

The Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 3) on the Data Protection and Digital Information Bill

January 2024



1. Background

The UK Government's Data Protection and Digital Information Bill

- 1.** A Data Protection and Digital Information Bill was introduced into the House of Commons on 18 July 2022. However this Bill was subsequently placed on pause prior to its second reading.
- 2.** The Data Protection and Digital Information (No. 2) Bill¹ was introduced into the House of Commons and had its first reading on 8 March 2023.
- 3.** The Data Protection and Digital Information (No. 2) Bill was carried over to the 2023-24 UK Parliament session and became the Data Protection and Digital Information Bill² ("the Bill"). It is sponsored by the Department for Science, Innovation and Technology.
- 4.** The Bill was introduced into the House of Commons on 8 November 2023, and had its third reading on 29 November 2023.
- 5.** First reading in the House of Lords took place on 6 December 2023, followed soon after by second reading on 19 December. At the time of writing this report, Committee stage in the House of Lords was yet to be scheduled.

- 6.** The Explanatory Notes to the Bill provide the following overview:

"This Bill is intended to update and simplify the UK's data protection framework with a view to reducing burdens on organisations while maintaining high data protection standards."³

- 7.** The long title to the Bill states that it is a Bill to:

"Make provision for the regulation of the processing of information relating to identified or identifiable living individuals; to make provision about services consisting of the use of information to ascertain and verify facts about individuals; to make provision about access to customer data and business data; to make provision about privacy and electronic communications; to make provision about services

¹ [Data Protection and Digital Information \(No. 2\) Bill](#), as introduced (Bill 265)

² [Data Protection and Digital Information Bill](#), as introduced (Bill 1)

³ [Data Protection and Digital Information Bill, as introduced, Explanatory Notes](#), November 2023

for the provision of electronic signatures, electronic seals and other trust services; to make provision about the disclosure of information to improve public service delivery; to make provision for the implementation of agreements on sharing information for law enforcement purposes; to make provision about the keeping and maintenance of registers of births and deaths; to make provision about information standards for health and social care; to establish the Information Commission; to make provision about oversight of biometric data; and for connected purposes.”⁴

The Welsh Government's Legislative Consent Memorandum and Supplementary Legislative Consent Memorandum (Memorandum No. 2)

- 8.** Standing Orders 29.1 and 29.2 provide that a legislative consent memorandum is required when a relevant UK Bill makes provision in relation to Wales for any purpose within the legislative competence of the Senedd or which modifies the Senedd's legislative competence.
- 9.** On 29 March 2023, the Rt Hon Mark Drakeford MS, First Minister of Wales (the First Minister), laid before the Senedd a Legislative Consent Memorandum (the Memorandum) in respect of the Bill.⁵
- 10.** The First Minister laid a Supplementary Legislative Consent Memorandum (Memorandum No. 2) on 25 May 2023.⁶
- 11.** We reported on the Memorandum and Memorandum No. 2 on 24 July 2023 (our first report).⁷
- 12.** Paragraphs 14 and 15 of our first report describe the intergovernmental working on the Bill.
- 13.** Paragraphs 16 to 19 and 30 to 32 of our first report set out the clauses of the Bill which, at the time, the Welsh Government considered to require the Senedd's

⁴ Data Protection and Digital Information Bill, as introduced (Bill 1)

⁵ Welsh Government, [Legislative Consent Memorandum. The Data Protection and Digital Information \(No. 2\) Bill](#), March 2023

⁶ Welsh Government, [Supplementary Legislative Consent Memorandum \(Memorandum No. 2\). The Data Protection and Digital Information \(No. 2\) Bill](#), 25 May 2023

⁷ Legislation, Justice and Constitution Committee, [Report on the Welsh Government's Legislative Consent Memoranda on the Data Protection and Digital Information \(No. 2\) Bill](#), July 2023

consent, and identified where disagreement existed between the Welsh and UK Governments.

14. Paragraphs 20 to 26 and 33 to 46 of our first report set out the Welsh Government's position on the Bill, as set out in the Memorandum and Memorandum No. 2.

15. Paragraphs 47 to 60 of our first report consider the UK-EU dynamic which is relevant to the Bill.

16. Our first report contained six conclusions and seven recommendations.

17. The First Minister responded to our first report on 5 September 2023.⁸

The Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 3)

18. On 23 and 27 November 2023 the UK Government tabled amendments to the Bill for consideration at Commons' Report Stage.

19. The First Minister laid a Supplementary Legislative Consent Memorandum (Memorandum No. 3)⁹ on 11 December 2023.

20. The Business Committee agreed that the Legislation, Justice and Constitution Committee and the Culture, Communication, Welsh Language, Sport and International Relations Committee should report on Memorandum No. 3 by 2 February 2024.¹⁰

Engagement with the UK Government

21. Paragraphs 5 and 6 of Memorandum No. 3 set out the Welsh Government's engagement with the UK Government since the laying of Memorandum No. 2 on 25 May 2023.

22. At paragraph 5 of Memorandum No. 3 the First Minister states that UK Government officials and Welsh Government officials have continued to be in

⁸ [Letter from the First Minister](#), 5 September 2023

⁹ Welsh Government, [Supplementary Legislative Consent Memorandum \(Memorandum No. 3\), The Data Protection and Digital Information Bill](#), 11 December 2023

¹⁰ Business Committee, [Timetable for consideration: Supplementary Legislative Consent Memorandum \(Memorandum No. 3\) on the Data Protection & Digital Information Bill](#), December 2023

regular contact during the passage of the Bill through the UK Parliament. The First Minister adds:

“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”.¹¹

Update on the position since the publication of the Memorandum and Memorandum No. 2, and provisions for which the Senedd’s consent is required

23. Clause numbering in Memorandum No. 3 refers to the Bill re-introduced into the House of Commons on 8 November 2023.

24. As set out in paragraphs 12 to 17 of Memorandum No. 3, the First Minister’s assessment is that the following provisions require the Senedd’s consent:

- In relation to Digital Verification Services – amendments 79 and 80 to clauses 56 and 60.
- In relation to Part 3 of the Bill (Customer data and business data) – amendments 82 to 196; amendments NC27, NC103, NC109, NC126 and NC133 regarding interface bodies; amendment NC31 regarding liability in damages; and amendment NC32 regarding other data provision.
- In relation to new provisions for a National Underground Asset Register – amendments NC39, NS2 and 215 regarding the National Underground Asset Register; amendment NC40 regarding information in relation to

¹¹ Memorandum No. 3, paragraph 6

apparatus; amendment NC41 regarding pre-commencement consultation; and amendment NC42 regarding the transfer of certain functions to the Secretary of State.

25. As regards the new provisions for a National Underground Asset Register, the First Minister states:

“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.

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. (...)

...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.”¹²

26. In Memorandum No. 3, the First Minister provides an overview of the UK Government's position on the need for consent for these amendments to the Bill:

“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).

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.”¹³

27. The First Minister states:

¹² Memorandum No. 3, paragraphs 15, 16 and 22

¹³ Memorandum No. 3, paragraphs 18 and 19

"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.

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."¹⁴

2. Committee consideration

28. We considered Memorandum No. 3 on 15 January 2024.¹⁵

29. We agreed our report on 22 January 2024.¹⁶

Our view

Legislative consent

30. We note the First Minister's assessment of the provisions within the Bill that require the consent of the Senedd, as set out in Memorandum No. 3.

31. With regards to clauses 56 and 60 in the Bill concerning DVS, and amendments 79 and 80 to those clauses, we remain of the view that the purpose of these clauses (and therefore the relevant amendments) do not make provision for any purpose within the legislative competence of the Senedd.

Conclusion 1. We disagree with the First Minister that clauses 56 and 60, and amendments 79 and 80 to those clauses, relating to Digital Verification Services, require the consent of the Senedd.

¹⁴ Memorandum No. 3, paragraphs 20 and 21

¹⁵ ~~Legislation, Justice and Constitution Committee~~, 15 January 2024

¹⁶ ~~Legislation, Justice and Constitution Committee~~, 22 January 2024

Conclusion 2. Subject to our view that the Senedd's consent is not required for clauses 56 and 60, and amendments 79 and 80 to those clauses, we consider that the other clauses set out in Memorandum No. 3, and the amendments made to those clauses, fall within a purpose within the legislative competence of the Senedd, as described in Standing Order 29, and therefore require the consent of the Senedd. Similarly, we consider that the Senedd's consent is required for amendments NC27, NC31, NC32, NC39 to NC42, and NS2.

Conclusion 3. We note that the amendments to the Bill relating to the National Underground Asset Register will modify the legislative competence of the Senedd.

32. We note that the First Minister has concluded that it is not appropriate to recommend consent for any of the provisions outlined in Memorandum No. 3 until the Welsh Government has held further discussions with the UK Government.

The quality of Memorandum No. 3

33. Standing Order 29.3(ii) states that a legislative consent memorandum must "specify the extent to which the Bill makes (or would make) relevant provision".

34. Memorandum No. 3 lacks detail in relation to the effect of many of the amendments identified as requiring legislative consent, particularly in regard to amendments to Part 3 of the Bill and those concerning DVS. For example, as regards Part 3, in Memorandum No. 3 it is simply indicated that over 110 various amendments which make relevant provision have been tabled, but there is no explanation as to the effect of these amendments. We believe that this approach inhibits transparency. Furthermore, unfortunately it has a detrimental impact on the ability of the Senedd to effectively scrutinise Memorandum No. 3 and the effect of the amendments made to the Bill which fall in devolved areas. Consequently it impacts on the Senedd's ability to hold the Welsh Government to account.

35. We expressed an overarching concern in relation to the quality of legislative consent memoranda in our 2022/23 Annual Report. We stated that we have concerns with the quality of some memoranda, which can in some circumstances hamper the ability of a Senedd committee to hold the Welsh Government fully to account in the available time.¹⁷ This follows on from concerns we expressed in our 2021/2022 Annual Report, in which we stated that significant themes and issues

¹⁷ Legislation, Justice and Constitution Committee, [Annual Report 2022/23](#), paragraph 34

arising from that past year's scrutiny included poorly drafted, incomplete or inaccurate legislative consent memoranda. We shared our belief that this meant the Senedd was being placed at a disadvantage when trying to undertake its vital scrutiny.¹⁸

36. We note in particular that we have been raising concerns with the quality of legislative consent memoranda for two years.

Comments regarding specific clauses of the Bill and matters outstanding from first report

Provisions relating to Digital Verification Services

37. As noted above in paragraph 31 and conclusion 1, while we do not consider that the consent of the Senedd is required for the provisions in the Bill relating to DVS, we are nonetheless keen to understand the devolved implications of a UK-wide Code of Practice about the disclosure of information and the powers being provided to the Secretary of State.

38. Recommendation 1 in our first report asked the First Minister to provide us (and the Senedd) with an update on the Welsh Government's consideration of such devolved implications.

39. When the First Minister responded to our first report on 5 September 2023, he told us that his officials were continuing to consider the impacts and suitability for Wales and Welsh public bodies of the clause introducing the UK-wide Code of Practice, and that officials were in ongoing discussions with UK Government counterparts. The First Minister said he would "provide an update of the outcome of those discussions through the LCM process".

Recommendation 1. In line with recommendation 1 in our first report, the First Minister should provide to us, as soon as possible, the Welsh Government's assessment of the devolved implications of a UK-wide Code of Practice about the disclosure of information and the powers being provided to the Secretary of State in the Bill.

Conclusion 4. If the Welsh Government remains of the view that consent is required for the provisions in the Bill relating to Digital Verification Services, without detailed information about the DVS provisions which are the subject of Memorandum No. 3, we do not believe the Senedd will have sufficient

¹⁸ Legislation, Justice and Constitution Committee, [Annual Report 2021/22](#), paragraph 31

information to make an informed decision on whether it should consent to these provisions in the Bill.

Provisions relating to Part 3 of the Bill (Customer data and business data)

40. We note that Memorandum No. 3 identifies various amendments to Part 3 of the Bill for which the Welsh Government is of the view that Senedd consent is required.

41. As we highlight earlier, at paragraphs 33 to 36, Memorandum No. 3 lacks detail as to the effect of these amendments.

42. We note that amendment NC27 inserts a new clause that enables regulations under Part 3 of the Bill to make provision about bodies (known as “interface bodies”) providing facilities or services used for providing, publishing or processing customer data or business data, or setting standards or making other arrangements in connection with such facilities or services. We further note that amendments 103, 109, 126 and 133 are consequential to amendment NC27, as are other amendments which are not specified as being consequential in Memorandum No. 3 (including, for example, amendment 150 which enables regulations made under Part 3 to create an offence in respect of an act or omission which prevents an interface body from accessing information, documents, equipment or other material).

43. We also note that the regulation-making powers under Part 3 would be exercisable by the Secretary of State or the Treasury.

44. Amendment NC31 inserts a new clause into the Bill which would enable regulations under Part 3 to provide that certain persons are not liable in damages when exercising functions under such regulations. In addition, we note that amendment NC32 inserts a new clause to enable the regulation-making powers under Part 3 to be used to supplement existing subordinate legislation which requires customer data or business data to be provided to customers and others.

45. While we acknowledge that the other amendments to Part 3 mainly consist of technical and consequential amendments, others add to the provisions that can be set out by regulations made under Part 3, such as amendment 140 which enables regulations to require decision-makers (i.e. those specified persons who may decide whether a person satisfies the conditions for authorisation or approval in order to receive customer data and business data) to have procedures for handling complaints.

46. We note that the First Minister has stated¹⁹ that the Welsh Government is awaiting the UK Government's assessment of the need for legislative consent in respect of the amendments relating to Part 3. However, we also note that the Explanatory Notes (that accompany the Bill introduced to the House of Lords as brought from the Commons) state in relation to Smart Data schemes which are covered by Part 3 of the Bill:

"While many aspects of the proposals are reserved, some areas are devolved (e.g. where the customer is a business and not an individual [...]). Therefore a LCM is required in all three Devolved Administrations."²⁰

47. Recommendation 2 in our first report asked the First Minister to update us (and the Senedd) on the Welsh Government's consideration of the devolved implications of the regulation-making powers in Part 3 of the Bill.

48. The First Minister told us, in his letter of 5 September 2023, that his officials were continuing to consider the suitability of the regulation-making powers and were in ongoing discussions with UK Government counterparts. Again, the First Minister committed to "provide an update of the outcome of those discussions through the LCM process".

Recommendation 2. In line with recommendation 2 in our first report, the First Minister should provide to us, as soon as possible, the Welsh Government's assessment of the devolved implications of the regulation-making powers in Part 3 of the Bill.

Conclusion 5. Without the Welsh Government's full assessment of the devolved implications of the regulation-making powers in Part 3 of the Bill, along with detailed information about the provisions in Part 3 which are the subject of Memorandum No. 3, we do not believe the Senedd will have sufficient information to make an informed decision on whether it should consent to the relevant provisions in the Bill.

Provisions relating to the National Underground Asset Register

49. We note that (through amendments 215, NC39 to NC42 and NS2) new provisions have been inserted into the Bill which make amendments to, and insert a new Part and Schedule into, the *New Roads and Street Works Act 1991*

¹⁹ Memorandum No. 3, paragraph 19

²⁰ [Data Protection and Digital Information Bill, HL Bill 30 \(as brought from the Commons\), Explanatory Notes](#), December 2023

(the 1991 Act). These provisions 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 (NUAR).

50. The subject matter of the 1991 Act is a devolved matter. We note that its purpose was to amend the law relating to roads so as to enable new roads to be provided by new means, to make provision with respect to street works, and for connected purposes.

51. The functions of the Secretary of State under the 1991 Act in relation to Wales, except under section 167(3) (Crown application), were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). These functions of the Assembly were subsequently transferred to the Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the *Government of Wales Act 2006*.

52. These amendments to the Bill provide various regulation-making powers to the Secretary of State under the new Part 3A of the 1991 Act, including the power to act in relation to Wales in a devolved area. As the regulation-making powers would be exercisable by the Secretary of State, there is no requirement for the regulations to be laid before the Senedd.

53. We acknowledge that amendment NC39 does provide that, before making regulations under the new part 3A of the 1991 Act, the Secretary of State must consult the Welsh Ministers.

54. We are concerned that, through amendment 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 to the Secretary of State. We expand on our reasoning for this concern in the paragraphs below.

55. However, we again acknowledge that amendment NC40 amends section 104 of the 1991 Act to provide that, before making regulations under sections 79 and 80 of the 1991 Act, the Secretary of State must consult the Welsh Ministers.

56. The National Assembly for Wales (as it was) exercised its powers (now exercisable by the Welsh Ministers) in section 79 of the 1991 Act to make the Street Works (Records) (Wales) Regulations 2005 (the 2005 Regulations). The 2005 Regulations came into force on 1 December 2005 and remain in force. In relation to Wales, they prescribe the form of records of apparatus placed in streets to be kept by undertakers.

57. Amendment NC42 revokes the 2005 Regulations and extends the application of the Street Works (Records) (England) Regulations 2002, which currently apply in respect of England only (and makes similar provision to the form and manner of records of apparatus) to Wales.

58. We note that the Explanatory Notes (that accompany the Bill introduced to the House of Lords as brought from the Commons) state:

"In order for NUAR to operate effectively across England and Wales, it is necessary to ensure consistency in approach across both of these parts of the United Kingdom. As such, powers to make regulations which supplement the provision made by these clauses (and the sections of the 1991 Act they amend) are only exercisable by the Secretary of State, who will make provision in respect of both England and Wales.

Currently, the existing powers to make regulations in section 79 of the 1991 Act are exercisable by the Welsh Ministers in relation to Wales. Given the need for a consistent approach, this clause transfers these regulation-making powers to the Secretary of State, who will be able to make provision in respect of both England and Wales. As set out below, wherever the Secretary of State proposes to make regulations in exercise of these powers, the Secretary of State must first consult the Welsh Ministers so as to ensure their views are taken into account.

Separate regulations have previously been made, by the Secretary of State and the Welsh Assembly, in exercise of these powers in section 79 of the 1991 Act. To reflect the new approach as set out above, subsection (3) of clause 141 amends the Street Works (Records) (England) Regulations 2002 so as to extend and apply to both England and Wales, whilst subsection (4) revokes the Street Works (Records) (Wales) Regulations 2005."²¹

59. While we note that the First Minister has stated that the Welsh Government is awaiting the UK Government's assessment of the need for legislative consent in respect of the new provisions relating to the NUAR, we note that the Explanatory

²¹ Data Protection and Digital Information Bill, HL Bill 30 (as brought from the Commons), Explanatory Notes, December 2023

Notes (that accompany the Bill introduced to the House of Lords as brought from the Commons) state:

“Legislative competence for the subject matter of Part 3 of the New Roads and Street Works Act 1991 (which concerns street works) is devolved to Wales. As these provisions make amendments to Part 3 of the 1991 Act in relation to this devolved subject matter, an LCM will be required from Wales.

In addition, some existing functions in this area, currently exercisable by the Welsh Ministers in relation to Wales, will be transferred so as to be solely exercisable by the Secretary of State in relation to England and Wales. As this approach will modify the executive competence of the Welsh Ministers this provides an additional basis on which an LCM will be required from Wales.”²²

60. We acknowledge that the First Minister has stated that the Welsh Government has “constitutional policy concerns” around the regulation-making powers under section 79 of the 1991 Act, so far as exercisable in relation to Wales, being transferred from the Welsh Ministers to the Secretary of State.²³

61. The transfer of existing regulation-making powers currently exercisable by the Welsh Ministers to the Secretary of State – meaning the modification of devolved legislative competence – through a Bill proposed by the UK Government which is therefore not subject to Senedd scrutiny and approval is a serious matter.

62. We do not consider that the explanation for this action which is provided by the UK Government in the Explanatory Notes to the Bill provides an appropriate or sufficient justification. For example, we do not consider that the UK Government has made it clear why powers exercisable by different Ministers in England and Wales since 1999 now require a “consistent approach” across England and Wales. Neither is it made clear why the NUAR needs to apply on an England and Wales basis, or why the Welsh Ministers and Secretary of State could not exercise the powers jointly.

63. One practical implication will be the replacement of bilingual legislation for Wales with monolingual legislation.

²² Data Protection and Digital Information Bill, HL Bill 30 (as brought from the Commons), Explanatory Notes, December 2023

²³ Memorandum No. 3, paragraph 22

64. Further, to remove the exercise of these legislative powers from the purview of the Welsh Ministers and the Senedd and replace them simply with a statutory obligation on the Secretary of State to consult the Welsh Ministers before their exercise is both inadequate and unsatisfactory.

65. We further note and are disappointed that the NUAR provisions give new regulation-making powers to the Secretary of State to act in devolved areas in relation to the keeping of a register of apparatus in streets in England and Wales.

Conclusion 6. We do not consider that the new regulation-making powers provided to the Secretary of State in the new National Underground Asset Register provisions, or the transfer to the Secretary of State of existing powers exercisable by the Welsh Ministers which means the modification of the Senedd's legislative competence in this area, are appropriate.

66. In Memorandum No. 3, the First Minister states that discussions on the NUAR provisions are being held at an official level between the Welsh and UK Governments.²⁴ However, we note that further detail is not provided on the Welsh Government's concerns regarding the return of powers under section 79 of the 1991 Act, so far as exercisable in relation to Wales.

67. Given the nature of the NUAR provisions and the effect they will have on devolved competence, it is unclear to us why discussions are being held at an official level, rather than at Ministerial level. We note that, in Memorandum No. 3, the First Minister indicates that Ministerial-level engagement has taken place in relation to other aspects of the Bill, including the UK's current adequacy decision and the DVS provisions.

68. In our first report, we highlighted a similar concern that discussions about the potential risk of the loss of the adequacy decision were also being held at official level rather than Ministerial level, and we recommended the matter should be escalated. We hold the same view in respect of the NUAR provisions.

Recommendation 3. Given the "constitutional policy concerns" regarding the National Underground Asset Register provisions in the Bill and specifically the return of powers under section 79 of the 1991 Act (so far as exercisable in relation to Wales), the First Minister should escalate this issue to Ministerial level discussions, up to and including the formal dispute resolution procedures, as opposed to discussion at official level.

²⁴ Memorandum No. 3, paragraph 22

Recommendation 4. The First Minister should keep this Committee up-to-date on the discussions between the Welsh Government and the UK Government – at both official and Ministerial level – relating to the National Underground Asset Register provisions.

69. We would also welcome details from the First Minister on any remedial action the Welsh Government considers it could take – that would be within the legislative competence of the Senedd – in respect of the transfer to the Secretary of State of existing delegated powers exercisable by the Welsh Ministers. For example, we would welcome the First Minister's view on whether the Welsh Government considers that it would be within the legislative competence of the Senedd to bring forward provisions in a Bill that would re-delegate to the Welsh Ministers the regulation-making powers under section 79 of the 1991 Act which are being transferred to the Secretary of State through amendment NC42.

Recommendation 5. The First Minister should provide us with details about any action the Welsh Government considers it could take to remedy the transfer to the Secretary of State through amendment NC42 of existing delegated powers in section 79 of the 1991 Act, which are currently exercisable by the Welsh Ministers (so far as exercisable in relation to Wales). Such details should include whether the Welsh Government considers that it would be within the legislative competence of the Senedd to bring forward provisions in a Bill that would re-delegate to the Welsh Ministers the regulation-making powers under section 79 of the 1991 Act which are being transferred to the Secretary of State.

Provisions relating to the implementation of law enforcement information-sharing agreements

70. In our first report we commented on what was then clause 93 of the Bill (now clause 99) and the powers to make regulations for the purpose of implementing an international agreement relating to the sharing of information.

71. Recommendation 3 in our first report said that, where the Welsh Ministers do not make regulations to implement international agreements, and powers to do so are instead exercised by the Secretary of State, the Welsh Ministers must provide full detail and an explanation to the Senedd in advance of such regulations being made by the Secretary of State.

72. In his response, the First Minister noted our views and said the Senedd would be updated through the usual process. .

Recommendation 6. In line with recommendation 3 in our first report, we would welcome a commitment from the First Minister that, where the Welsh Ministers do not make regulations to implement international agreements, and powers in the Bill to do so are instead exercised by the Secretary of State, in any update to the Senedd the Welsh Ministers must provide a detailed explanation in advance of such regulations being made by the Secretary of State.

Provisions relating to interview notices

73. In our first report we commented on what was clause 36 of the Bill (now clause 38) and the powers which can be used to require a person to attend an interview and answer questions when required by the Information Commissioner (the Commissioner).

74. We noted that exemptions provided for in the Bill for functions relating to registration of certain establishments and agencies in England did not apply to Wales, meaning that the Commissioner would be able to issue an interview notice in relation to those matters in Wales but not in England.

75. Recommendation 4 in our first report asked the First Minister to update us (and the Senedd) on the Welsh Government's consideration of what was clause 36 of the Bill (now clause 38).

76. In his letter to us on 5 September 2023, the First Minister said Welsh Government officials were exploring the background and rationale behind what was clause 36 (now clause 38) relating to interview notices with the UK Government to inform Welsh Government's position, and this was a matter of ongoing discussions. As with his response to other recommendations in our first report, the First Minister said he would "provide an update of the outcome of those discussions through the LCM process".

Recommendation 7. In line with recommendation 4 in our first report, the First Minister should provide to us, as soon as possible, the Welsh Government's assessment of the Bill's provisions relating to interview notices.

UK-EU dynamic

77. We noted in our first report that the First Minister has concerns that the introduction of the Bill creates a risk to the UK's current adequacy decision, which was granted in June 2021 by the EU for an initial period of 4 years. We recognised that the Bill intersects with UK-EU obligations, and that it engages multiple

aspects of our remit, including UK-EU governance and international obligations compliance.

78. In our first report we welcomed the clarity and detail of the Welsh Government's position, and particularly welcomed the level of detail provided by the First Minister on the implications for Wales of the loss of adequacy.

79. Recommendation 5 in our first report noted our support for the Welsh Government's request to the UK Government that it should share a copy of its risk assessment on the Bill and the loss of the adequacy decision as a matter of urgency. The First Minister's response to our recommendation noted that the Welsh Government would continue to raise the issue of the potential impact of the Bill on EU data adequacy.

80. We note that, in Memorandum No. 3, the First Minister highlights that:

- concerns remain in relation to the impact the Bill may have on the UK's Data Adequacy status;²⁵
- both official level and Ministerial level engagement has continued in relation to concerns relating to the impact of the Bill on the retention of EU Data Adequacy.²⁶

Recommendation 8. The First Minister should confirm if the Welsh Government has received from the UK Government its risk assessment on the Bill and the loss of the UK's current adequacy decision. If it has been received and if the terms of sharing permit, the risk assessment should be shared with the Senedd.

Recommendation 9. The First Minister should clarify if there are circumstances in which the Welsh Government would recommend that the Senedd gives its consent to the relevant provisions in the Bill in spite of its concerns about the implications for the UK's current adequacy decision.

Recommendation 10. The First Minister should confirm whether the Welsh Government is aware of any UK-EU level discussions about the Bill, in particular in relation to the UK's current adequacy decision.

²⁵ Memorandum No. 3, paragraph 21

²⁶ Memorandum No. 3, paragraph 6