

SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM (MEMORANDUM NO.4)

DATA PROTECTION AND DIGITAL INFORMATION BILL

1. This legislative consent memorandum is laid under Standing Order (“SO”) 29. 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 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 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 2023, which remains accurate.

Engagement with the UK Government since LCM No. 3, laid on 11 December 2023

5. UK Government (UKG) officials and Welsh Government (WG) officials have continued to be in regular contact during the passage of the Bill through Parliament.
6. Both official level and Ministerial level engagement has also continued in relation to concerns relating to the impact of the Bill on the retention of EU Data Adequacy and in relation to the devolved implications (as set out across previous LCMs) of the following provisions:
 - Part 2, Digital Verification Services (DVS) - clause 74, Code of Practice about the disclosure of information (clause 56 as introduced);
 - Part 3, Customer Data and Business Data - clauses 85-107 (clauses 61-77 as introduced);
 - Part 4, Other provision about digital information - clause 126, Implementation of law enforcement information-sharing agreements

(clause 93 as introduced), clause 127 Meaning of “appropriate national authority”, and clause 151 Regulations; and,

- Part 4, Other provision about Digital Information - clauses 138-141 National Underground Asset Register.

Update on position since the publication of Legislative Consent Memorandum 1, 2 and 3

7. Within the LCM, supplementary LCM No. 2 and supplementary LCM No. 3, laid on the 24 March, 25 May 2023 and 11 December 2023 respectively, the former First Minister recommended that consent be given in respect of:

- Clause 74 (54 as introduced), Part 2, Digital Verification Services;
- Clause 98 (92 as introduced), Part 4, Disclosure of information to improve public service delivery to undertakings.
- Clause 76 (amendment NC3), Information disclosed by the Welsh Revenue Authority.

8. However, it was recommended that consent be withheld for the following provisions to allow for further discussions to be held between WG officials and UKG officials in relation to devolved implications on:

- Clause 78, Part 2, Digital Verification Services (clause 56 as introduced);
- Clauses 85-107, Part 3, Customer Data and Business Data (61-77 as introduced);
- Clause 126, Part 4, Implementation of law enforcement information sharing agreements (93 as introduced), clause 127 Meaning of “appropriate national authority” (amendment NC5), and clause 151 Regulations (clause 108 as introduced).

9. These discussions have concluded and I have provided details in my [letter](#) to the Chair of the Legislation, Justice and Constitution Committee, copied to the Chair of the Culture, Communications, Welsh Language, Sport, and International Relations Committee, on 16 April.

10. Ahead of Committee Stage in the House of Lords, which commenced on 20 March 2024, the UKG tabled its [amendments to the Bill](#) on 13 March 2024.

11. The following amendments, tabled on the 13 March, were assessed by Welsh Government as requiring the legislative consent of the Senedd:

- Amendment to clause 96: Levy
- Amendment to clause 103: Regulations under this Part (i.e. Part 3)
- Amendments to clause 138: National Underground Asset Register
- Amendments to clause 139: Information in relation to apparatus

- Amendment to Schedule 13: National Underground Asset Register: monetary penalties

12. Following 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 13 to 23 below.

Provisions in the Bill for which consent is required

Part 3: customer data and business data, clauses 85-107 (61-77 as introduced)

13. Clauses 85-107 (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.
14. 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.
15. The purpose is to improve the quality of service provided to the customer and to businesses. LCMs were previously laid in relation to those provisions, and the following amendments are relevant:
- Amendment to clause 96: Levy
 - Amendment to clause 103: Regulations under this Part
16. The amendment to clause 96 Levy (OPC587) provides that the restriction in clause 96(3) on the exercise of the regulation-making power in clause 96(1) (power to impose a levy) applies in connection with regulations imposing a levy on authorised persons or third-party recipients, as well as regulations imposing a levy on data holders.
17. The amendment to clause 103 Regulations under this Part (OPC608) makes clear that the requirement under clause 103(9) to consult before making regulations described in clause 103(7) may be satisfied by consultation carried out before clause 103 comes into force.

Part 4, Other provision about Digital Information - clauses 138-141 National Underground Asset Register

18. Clauses 138 to 141 make amendments to, and insert a new Part and Schedule into, the New Roads and Street Works Act 1991. These require,

and make provision in connection with, the keeping of a register of information relating to apparatus in streets, to be called the National Underground Asset Register.

19. The National Underground Asset Register (NUAR), developed by the Geospatial Commission (part of DSIT), is a digital map of underground pipes and cables that will significantly improve the way bodies across the UK and industry install, maintain, operate and repair the buried infrastructure.
20. Supplementary LCM No. 3 was previously laid in relation to those provisions, and the following amendments are relevant:
 - Amendments to clause 138: National Underground Asset Register
 - Amendments to clause 139: Information in relation to apparatus
 - Amendment to Schedule 13: National Underground Asset Register: monetary penalties
21. The amendments to clause 138: National Underground Asset Register are as follows:
 - OPC630: This amendment moves provision about the initial upload of information into the National Underground Asset Register into a new section to be inserted into Part 3A of the New Roads and Street Works Act 1991 (inserted by this clause).
 - OPC592: This amendment is consequential on amendment OPC630.
 - OPC672: This amendment makes clear that regulations under section 106B(1) of the New Roads and Street Works Act 1991 (inserted by this clause) may make provision for, as well as provision in connection with, making information kept in the National Underground Asset Register available.
 - OPC674: This amendment moves provision about licensing and the charging of fees under regulations under section 106B of the New Roads and Street Works Act 1991 (inserted by this clause) into subsection (2) of that section; and makes it clear that those regulations will only provide for licensing in relation to non-Crown rights.
 - OPC673 and OPC637 are consequential on amendment OPC674.
 - OPC638 provides for definitions and is consequential on amendment OPC674.
22. The amendments to clause 139: Information in relation to apparatus (OPC631 and OPC632) are consequential on amendment OPC630 to clause 138 moving provision about the initial upload of information into the National Underground Asset Register into a new section to be inserted into Part 3A of the New Roads and Street Works Act 1991 (inserted by clause 138).

23. The amendment to Schedule 13: National Underground Asset Register: monetary penalties (OPC677) ensures that language used in paragraphs 2 and 3 of Schedule 5A to the New Roads and Street Works Act 1991 (inserted by this Schedule) is consistent.

UK Government view on the need for consent to the amendments tabled on 13 March

24. UK Government agree that Part 3: customer data and business data, clauses 85-107 (61-77 as introduced) are devolved in so far as the customer is a business and not an individual, and therefore consider legislative consent is required but limited in this respect. UK Government consider the reserved matter of regulation of the sale and supply of goods and services to consumers applies (paragraph 72(a) of Schedule 7A to the Government of Wales Act 2006).
25. UK Government agree that legislative consent is required for Part 4, Other provision about Digital Information - clauses 138-141 National Underground Asset Register.

Welsh Government position on the Data Protection and Digital Information Bill

26. Despite discussions being held with UK Government since the introduction of the Bill, concerns outlined across the previous three LCMs remain in relation to the devolved implications of a number of the Bill's provisions, as follows:
- **Part 2, Digital Verification Services (DVS) Information Gateway clause 78 (c56 as introduced) Code of practice about the disclosure of information** - as clauses 74 and 78 are both considered to relate to devolved matters, Welsh Ministers are of the view that the current approach to conferring powers solely upon the Secretary of State fails to reflect devolution and is inappropriate.
 - **Part 3, Customer Data and Business Data - clauses 85-107 (c61-77 as introduced)** – as the purpose of the clauses within Part 3 of the Bill is to improve the quality of service provided to the customer and to businesses and is considered to relate to devolved matters of business and economy, Welsh Ministers are of the view that the current approach to conferring powers solely upon the Secretary of State again fails to reflect devolution and is inappropriate.
 - **Part 4, Other provision about Digital Information - clause 126 Implementation of law enforcement information sharing agreements, clause 127 Meaning of “appropriate national authority”, and clause 151 Regulations** – the Senedd has legislative competence to make provision for the prosecution of criminal offences

and execution of criminal penalties on a wide range of devolved matters. Welsh Ministers are again of the view that conferral of powers solely upon the Secretary of State fails to reflect devolution and is inappropriate.

Our view is that an appropriate recognition for devolved interests could be reflected alongside the potential merits of UK-wide policy delivery through the conferral of concurrent plus powers in each of the above areas. This would ensure the devolved powers could be exercised in Wales where relevant, whilst providing that any UK Government exercise of those powers in Wales is contingent upon the agreement of the Welsh Ministers. UK Government have rejected that approach, whilst offering amendments including concurrent powers (without consent mechanisms) and consultation provisions. This approach does not align with our principles, nor the Senedd's consistent opposition to the creation of such concurrent powers.

- **Part 4, Other provision about Digital Information - clauses 138-141 National Underground Asset Register** - under clause 141, certain powers to make regulations under section 79 of the New Roads and Street Works Act 1991 would be transferred from the Welsh Ministers to the Secretary of State. We consider the removal of a devolved executive function to be a completely inappropriate reversal of devolution.

27. Concerns also remain regarding Part 1, Data Protection, clause 41 Interview Notices. This provision includes an exemption for the Office for Standards in Education, Children's Services and Skills (OfSTED). Welsh Ministers are of the view that a similar exemption should be granted to Welsh Ministers as the Regulator for the equivalent services in Wales.
28. Furthermore, concerns remain in relation to the interrelated issues of the independence of the Information Commissioner's Office and the impact of the Bill on the UK's Data Adequacy status, with a number of provisions 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.
29. This Adequacy status concern is shared by others, reflected by the Northern Ireland Executive's Department for the Economy report ['Understanding the risks to cross border transfer of personal data: EU-UK Data Adequacy'](#).

Financial implications

30. It is likely that there will be financial implications for Wales as a result of the new NUAR provisions. UKG are currently considering some form of charging model for use of the NUAR, based on a not-for-profit cost recovery model option. This may include some form of reduced charges or exemption for public sector bodies and small and micro businesses.

Officials are asking UKG for more details on this, the likely costs for Wales and what this will mean in practice.

Conclusion

31. Whilst the Welsh Government are supportive of the policy objectives behind the majority of the provisions within the Bill, it is my view that consent to this Bill cannot be recommended due to the constitutional concerns which remain, as outlined in paras 26 to 29.

Jeremy Miles MS
Cabinet Secretary for Economy, Energy and Welsh Language
25 April 2024