

## **SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM (MEMORANDUM NO.3)**

### **DATA PROTECTION AND DIGITAL INFORMATION 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 Bill (“the Bill”) was introduced in the House of Commons on 8 March 2023. The Bill is a carry over and was previously titled the Data Protection and Digital Information (No.2) Bill. 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 2, laid on 25 May 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 of the following provisions (as set out in [LCM 1](#) and Supplementary [LCM 2](#)).
  - Part 2, Digital Verification Services (DVS) - clause 60, Code of Practice about the disclosure of information (clause 56 as introduced);
  - Part 3, Customer Data and Business Data - clauses 65-81 (clauses 61-77 as introduced); and,
  - Part 4, Other provision about digital information - clause 99, Implementation of law enforcement information-sharing agreements (clause 93 as introduced) and clause 100, Meaning of “appropriate national authority”.

## **Update on position since the publication of Legislative Consent Memorandum 1 and 2**

7. Within the LCM and the supplementary LCM, laid on the 24 March and 25 May 2023 respectively, I recommended that consent be given in respect of:
  - Clause 56 (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.
  - Amendment NC3, Information disclosed by the Welsh Revenue Authority.
  
8. However, I 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:
  - Clause 60, Part 2, Digital Verification Services (clause 56 as introduced);
  - Clauses 65-81, Part 3, Customer Data and Business Data (61-77 as introduced); and amendment 46 – change to clause 61 customer data and business data;
  - Clause 99, Part 4, Implementation of law enforcement information sharing agreements (93 as introduced) and amendments 8-16 and NC5, clause 108 (regulations), meaning of “appropriate national authority”.
  
9. Ahead of Report Stage, which took place on 29 November 2023, the UKG tabled its amendments to the Bill on [23](#) and [27](#) November 2023.
  
10. The following amendments, tabled on the 23 November, were assessed by WG as requiring legislative consent of the Senedd:
  - NC27, 103, 109, 126, 133: Interface bodies (and consequential amendments)
  - NC31: Liability in damages
  - NC32: Other data provision
  - Amendments 82 to 196: various amendments to Part 3
  - NC39, NS2, 215: National Underground Asset Register
  - NC40: Information in relation to apparatus
  - NC41: Pre-commencement consultation
  - NC42: Transfer of certain functions to Secretary of State
  - Amendments 79-80: amendments to clauses 56 and 60 Digital Verification Services

11. 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 12 to 17 below.

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

#### *Clauses 65 to 81 - Part 3: customer data and business data (Smart Data) (61-77 as introduced)*

12. Clauses 65 to 81 make provision about sharing customer and business information to improve data portability (Smart Data). The purpose is to improve the quality of service provided to the customer and to businesses. As LCMs were previously laid in relation to those provisions, a further LCM is required for amendments to the same. The relevant amendments are:

- NC27, 103, 109, 126, 133: Interface bodies (and consequential amendments)
- NC31: Liability in damages
- NC32: Other data provision
- Amendments 82 to 196: various amendments to Part 3

#### *The National Underground Asset Register*

13. New clauses in the Bill make amendments to, and insert a new Part and Schedule into, the New Roads and Street Works Act 1991 (“the 1991 Act”). 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.

14. This is a matter of devolved competence and therefore legislative consent is required for the following amendments:

- NC39, NS2, 215: National Underground Asset Register
- NC40: Information in relation to apparatus
- NC41: Pre-commencement consultation
- NC42: Transfer of certain functions to Secretary of State

15. Notably in NC42, regulation making powers under section 79 of the 1991 Act, so far as exercisable in relation to Wales, are to be transferred from the Welsh Ministers back to the Secretary of State. NC42 also revokes a Wales SI and applies an England only SI to Wales.

16. NC39 and NC40 amend the 1991 Act so that, before making regulations under new Part 3A, section 79 or 80, the Secretary of State must consult Welsh Ministers.

#### *Digital Verification Services (DVS)*

17. Clauses 56 (54 as introduced) and 60 (56 as introduced) make provision about the sharing of information for the purpose of providing Digital Verification Services (DVS). The purpose is to enable the provision of DVS and it does not relate to the regulation of the provision of that service.

Therefore, LCMs were previously laid in relation to those provisions, and a further LCM is required for amendments to the same. The relevant amendments are:

- Amendments 79-80: amendments to clauses 56 and 60 (54 and 56 as introduced)

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

18. UK Government are not in agreement that the new provisions in respect of DVS clauses 56 and 60 require the legislative consent of the Senedd. Rather UK Government consider the internet services reservation to apply to these new provisions (amendments 79 and 80).

19. We are awaiting UK Government's assessment of the need for legislative consent in respect of the amendments relating to Part 3, clauses 65 to 81, Customer and Business Data and the new provisions pertaining to the NUAR.

### **Welsh Government position on the Data Protection and Digital Information Bill**

20. The concerns outlined in the previous two LCMs 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 65-81 (61-77 as introduced) to which new amendments NC27, 103, 109, 126, 133, NC31, NC32, and 82 to 196, relate (see paragraph 12).
- the powers to the Secretary of State and Treasury to publish a Code of Practice in relation to clause 56 (54 as introduced) (DVS) to which new amendments 79-80 relate (see paragraph 17). Discussions continue between WG and UKG.

21. Concerns also remain in relation to the impact the Bill may have on the UK's Data Adequacy status and the independence of the Information Commissioner's Office.

22. In relation to the new clause relating to the National Underground Asset Register (detailed in paragraph 13-16) there are constitutional policy concerns around regulation making powers under section 79 of the 1991 Act, so far as exercisable in relation to Wales, being transferred from Welsh Ministers back to the Secretary of State. Discussions are being held at an official level between WG and UKG to understand this in more detail.

### **Financial implications**

23. 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**

24. It is my view that it is not appropriate to recommend consent for the following provisions until further discussions have been held with UKG in relation to the matters outlined in paragraphs 20 and 22 above:

- NC27, 103, 109, 126, 133: Interface bodies (and consequential amendments)
- NC31: Liability in damages
- NC32: Other data provision
- Amendments 82 to 196: various amendments to Part 3
- NC39, NS2, 215: National Underground Asset Register
- NC40: Information in relation to apparatus
- NC41: Pre-commencement consultation
- NC42: Transfer of certain functions to Secretary of State
- Amendments 79-80: amendments to clauses 56 and 60 Digital Verification Services

**Mark Drakeford MS**  
**First Minister**  
**11 December 2023**