

SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM (MEMORANDUM NO 2)

Data (Use and Access) Bill

1. This legislative consent memorandum (LCM) 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 Cymru¹ if a UK Parliamentary Bill makes provision in relation to Wales which has regard to devolved matters.
2. The Data (Use and Access) Bill (“the Bill”) was introduced in the UK Parliament, the House of Lords, on 23 October 2024. I laid an LCM on 2 January 2025.
3. On 26 February a number of government amendments were tabled to the Bill for House of Commons Committee stage, which commenced on 4 March. Five of these amendments make provision which have regards to devolved matters, as detailed in paragraphs 8 to 15 below.
4. The Bill, as brought from the House of Lords, can be found at:
<https://publications.parliament.uk/pa/bills/cbill/59-01/0179/240179.pdf>

Policy Objective(s)

5. The UK Government’s stated policy objectives are to harness the power of data for economic growth, support a modern digital government, and improve people’s lives. It indicates that the Bill has been designed to achieve these three objectives with measures included to start delivering its commitment to better serve the British public through science and technology.

Summary of the Bill

6. A summary of the Bill was provided in the first LCM laid on 2 January, which remains accurate.

Update on position since the publication of the first LCM

7. Officials for the Welsh Government and UK Government have continued to have regular contact on the Bill, including specific parts relating to Access to Customer Data and Business Data, Digital Verification Services and the National Underground Asset Register (NUAR).
8. The following government amendments, tabled on 26 February, were assessed by Welsh Government as requiring legislative consent of the Senedd:

¹ Please note in accordance with Welsh Government policy we refer to the legislature in Wales as “Senedd Cymru” on first use and “the Senedd” thereafter unless the context stipulates otherwise.

- Amendments 1, 2, 3 and 5, which amend Part 1, clause 8 – Enforcement of Regulations
 - Amendment 6, which amends Part 1, clause 10 - Financial penalties
9. Following legal analysis of the implications of these new amendments I consider this supplementary LCM is required to be laid before the Senedd for the reasons set out in paragraphs 11 to 15 below.
10. Part 1 of the Bill – Access to Customer Data and Business Data - makes provision about the sharing of customer and business information to improve data portability and establishes a regulatory framework for the setting up of Smart Data schemes.

Amendment 1, 2, 3 and 5 – Part 1, clause 8 - Enforcement of Regulations

11. Clause 8 includes powers for the Secretary of State or Treasury to make regulations regarding enforcement measures in respect of Smart Data schemes. Amendment 1, 2, 3 and 5 amends clause 8, as follows:
- Amendment 1 - amends a reference to conditions for authorisation or approval to receive customer data or business data, extending the scope of who can impose conditions beyond decision-makers.
 - Amendments 2,3 and 5 - provide that regulations made under Part 1 may require enforcers to publish or provide documents, as well as information, making the regulation-making powers in relation to enforcers consistent with the powers in relation to decision-makers and interface bodies. These amendments make provision for the first time in respect of the publication or production of documents.
12. The need for legislative consent for Part 1 of the Bill, including clause 8, was set out in the LCM laid on the Bill on 2 January. As amendments 1,2,3 and 5 amend clause 8 by extending the scope of enforcement regulations, an SLCM is required for these amendments.

Amendment 6 – Part 1, clause 10 – Financial penalties

13. Clause 10 makes provision for financial penalties in relation to Smart Data schemes and imposes safeguards on their use.
14. Amendment 6 adds an additional provision that regulations under this clause must contain. This confers express power to make provision about the treatment of penalties paid to enforcers, in order to be consistent with similar powers in clauses 11(1)(b) (fees) and 12(1)(b) (levies).
15. The need for legislative consent for Part 1 of the Bill, including clause 8, was set out in the LCM laid on the Bill on 2 January. As amendment 6 makes provision about what must, or may, be done with penalties for the first time, an SLCM is required for this amendment.

UK Government view on the need for consent

16. A summary of the UK Government's view on the need for consent in relation to Part 1 of the Bill was provided in the first LCM laid on 2 January. UK Government have confirmed that this continues to be their position and applies to these amendments.

Welsh Government position on the Bill

17. The Welsh Government remains supportive of the UK Government's policy intent behind the Bill, which was summarised in the first LCM laid on the Bill.
18. The vast majority of the provisions within the Bill relate to the reserved matters reserved under the data protection reservation, the sale and supply of goods and services to consumers reservation, the telecommunications reservation and the reservation for the registrations of births, deaths and places of worship, as set out in Schedule 7A to the Government of Wales Act 2006.
19. The previous LCM outlined concerns in relation to the devolved implications of the following provisions:
 - Part 1, Access to Customer Data and Business Data, clauses 1-13 and 18-26;
 - Part 2, Digital Verification Services, clause 49; and,
 - Part 3 - National Underground Asset Register, clauses 56, 57, 60(1) and Schedule 1.
20. Concerns remain in relation to the impact the Bill may have on the UK's Data Adequacy status, as set out in the first LCM laid on the Bill.
21. Discussions with the UK Government on these matters, at both Ministerial and official level, are ongoing.

Financial implications

22. Part 1, Access to Customer Data and Business Data - includes powers to impose fees on data holders and others and to impose a levy on data holders and others. The UK Government indicates these are intended to cover the costs incurred by decision-makers and enforcers in exercising their functions. It states the provisions aim to ensure schemes are self-funding and not reliant on public funds.

Conclusion

23. It is my view that it is 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.

24. Whilst the Welsh Government is supportive of the policy intent behind the Bill, there remain concerns from a constitutional perspective as outlined in paragraphs 19-20.
25. We are continuing to engage positively with UK Government at both Ministerial and official level on the role of the Welsh Ministers and the Senedd within the Bill on these matters.
26. I will provide further updates to the Senedd on the Welsh Government's position in relation to the Bill following further engagement with UK Government.

Rebecca Evans MS

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12 March 2025