

LEGISLATIVE CONSENT MEMORANDUM

Data (Use and Access) 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 Cymru¹ if a UK Parliamentary Bill makes provision in relation to Wales that has regard to devolved matters.
2. Data (Use and Access) Bill (“the Bill”) was introduced in the House of Lords on 23 October 2024. The Bill can be found at: bills.parliament.uk/publications/56527/documents/5211
3. I wrote to the Llywydd on 30 October 2024 notifying of a delay in laying a Legislative Consent Memorandum in relation to the Bill. This was primarily due to the complexity and length of the Bill, coupled with the need to consider the issues encountered on the previous Data Protection and Digital Information (DPDI) Bill, which contained similar provisions.

Policy Objective(s)

4. 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

5. The Bill is sponsored by the Department for Science, Innovation and Technology (DSIT).
6. The Bill makes provision to:
 - allow for the secure sharing of customer data, e.g., held by a communications provider or financial services provider, upon the customer’s request, with authorised third-party providers.
 - establish a legislative structure for the provision of digital verification services in the UK.
 - provide a legislative framework to support the operation of the National Underground Asset Register.
 - reform the way in which births and deaths are registered in England and Wales, enabling the move from a paper-based system to registration in an electronic register.

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.

- reform parts of the UK's data protection and privacy framework to maintain high standards of protection, whilst addressing a lack of clarity in existing legislation that impedes the safe development and deployment of some new technologies.
- facilitate the flow and use of personal data for law enforcement and national security purposes.
- reform the regulator, the Information Commissioner, including its governance structure, duties, enforcement powers, reporting requirements, data protection complaints processes and its development of statutory codes of practice.
- provide the Gas and Electricity Markets Authority with flexibility to determine the best process to follow in appointing the successor licensee for providing smart meter communication services.
- extend data sharing powers under section 35 of the Digital Economy Act 2017 to include businesses.
- amend the Online Safety Act 2023 to create a requirement for OFCOM, when notified of a child death by the Coroner (or Procurator Fiscal in Scotland) to issue an information notice to specified online service providers requiring them to retain certain information relating to the use of the service by the deceased child for a specified period.
- create a framework allowing researchers access to data relating to online safety held by tech companies.
- retain biometric information, including that received through international partner sharing.
- update regulations to make sure that the UK's trust services legal framework continues to function effectively.

Engagement with the UK Government

7. The UK Government announced this new Bill in the King's Speech on 17 July 2024. At the time the Bill was titled the 'Digital Information and Smart Data Bill'. UK Government officials have been in regular contact with Welsh Government officials since that announcement.
8. Many of the Bill's provisions align with provisions included in the previous DPDI Bill. The DPDI Bill was introduced in the House of Commons on 8 March 2023, but failed to complete its passage through Parliament before the 2023-24 session of Parliament was dissolved prior to the General Election.
9. The DPDI Bill was subject to the legislative consent process with legislative consent memoranda laid in the Senedd on 29 March 2023, 25 May 2023, 11 December 2023 and 25 April 2024. A legislative consent motion for the DPDI Bill was also debated on 14 May 2024 in which the then Cabinet Secretary for Energy, Economy and Welsh Language advised the Senedd to withhold consent due to constitutional concerns with a number of the Bill's provisions. The Senedd agreed to withhold consent following a vote.

10. Engagement with the previous UK Government regarding the DPDI Bill was set out through the legislative consent memoranda laid on the Bill, and other supporting documents, [as published on the Senedd website](#).
11. The Bill interacts with a wide range of other key legislation:
- Births and Deaths Registration Act 1953
 - Data Protection Act 2018
 - Data Protection, Privacy and Electronic Communication (Amendments etc) (EU Exit) Regulations 2019
 - Digital Economy Act 2017
 - Electricity Act 1989 and Gas Act 1986
 - Electronic Identification and Trust Services for Electronic Transactions Regulations 2016
 - Energy Act 2008
 - Enterprise and Regulatory Reform Act 2013
 - European Union (Withdrawal) Act 2018 as amended by the Electronic Identification and Trust Services for Electronic Transactions (Amendment etc.)
 - European Union Exit Regulations 2019
 - Health and Social Care Act 2012 as amended by the Health and Care Act 2022
 - Immigration Act 2014
 - Immigration Act 2016
 - Immigration, Asylum and Nationality Act 2006
 - New Roads and Street Works Act 1991
 - Online Safety Act 2023
 - Registration of Births and Deaths Regulations 1987
 - Registration Service Act 1953
 - Street Works (Northern Ireland) Order 1995
 - The Privacy and Electronic Communications (EC Directive) Regulations 2003
 - UK General Data Protection Regulation

Provisions in the Bill for which consent is required

12. The following clauses require the consent of the Senedd to the extent they make provision in relation to Wales that has regard to devolved matters.

Part 1 - Access to Customer Data and Business Data, clauses 1-13 and 18-26

13. Clauses 1-13 and 18-26 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.
14. Together these clauses provide the Secretary of State and the Treasury with a number of regulation-making powers. This would enable Smart Data schemes to be established via regulations, requiring suppliers and other relevant persons to share data in the manner prescribed in regulations. Regulations would specify the scope of a scheme, the companies defined as “data holders”, and the data they will be required to

publish/share. Regulations would also establish the framework for the set up and ongoing management of the scheme, including the accreditation of third parties, provision of enforcement by a specified public body, and the payment of fees and levies. These provisions also enable the Secretary of State or Treasury to give financial assistance to enforcers to cover expenses.

15. These clauses make provision about sharing customer and business information to improve data portability in order to improve the quality of service provided to the customer and to businesses. Further, these clauses are intended to facilitate the sharing of personal data but do not make changes to data protection legislation framework itself and therefore do not relate to paragraph 170 of Schedule 7A to GOWA 2006, "*Protection of personal data*".
16. As the purpose of these provisions relate to business and economy, neither the reserved matter in paragraph 170, nor any other reserved matters in Schedule 7A to GOWA 2006, are engaged. Further, these provisions do not relate to the or "*Regulation of the sale and supply of goods and services to consumers*" in Paragraph 72 of Schedule 7A to GoWA 2006.
17. With regards to clause 12 (levy), a power to levy a charge does not amount to a tax falling within the scope of "*Fiscal, economic and monetary policy including the issue and circulation of...taxes*" as reserved by paragraph 15 of Schedule 7A to GoWA 2006.

Part 2 - Digital Verification Services - Information Gateway, clauses 45, 47 & 49

18. These clauses make provision for Digital Verification Services (DVS) including the establishment of a regulatory framework for the provision of DVS to enable greater use digital identities across the UK:
 - *Clause 45, Power of public authority to disclose information to registered Person* - establishes a new information gateway and confers a permissive power on public authorities to provide personal information about individuals (subject to consent) to identity service providers providing trust-marked DVS.
 - *Clause 47, Information disclosed by the Welsh Revenue Authority* - prevents further disclosure of information provided by the Welsh Revenue Authority (WRA) under clause 43, without the consent of the WRA is prevented. Disclosure of information without consent will be an offence.
 - *Clause 49, Code of practice about the disclosure of information* - gives powers to the Secretary of State to publish a Code of Practice regarding the disclosure of information under clause 45, which Public

Authorities sharing data for DVS must have regard to. Under clause 49(5) the SoS is required to consult with the Welsh Ministers when preparing or revising the code of practice.

19. The data sharing power under clause 45 enables the public authority to provide personal information which facilitates access to DVS. The purpose is about enabling the provision of DVS and therefore does not relate to the regulation of the provision of that service. Under clause 49, the code of practice will apply to Welsh public authorities which are devolved.
20. These provisions do not relate to the “*internet services*” in paragraph 84 of Schedule 7A to GOWA 2006. This would be an extraordinarily wide interpretation of the reservation. Many services, including public services, are provided via the internet and it would be hard for the Senedd to legislate on most areas without involving the use of the internet.
21. Clause 47 relates to the governance of the Welsh Revenue Authority and therefore to the exception “*Devolved taxes, including their collection and management*” to the reservation on “*Fiscal, economic and monetary policy, including the issue and circulation of... taxes...*” in paragraph 15 of Schedule 7A to GOWA 2006.

Part 3 - National Underground Asset Register, clauses 56, 57, 60(1) and Schedule 1

22. The National Underground Asset Register (NUAR), developed by the Geospatial Commission, is a digital map of underground pipes and cables. These provisions amend the New Roads and Street Works Act 1991 (NRSWA 1991), enabling creation of NUAR:
 - *Clause 56, National Underground Asset Register: England and Wales* - new Part 3A is to be inserted into the NRSWA 1991 and provides regulation making powers in respect of the NUAR to the Secretary of State, with a requirement being placed on the Secretary of State to consult the Welsh Ministers prior to making regulations.
 - *Clause 57, Information in relation to apparatus: England and Wales* – this clause amends the NRSWA 1991 so as to impose new duties on undertakers to keep records of, and share information relating to, apparatus in streets; and makes amendments consequential on those changes:
 - under sub-sections (2) and (3) the amendments to be made to section 79 of the NRSWA 1991 provide the Secretary of State and Welsh Ministers with concurrent regulation making powers. A requirement is also placed on the Secretary of State to consult the Welsh Ministers before making regulations under this section.
 - under sub-section (4), the amendments to section 80 of the NRSWA 1991 provide regulation making powers to the Secretary

of State only, with a requirement being placed on the Secretary of State to consult the Welsh Ministers before making regulations under this section. As a consequence, existing but un-commenced powers will be removed from Welsh Ministers in relation to Wales and the Secretary of State in relation to England.

- sub-section (9) revokes the Street Works (Records) (Wales) Regulations 2005 (S.I. 2005/1812), with sub-section (8) amending the Street Works (Records) (England) Regulations 2002 so that apply to both England and Wales, rather than just England.
 - *Clause 60(1), Pre-commencement consultation* - provides that a requirement to consult (under a provision which is inserted into the New Roads and Street Work Act 1991 by clauses 56 or 57) may be satisfied by consultation undertaken before the day on which this Bill is passed.
 - *Schedule 1, National Underground Asset Register (England and Wales): monetary penalties* - inserts a new Schedule (5A) into the NRSWA 1991 which makes provisions about monetary penalties for non-compliance with the requirements to pay a fee and provide information set out in Part 3A of the Act.
23. Welsh Ministers have executive competence in relation to the NRSWA 1991 (except s.167(3)) by virtue of article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999/672. No relevant reserved matters as set out in Schedule 7A to GoWA 2006 have been identified.
24. The regulation making powers conferred the Welsh Ministers (which are exercisable concurrently with SoS) as provided for in clause 57(3) are subject to the negative procedure.

Part 7 - Information to improve public service delivery, clause 121

25. Clause 121 extends the data sharing powers in section 35 of the Digital Economy Act 2017 (DEA), which permit specified public authorities ('specified persons' in the DEA) to share data to improve the delivery of public services to individuals and households. This would extend these powers to include improving the delivery of services to businesses.
26. The purpose of this clause is to improve public service delivery by specified public authorities. It will create a new legal gateway to enable specified public authorities to share information to improve the delivery of public services. 'Specified persons' are listed in Schedule 4 to the DEA and include in Part 2 'Welsh Bodies' and include various devolved Welsh authorities. It does not change the data protection framework itself. No reserved matters are engaged.

27. The amendment made by clause 121 extends a pre-existing Henry VIII power exercisable by Welsh Ministers, by enabling the sharing of information to improve the delivery of public services to 'undertakings'. This is a modification of an existing power, rather than a conferral of a power. The regulation-making power in section 35 of the DEA (the power being modified), is subject to the affirmative procedure.

UK Government view on the need for consent

28. In a letter to the Cabinet Secretary for Economy, Energy and Planning from the Secretary of State for Science, Innovation and Technology dated 23 October 2024, the UK Government stated they would be seeking to engage in the legislative consent process for Wales in relation to a number of measures within the Bill, as set out below.

29. UK Government are of the view that the general provisions under *Part 1, Access to Customer Data and Business Data clauses 1-28* are reserved under the consumer protection reservation in Schedule 7A Section C6 GOWA 2006; but are in a devolved area in relation to business customers. Further that the 'Smart Data' provisions are reserved where it applies to the financial services sector, under the financial services reservation (Paragraph 17 of Schedule 7A to GoWA 2006). UK Government also consider the levy raising power under *clause 12, Levy* to be reserved under the fiscal economic and monetary policy reservation – Paragraph 15 of Schedule 7A to GoWA 2006.

30. UK Government consider the *Part 2 Digital Verification Services* provisions to be reserved under the internet services reservation (Paragraph 84 of Schedule 7A to GoWA 2006). However, UK Government are of the view that the legislative consent process is engaged as follows:

- *Clause 45, Power of public authority to disclose information to registered Person* – which relates to a devolved purpose, and engages the legislative consent process as it has been included to protect the confidential nature of information held by the Welsh Revenue Authority.
- *Clause 47 Information disclosed by the Welsh Revenue Authority* - which requires an LCM under the Devolution Guidance Note for Wales (DGNW) as it modifies functions of/confers functions on Devolved Welsh Authorities.
- *Clause 49, Code of practice about the disclosure of information* - which requires an LCM under the DGNW as it modifies functions of/confers functions on Devolved Welsh Authorities.

31. UK Government agree that legislative consent is required for the provisions contained within *Part 3, National Underground Asset Register*,

clauses 56, 57, 60(1) and Schedule 1 as they will alter the executive competence of the Welsh Ministers.

32. UK Government agree that legislative consent is required for *Part 7, clause 121, Disclosure of information to improve public service delivery to undertakings*.

Welsh Government position on the Bill

33. The Welsh Government is supportive of the UK Government's policy intent behind the Bill, aims to:
- improve data portability between suppliers, service providers, customers, and relevant third parties.
 - to increase trust in and acceptance of digital identities across the UK and to enable a trusted digital identity market to develop in the UK by establishing a legislative structure for the provision of digital verification services in the UK.
 - streamline the data-sharing process, reduce the risk of potentially lethal utility strikes on apparatus and promote more efficient management and maintenance of underground apparatus, through the establishment, on a statutory footing, of the NUAR.
 - modernise the governance structures of the Information Commissioner's Office.
 - facilitate more responsive, joined-up public services across the digital economy.
 - ensure the effective functioning of the UK trust services regime and make it work for future arrangements.
34. 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. As such, I believe it may be appropriate for these provisions to be made through a UK Bill.
35. The Welsh Government is also supportive of the policy intent behind these provisions, as set out below:
- *Part 1, Access to Customer Data and Business Data, clauses 1-13 and 18-26* – the policy intent for these provisions is to improve data portability, enabling customers to make better use of their personal data; to benefit from a more competitive marketplace; helping consumers save and manage their money and services and to provide access to new and more innovative services in and across the sectors.
 - *Part 2, Digital Verification Services, clauses 45, 47 & 49* - the intent behind the DVS provisions is to increase trust in and acceptance in use of digital identities, making identity proofing easier, cheaper and more secure.

- *Part 3, National Underground Asset Register, clauses 56, 57 & 60(1) and Schedule 1* - the NUAR is expected to deliver significant economic growth across the UK, through increased efficiency, reduced asset strikes (when underground pipes and cables are accidentally damaged) and reduced disruptions for the public and businesses. The NUAR programme also supports the Strategic Infrastructure Steering group project in Wales, which looks to improve efficiency in planned works between utility companies and local authorities, as well as improved planning for utility companies on future housing and industrial developments.
- *Part 7, Information to improve public service delivery, clause 121* - the extension of the data sharing powers in the DEA to include enhanced outcomes for businesses will support the delivery of joined up public services across Wales that meet the needs of users and citizens and support the delivery of the economic commitments in the Programme for Government. In addition, the data sharing powers in Part 5 of the DEA are permissive, not mandatory, therefore there is no obligation for public authorities to use them unless they wish to. As such, this places no additional burden on public authorities.

Key matters of concern to be resolved

36. With the previous DPDI Bill, there were a number of provisions which touched upon devolved matters but did not align with the Welsh Government's Principles on UK legislation. Some of these concerns have been resolved in the Bill, namely:
 - the removal of NUAR provisions on transferring regulation making powers under section 79 of the NRSWA 1991 from Welsh Ministers to the Secretary of State.
37. However, the following provisions, as currently drafted, do not align with our principles on UK legislation. Engagement with UK Government regarding these concerns is ongoing.
38. *Part 1, Access to Customer Data and Business Data, clauses 1-13 and 18-26* - provides the Secretary of State and HM Treasury with regulation making powers in an area which is devolved.
39. *Part 2, Digital Verification Services, clause 49* - provides the Secretary of State with powers to prepare and publish a Code of Practice, which would be applicable to Welsh public authorities, in an area which is devolved.
40. *Part 3, National Underground Asset Register:*
 - Clause 56 places a requirement on the Secretary of State to consult the Welsh Ministers prior to making regulations (under new Part 3A to be inserted into the NRSWA 1991).

- Clause 57 (3) provides the Secretary of State and Welsh Ministers with concurrent regulation making powers, with a requirement being placed on the Secretary of State to consult the Welsh Ministers before making regulations under this section (under the amendments to be made to section 79 of the NRSWA 1991).
- Clause 57(4), provides regulation making powers to the Secretary of State , with a requirement being placed on the Secretary of State to consult the Welsh Ministers before making regulations under this section (under the amendments to section 80 of the NRSWA 1991).
- Clause 57(9) revokes the Street Works (Records) (Wales) Regulations 2005 (S.I. 2005/1812), with clause 57(8) amending the Street Works (Records) (England) Regulations 2002 so that they apply to both England and Wales, rather than just England.

EU Data Adequacy

41. Concerns were also raised during the passage of the DPDI Bill regarding its potential impact on the UK's current adequacy decisions, which were granted in June 2021 by the EU for a period of 4 years initially.
42. These concerns were in relation to provisions which were seen to weaken the independence of the Information Commissioner and undermine individual rights, as well as provisions which amended the statutory definition of personal data, which presented a risk that a broader range of health and social care data could have been included in the scope of free trade agreements. These provisions were considered as being challenging and having the potential of a review by the Commission and legal challenge in the Court of Justice of the European Union.
43. Any potential loss of EU data adequacy is a key concern from a trade perspective as this would be a major threat for Welsh exporting businesses whose main overseas market continues to be the EU. There are a significant number of high-value Welsh businesses which rely on smooth data transfers with the EU, particularly multinationals with parent or sister companies based in EU countries. If the UK lost its data adequacy status, implementation of the safeguards required by the EU would mean additional administrative and reporting requirements for EU businesses and disruption for Welsh businesses, as they would also need to undertake additional, potentially costly, compliance activities.
44. In addition, the loss of data adequacy could also impact public service delivery where there is a reliance on the flow of personal data flow from the EU, for example within education and local government. From a Health perspective the risks are even more significant - the loss of data adequacy would potentially have an effect on the Welsh NHS, impacting aspects of our cooperation with the EU on health. For example, access to data for existing reciprocal healthcare arrangements, protection of public

health security, continuity for medical research, innovation and cross-border information flows.

45. This new Bill contains some, but not all, of the provisions which caused concern previously. Welsh Government is currently undertaking a detailed assessment of the potential. Welsh Government are also engaged with UK Government on this matter.

Financial implications

46. *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.
47. *Part 2, Digital Verification Services* - the UK Government expects some public sector organisations to have direct familiarisation costs as a result of this legislation. The UK Government also expects some UK businesses to face indirect costs, including those which choose to become certified against the UK digital identities and attributes trust framework and registered in the Digital Verification Services register. The UK Government also expects UK businesses to face indirect annual costs in the form of fees levied by public sector organisations to connect to government-held datasets and to check data. These fees are intended to offset public sector costs and maintain value for money for the taxpayer.
48. *Part 3, National Underground Asset Register* - UK Government's intention is for the NUAR's running costs to be funded through fees paid by those who benefit from the service (and not the taxpayer). Through regulations the Secretary of State may create a fees scheme and may require undertakers with apparatus in a street to pay fees to fund the operation of the NUAR service. The intended approach is that the fees will be targeted at covering the operating and are not to generate additional revenue beyond this.

Conclusion

49. 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.
50. Whilst the Welsh Government is supportive of the policy intent behind the Bill, there remain concerns from a constitutional perspective as outlined in paragraphs 38 - 40. We are engaging 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.

51. 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
Cabinet Secretary for Economy, Energy and Planning
2 January 2025