

The Welsh Government's Legislative Consent Memorandum on the Data (Use and Access) Bill

March 2025



1. Background

The UK Government's Data (Use and Access) Bill

1. The Data (Use and Access) Bill¹ (the Bill) was introduced into the House of Lords and had its first reading on 23 October 2024. It is sponsored by the Department for Science, Innovation and Technology.

2. The Explanatory Notes to the Bill state:

*"This Bill is intended to harness the power of data for economic growth, support a modern digital government, and improve people's lives."*²

3. The long title to the Bill states that it is a Bill:

"to make provision about access to customer data and business data; to make provision about services consisting of the use of information to ascertain and verify facts about individuals; to make provision about the recording and sharing, and keeping of registers, of information relating to apparatus in streets; to make provision about the keeping and maintenance of registers of births and deaths; to make provision for the regulation of the processing of information relating to identified or identifiable living individuals; to make provision about privacy and electronic communications; to establish the Information Commission; to make provision about information standards for health and social care; to make provision about the grant of smart meter communication licences; to make provision about the disclosure of information to improve public service delivery; to make provision about the retention of information by providers of internet services in connection with investigations into child deaths; to make provision about providing information for purposes related to the carrying out of independent research into online safety matters; to make provision about the retention of biometric data; to make provision about services for the provision of electronic

¹ The Data (Use and Access) Bill, as introduced

² Explanatory Notes to the Data (Use and Access) Bill, as introduced

signatures, electronic seals and other trust services; and for connected purposes.”³

4. The Bill completed its passage through the House of Lords on 5 February 2025. It had its first reading in the House of Commons on 6 February 2025. The Bill was debated at second reading on 12 February and was sent to a Public Bill Committee; it is expected to conclude its work by 18 March 2025.

The previous UK Government's Data Protection and Digital Information Bill

5. The previous UK Government introduced the Data Protection and Digital Information Bill (the DPDI Bill) into the House of Commons on 8 March 2023, but it failed to complete its passage through the UK Parliament before the 2023-24 session was dissolved prior to the UK General Election.⁴

6. The Legislation, Justice and Constitution Committee (the Committee) reported on the legislative consent memoranda⁵ relating to the DPDI Bill on 24 July 2023⁶ (first report on the DPDI Bill), 26 January 2024⁷ (second report on the DPDI Bill), and 13 May 2024⁸ (third report on the DPDI Bill). The Welsh Government responded to the Committee's reports on 5 September 2023⁹, 8 March 2024¹⁰, and 17 June 2024¹¹. The Committee also exchanged correspondence with the Welsh Government following its second report on the DPDI Bill.¹²

7. Key areas of concern raised by the Committee in its reports on the legislative consent memoranda relating to the DPDI Bill included:

³ The Data (Use and Access) Bill, as introduced, page 1

⁴ Data Protection and Digital Information Bill, Originated in the House of Commons, Sessions 2022-23, 2023-24

⁵ Legislative Consent: Data Protection and Digital Information Bill

⁶ Legislation, Justice and Constitution Committee, Report on the Welsh Government's Legislative Consent Memoranda on the Data Protection and Digital Information Bill, July 2023

⁷ Legislation, Justice and Constitution Committee, Report on the Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 3) on the Data Protection and Digital Information Bill, January 2024

⁸ Legislation, Justice and Constitution Committee, Report on the Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 4) on the Data Protection and Digital Information Bill, May 2024

⁹ Letter from Rt Hon Mark Drakeford MS, the then First Minister of Wales, 5 September 2023

¹⁰ Letter from Rt Hon Mark Drakeford MS, the then First Minister of Wales, 8 March 2024

¹¹ Letter from Jeremy Miles MS, the then Cabinet Secretary for Economy, Energy and Welsh Language, 17 June 2024

¹² Letter to the Welsh Government, 15 March 2024, and Letter from the Welsh Government, 16 April 2024

- engagement with the UK Government and intergovernmental working;
- provisions relating to Digital Verification Services, including the conferral of regulation-making powers solely upon the Secretary of State to act in devolved areas;
- provisions relating to customer data and business data, including the conferral of various delegated powers on the Secretary of State and the Treasury to act in devolved areas;
- provisions relating to a National Underground Asset Register, including the transfer to the Secretary of State of existing powers exercisable by the Welsh Ministers and the revocation of Senedd-approved regulations;
- a potential impact on the UK's current EU data adequacy decision.

8. The DPD Bill was subject to the Senedd's legislative consent process. A legislative consent motion on the DPD Bill was debated on 14 May 2024, during which the Senedd agreed to withhold consent following a vote.¹³

The Welsh Government's Legislative Consent Memorandum

9. 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 that has regard to devolved matters.

10. On 30 October 2024, Rebecca Evans MS, the Cabinet Secretary for Economy, Energy and Planning (the Cabinet Secretary), wrote to the Llywydd notifying her of a delay in laying a legislative consent memorandum in relation to the Bill. The Cabinet Secretary stated that this was due to the complexity and length of the Bill, and the need to consider the issues encountered on the DPD Bill, which contained similar provisions.¹⁴

11. On 2 January 2025, the Cabinet Secretary laid before the Senedd a Legislative Consent Memorandum (the Memorandum) in respect of the Bill.¹⁵

¹³ Senedd Cymru, Plenary, 14 May 2024

¹⁴ Letter from the Cabinet Secretary for Economy, Energy and Planning to the Llywydd, 30 October 2024

¹⁵ Welsh Government, Legislative Consent Memorandum. The Data (Use and Access) Bill, January 2025

12. The Business Committee agreed that the following Committees should report on the Memorandum by 7 March 2025¹⁶:

- the Culture, Communication, Welsh Language, Sport and International Relations Committee;
- the Economy, Trade, and Rural Affairs Committee;
- the Climate Change, Environment, and Infrastructure Committee;
- the Equality and Social Justice Committee; and
- the Committee.

13. The Business Committee subsequently agreed that the Committees should report by 28 March 2025.¹⁷

Provision for which the Senedd's consent is required

14. The Welsh Government's assessment is that the consent of the Senedd is required for:

- Part 1 – Access to Customer Data and Business Data, clauses 1 to 13 and 18 to 26;
- Part 2 – Digital Verification Services (DVS) - Information Gateway, clauses 45, 47 and 49;
- Part 3 – National Underground Asset Register (NUAR), clauses 56, 57, 60(1) and Schedule 1;
- Part 7 – Information to improve public service delivery, clause 121.¹⁸

15. With regards to the UK Government's views on the need for consent, the Cabinet Secretary states in the Memorandum that the UK Government considers that:

- The general provisions under Part 1, Access to Customer Data and Business Data, clauses 1 to 28, are reserved under the consumer

¹⁶ Business Committee, Timetable for consideration: Legislative Consent Memorandum on the Data (Use and Access) Bill, January 2025

¹⁷ Business Committee, Revised timetable for consideration: Legislative Consent Memorandum on the Data (Use and Access) Bill, January 2025, and Business Committee, Revised timetable for consideration: Legislative Consent Memorandum on the Data (Use and Access) Bill, February 2025

¹⁸ Memorandum, paragraphs 13 to 27

protection reservation in Schedule 7A Section C6 of the *Government of Wales Act 2006* (the 2006 Act), but are in a devolved area in relation to business customers.

- The 'Smart Data' provisions are reserved where it applies to the financial services sector, under the financial services reservation in Paragraph 17 of Schedule 7A to the 2006 Act.
- The levy raising power under clause 12 is reserved under the fiscal economic and monetary policy reservation in Paragraph 15 of Schedule 7A to the 2006 Act.
- The Part 2 Digital Verification Services provisions are reserved under the internet services reservation in Paragraph 84 of Schedule 7A to the 2006 Act.¹⁹

16. In the Memorandum, the Cabinet Secretary also states that the UK Government is of the view that the legislative consent process is engaged for:

- clause 45, Power of public authority to disclose information to registered Person;
- clause 47, Information disclosed by the Welsh Revenue Authority (the Cabinet Secretary notes in the Memorandum that the Senedd's consent is required in accordance with the UK Government's Devolution Guidance Note for Wales (DGNW) as the clause modifies functions of/confers functions on Devolved Welsh Authorities²⁰);
- clause 49, Code of practice about the disclosure of information (again, the Memorandum notes that the Senedd's consent is required in accordance with the UK Government's DGNW as the clause modifies functions of/confers functions on Devolved Welsh Authorities);
- clauses 56, 57, 60(1) and Schedule 1, the National Underground Asset Register (the Cabinet Secretary notes in the Memorandum that these provisions will alter the executive competence of the Welsh Ministers);

¹⁹ Memorandum, paragraphs 28 to 30

²⁰ A "devolved Welsh authority" is a body that meets the definition set out in section 157A of the *Government of Wales Act 2006*.

- clause 121, Disclosure of information to improve public service delivery to undertakings.²¹

Delegated powers in the Bill

17. The Bill contains numerous provisions which confer regulation-making powers on the Secretary of State and the Treasury, including in devolved areas. Some of these powers are to be exercised solely by the Secretary of State or the Treasury. Others are exercised concurrently²² with the Welsh Ministers in relation to Wales. The UK Government's justification for the conferral of these powers and the taking of powers in certain areas is set out in its Delegated Powers Memorandum.²³

18. Part 1 of the Bill (Access to customer data and business data), some provisions of which are captured by the legislative consent process, provides the Secretary of State and the Treasury with a number of regulation-making powers. The provisions will enable Smart Data schemes to be established via regulations, requiring suppliers and other relevant persons to share data in the manner prescribed in regulations. No role, including a consultative role, is provided for the Welsh Ministers under these provisions.

19. Clause 49 (Code of Practice about the disclosure of information) gives a power 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. This code would apply to Devolved Welsh Authorities. Under clause 49(5), the Secretary of State is required to consult with the Welsh Ministers when preparing or revising the Code. Whilst publication of the first version of the Code is subject to the affirmative procedure, republication of the Code is subject to the negative procedure.

²¹ Memorandum, paragraphs 30 to 32

²² A concurrent power is a power which can be exercised: (a) by Welsh Ministers, in relation to Wales; or (b) by UK Ministers in relation to Wales (for example, where UK Ministers are exercising powers in relation to the whole of the UK; or in relation to England and Wales). UK Ministers should not normally exercise their powers in relation to Wales without the agreement of the Welsh Ministers, but (unless it is a concurrent plus power – see below) they are not legally required to obtain consent in order to legislate. A “concurrent plus” power is a special type of concurrent power which can be exercised: (a) by the Welsh Ministers, in relation to Wales; or (b) provided that the Welsh Ministers consent, by UK Ministers in relation to Wales. When the Welsh Ministers are considering whether to give consent to UK Ministers exercising a concurrent plus power, they are exercising a statutory function. If they do not consent, UK Ministers cannot exercise these powers in relation to Wales.

²³ Data (Use and Access) Bill, Memorandum from the Department for Science, Innovation and Technology to the Delegated Powers and Regulatory Reform Committee, October 2024

20. Clause 56 (National Underground Asset Register: England and Wales) places a duty on the Secretary of State to keep a register of information relating to apparatus in streets in England and Wales. The form and manner of the NUAR is to be prescribed in regulations. Other provisions enable the Secretary of State to make regulations in relation to that register, such as in relation to the initial upload of information, access to information, fees payable by undertakers, the provision of information, monetary penalties, and arrangement for third parties to exercise functions. The Secretary of State is required to consult with the Welsh Ministers before making regulations under these powers, but no equivalent and/or concurrent powers are provided to the Welsh Ministers.

21. In the Memorandum, the Cabinet Secretary states that, under clause 57(2) and (3) of the Bill (Information in relation to apparatus: England and Wales), the amendments to be made to section 79 of the *New Roads and Street Works Act 1991* (the 1991 Act) provide the Secretary of State and the Welsh Ministers with concurrent regulation-making powers.²⁴

22. There are also other new powers being inserted into section 79 of the 1991 Act which are exercisable solely by the Secretary of State. Clause 57(3)(f) of the Bill inserts new subsections (3B) and (3C) into section 79 of the 1991 Act, imposing an ongoing duty on undertakers to enter information into NUAR. Three new powers are provided in total to the Secretary of State in the new subsections (3B) and (3C), namely a power to prescribe the period within which this duty is to be complied, a power to prescribe cases in which this duty does not apply, and a power to prescribe the form and manner in which information must be entered into NUAR.

23. The Secretary of State is required to consult the Welsh Ministers before making regulations under section 79 of the 1991 Act. Regulations made by the Welsh Ministers under section 79 are subject to the negative procedure.

24. Clause 57(4) of the Bill substitutes a new section 80 of the 1991 Act and sets out a duty on persons undertaking works in the street where, on finding an item of apparatus during the execution of street works in relation to which prescribed information is missing from NUAR, must take steps to inform the undertaker to whom the item belongs of the missing or incorrect information, or enter information into NUAR. Four powers are conferred solely on the Secretary of State in respect of this duty, namely:

²⁴ Memorandum, paragraph 24

- a power to prescribe, through regulations, information which, if missing from or incorrect in NUAR, triggers the duty to inform the undertaker of this;
- a power to prescribe the information which must be provided to the undertaker to which the item belongs, or must be entered into NUAR;
- a power to prescribe the form and manner in which such information must be entered into NUAR;
- a power to prescribe exceptions to the duty.

25. The Secretary of State must consult the Welsh Ministers before making regulations under the new section 80 of the 1991 Act.

26. Clause 121 (Disclosure of information to improve public service delivery to undertakings) of the Bill extends a pre-existing Henry VIII power exercisable by the Welsh Ministers by amending section 35 of the *Digital Economy Act 2017* (the 2017 Act).

27. Section 35 of the 2017 Act permits specified public authorities (known as a “specified person” in the 2017 Act) to share data to improve the delivery of public services to individuals and households for a “specified objective”, as prescribed in regulations. Clause 121 extends these powers to include improving the delivery of services to “undertakings”, meaning businesses or bodies established for charitable purposes. Regulations made under this power are subject to the affirmative procedure.

The Welsh Government's position as set out in the Memorandum

28. In the Memorandum, the Cabinet Secretary confirms that the Welsh Government is supportive of the UK Government's policy intent behind the Bill.²⁵ The Cabinet Secretary states:

“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

²⁵ Memorandum, paragraph 33

of Wales Act 2006. As such, I believe it may be appropriate for these provisions to be made through a UK Bill."²⁶

29. The Cabinet Secretary also confirms that the Welsh Government is supportive of the policy intent behind:

- Part 1, Access to Customer Data and Business Data, clauses 1 to 13 and 18 to 26;
- Part 2, Digital Verification Services, clauses 45, 47 and 49;
- Part 3, National Underground Asset Register, clauses 56, 57 & 60(1) and Schedule 1;
- Part 7, Information to improve public service delivery, clause 121.

30. The Cabinet Secretary states in the Memorandum that some concerns with the previous UK Government's DPD Bill have been resolved, namely the removal of NUAR provisions on transferring regulation-making powers under section 79 of the 1991 Act from the Welsh Ministers to the Secretary of State.²⁷

31. However, in the Memorandum the Cabinet Secretary also states that there are a number of key matters of concern which are yet to be resolved and that, as currently drafted, there are provisions which do not align with the Welsh Government's principles on UK legislation. These include:

- In Part 1, provision giving to the Secretary of State and HM Treasury regulation-making powers in an area which is devolved.
- In Part 2, 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.
- In Part 3:
 - 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 1991 Act);
 - clause 57(3) provides the Secretary of State and Welsh Ministers with concurrent regulation-making powers, with a requirement

²⁶ Memorandum, paragraph 34

²⁷ Memorandum, paragraph 36

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 1991 Act);

- 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 1991 Act);
- 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.²⁸

32. In October 2021, the Welsh Government provided the Committee with its principles for using UK Bills to legislate in devolved areas.²⁹ On 4 December 2024, Julie James MS, the Counsel General and Minister for Delivery (the Counsel General), wrote to the Committee providing a refreshed version of the Welsh Government's principles on legislating in devolved areas.³⁰ We exchanged correspondence with the Counsel General on the refreshed principles.³¹

Evidence from the Welsh Government

33. We considered the Memorandum at our meeting on 13 January 2025.³² At that meeting, we noted the letter of 30 October 2024 from the Cabinet Secretary to the Llywydd warning of a delay to the laying of the Memorandum. We wrote to the Cabinet Secretary inviting them in for an oral evidence session.³³ The evidence session took place on 3 February 2025.³⁴

Intergovernmental working and resolving constitutional issues

34. To begin our evidence gathering on 3 February, we highlighted the Cabinet Secretary's statement in the Memorandum that UK and Welsh Government officials have been in regular contact since the Bill was announced in the King's

²⁸ Memorandum, paragraphs 37 to 40

²⁹ Letter from the Counsel General and Minister for the Constitution, Mick Antoniw MS, 22 October 2021, response to question 1 and Annex B: Welsh Government's principles for UK Bills

³⁰ Letter from Julie James MS, the Counsel General and Minister for Delivery, 4 December 2024

³¹ Letter to the Counsel General and Minister for Delivery, 17 December 2024 and Letter from the Counsel General and Minister for Delivery, 9 January 2025

³² Legislation, Justice and Constitution Committee, 13 January 2025

³³ Letter to the Cabinet Secretary for Economy, Energy and Planning, 14 January 2025

³⁴ Legislation, Justice and Constitution Committee, 3 February 2025

Speech in July 2024.³⁵ We also noted that, in her letter to the Llywydd warning there would be a delay in laying a legislative consent memorandum for the Bill, the Cabinet Secretary said that she received a full version of the Bill three weeks before it was introduced to the House of Lords.³⁶ As such, we asked why it then took ten weeks for the Memorandum to be laid before the Senedd. In responding, the Cabinet Secretary confirmed that Welsh Government officials “received first sight of the draft Bill on 3 October”. The Cabinet Secretary went on to say:

“... this is a complex piece of legislation, and, as you'll appreciate, it does cut across quite a number of Welsh Government ministerial portfolios. Just an analysis of a Bill of this magnitude does take some time, so I think that that really describes part of the challenge, and also, of course, we had the previous Bill, which was introduced by the previous UK Government, the Data Protection and Digital Information Bill. There were some similarities between the two, so there was some extra work for us to do in terms of considering the approaches that we took to the previous Bill, and then reading them across and looking for the differences in the new Bill.”³⁷

35. The Cabinet Secretary also told us that she recognised the “importance of ensuring that the Senedd committees have the time that they need to scrutinise the Bills properly as well”.³⁸

36. Given the Welsh Government's constitutional issues with the proposed legislation as outlined in the Memorandum – many of which mirror concerns previously set out by the Welsh Government in relation to the DPD Bill – we asked why those concerns have not already been addressed. The Cabinet Secretary responded:

“Some of those issues that we experienced with the previous Bill have been addressed, for example, some of the issues surrounding the national underground asset register, particularly the previous UK Government's approach in terms of a removal of a devolved executive function from Welsh Ministers relating to the newer provisions, which was included

³⁵ Memorandum, paragraph 7

³⁶ Letter from the Cabinet Secretary for Economy, Energy and Planning to the Llywydd, 30 October 2024

³⁷ LJC Committee, 3 February 2025, RoP [10]

³⁸ LJC Committee, 3 February 2025, RoP [10]

in the previous UK Government's Bill. So, some of those challenges and concerns that we have have been addressed, but it does remain the case that there are still some ongoing issues that we are in discussion with the UK Government on, and that's why, at this point, we haven't taken a view in terms of whether or not we're able to recommend consent.”³⁹

37. The Cabinet Secretary went on to confirm the Welsh Government's position as regards the Bill. She told us:

“Our view is that it is absolutely appropriate for this subject matter to be dealt with by the UK Government through a Bill in Parliament, but our concerns and our challenges, really, are around those more subtle issues in respect of the constitution—ones which the committee will be very familiar with. So, it's not the subject matter that we have concerns about, it's more about those ongoing discussions around the constitutional points.”⁴⁰

38. The Cabinet Secretary also told us that it was not ideal for her or the Committee that the Welsh Government was, as yet, unable to form a view on legislative consent but “that it is the intention to provide a recommendation on consent prior to the motion being debated in the Senedd”.⁴¹

39. We asked if there are any red lines for the Cabinet Secretary, whereby she would not recommend that the Senedd gives its consent. The Cabinet Secretary responded:

“I hope that we can make progress on all of the areas that we're currently in discussion with the UK Government on. (...) some of these points are quite nuanced, so the UK Government does have some credible things to say where we do have those areas of disagreement. The Welsh Government takes a particular view, and we hold it strongly based on the evidence and our understanding, but, equally, the UK Government believes that it has a credible case as well, so we just need to try

³⁹ LJC Committee, 3 February 2025, RoP [12]

⁴⁰ LJC Committee, 3 February 2025, RoP [18]

⁴¹ LJC Committee, 3 February 2025, RoP [80]

and have those discussions, see if we can move towards each other and find areas of compromise.”⁴²

Part 1 – Access to Customer Data and Business Data

40. Clauses 1 to 13 and 18 to 26 in Part 1 of the Bill make 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.

41. In the Memorandum the Cabinet Secretary states that the delegation of regulation-making powers in Part 1 of the Bill to the Secretary of State and to the Treasury to act in devolved areas does not align with the Welsh Government's principles on UK legislation. We highlighted that this is a concern rolled-over from the Welsh Government's analysis of the DPD Bill. We asked the Cabinet Secretary to update us on the status of the latest discussions on Part 1 of the Bill. In confirming that the Welsh Government is supportive of the policy intent of the provisions in Part 1 of the Bill, the Cabinet Secretary told us:

“We do understand that the UK Government's initial focus on the potential smart data schemes will be within the banking, finance, energy, transport, retail and home-buying sectors, and so clearly there are some areas there that are within our devolved competence. Under Part 1 of the Bill, the Secretary of State and the Treasury are provided with regulation-making powers in those areas that we believe to be devolved, so that clearly then is in contrast to our Welsh Government principles on UK Government legislation in terms of needing the decisions to be taken by Welsh Ministers in those areas. So, this is an area where there's ongoing discussion with the UK Government at the moment.”⁴³

42. We asked the Cabinet Secretary to expand on why she believes the provisions are not consistent with the Welsh Government's principles, and she responded:

“Welsh Government considers the provisions that I described, particularly in relation to transport, energy, retail, home buying and so on, to be devolved. It's our view that none of the reservations set out in Schedule 7A to the Government of Wales

⁴² LJC Committee, 3 February 2025, RoP [82]

⁴³ LJC Committee, 3 February 2025, RoP [23]

Act 2006 are engaged, and that would include the reservations on protection of personal data and the regulation of the sale and supply of goods and services to customers.”⁴⁴

43. An official accompanying the Cabinet Secretary said:

“Yes, fundamentally, as the Cabinet Secretary has set out, our position is that delegated powers in devolved areas should be conferred on Welsh Ministers, and the powers that we're talking about in Part 1 are in a devolved area.”⁴⁵

44. The Cabinet Secretary also told us that she has met Baroness Jones of Whitchurch to discuss these matters and that she hopes “to be in a position where we are able to make progress as quickly as possible to provide the Senedd with clarity on our view in respect of providing consent.”⁴⁶

45. In the pursuit of obtaining clarity, we asked the Cabinet Secretary to confirm our understanding that, in her view, these powers should be delegated to the Welsh Ministers because they are within devolved areas and the Welsh Ministers would be able to “do the same thing just as effectively”.⁴⁷ The Cabinet Secretary responded:

“I'll give an example with regard to clause 12 specifically. Welsh Government is of the view that a power to levy a charge doesn't amount to a tax falling within the scope of the reservation in respect of fiscal, economic and monetary policy, including the issue and circulation of taxes. As I've set out in the legislative consent memorandum, the UK Government's assessment of the need for legislative consent is different to ours. They're of the view that the provisions under Part 1 are reserved where they apply to the financial services sector, under the financial services reservations, and also under the consumer protection reservation where the consumer is an individual. But they do, however, agree that provisions in relation to business customers are devolved.

So, I think that shows the kind of difference in view that we have at the moment and the things that we're trying to resolve

⁴⁴ LJC Committee, 3 February 2025, RoP [25]

⁴⁵ LJC Committee, 3 February 2025, RoP [26]

⁴⁶ LJC Committee, 3 February 2025, RoP [28]

⁴⁷ LJC Committee, 3 February 2025, RoP [29]

with the UK Government. You can see that there's a case to be argued on both sides, and we're having those discussions at the moment."⁴⁸

Part 2 – Digital Verification Services (DVS)

46. Much of Part 2 of the Bill relates to reserved matters but seeks to establish a legislative framework for the provision of Digital Verification Services (DVS) in the UK, where providers for those services wish to be registered on a government register.

47. The provisions enable public authorities to disclose personal information to registered DVS providers for the purpose of identity and eligibility verification. DVS providers will need to comply with the rules of the legislative structure if they wish to be registered on a government register, use a Trust mark and access an information gateway through which public authorities will be permitted to share information. The Senedd's consent is being sought in relation to the 'information gateway' provisions.

48. In relation to clauses 45, 47 and 49 of the Bill, similar clauses were included in the DPD Bill and were considered by the Welsh Government as requiring the consent of the Senedd.

49. In the Memorandum, the Cabinet Secretary states that the delegation of power to the Secretary of State to prepare and publish a code of practice regarding DVS is a key matter that needs to be resolved. As such, we asked for an update on the status of the discussions with the UK Government. The Cabinet Secretary responded:

"Again, you've touched on one of the areas that is yet to be resolved. It's our view that the purpose of the provisions under Part 2 of the Bill are to enable the provision of digital verification services, rather than being about the regulation of that service. As we set out in the LCM, we consider three clauses within Part 2 to be devolved—clauses 45, 47 and 49—and we would then say that those would require, of course, the consent of the Senedd.

Clause 49 in Part 2 of the Bill is the one that provides the Secretary of State with powers to prepare and publish that

⁴⁸ Legislation, Justice and Constitution Committee, 3 February 2025, RoP [31]

*code. That code would, of course, be applicable to Welsh public authorities in an area that we consider to be devolved. So, that is the discussion that we're having with the UK Government at the moment. I hope, really, to have the opportunity to resolve those conversations and discussions before I'm able to provide that fuller view to the Senedd. I wish, Chair, that I was in a position today to give more clarity on that but, I'm sorry, I'm not."*⁴⁹

50. We asked the Cabinet Secretary to confirm why the Welsh Government was not seeking the Senedd's consent for the other provisions in Part 2 of the Bill, and not just clauses 45, 47 and 49. The Cabinet Secretary wrote to the Committee on this point on 14 February 2025 stating:

*"The Welsh Government has not sought consent in relation to the provisions in Part 2 of the Bill, with the exception of clauses 45, 47 and 49, as we consider the purpose of these provisions to be about the regulation of digital verification services. As such, these are reserved under the "regulation of the sale and supply of...services to consumers" (paragraph 72 of Schedule 7A to Government of Wales Act 2006)."*⁵⁰

Part 3 – National Underground Asset Register (NUAR)

51. The National Underground Asset Register is a digital map of underground pipes and cables. As we highlight earlier in our report, Part 3 of the Bill amends the 1991 Act by inserting a new Part 3A into that Act to put the NUAR on a statutory footing by imposing a duty on the Secretary of State to keep a register (i.e. NUAR) and make the information on that register available to other persons.

52. The Secretary of State must consult the Welsh Ministers before making regulations under this Part.

53. At paragraphs 21 to 26 above, we summarise the delegated powers in Part 3 of the Bill.

54. As we highlight earlier in our report, the Committee had concerns with the NUAR provisions in the DPD Bill, including the transfer to the Secretary of State of

⁴⁹ Legislation, Justice and Constitution Committee, 3 February 2025, RoP [33] and [34]

⁵⁰ ~~Letter from the Cabinet Secretary~~, 14 February 2025

existing powers exercisable by the Welsh Ministers and the revocation of Senedd-approved regulations.

55. In the Memorandum, the Cabinet Secretary states that there are a number of issues with the NUAR provisions in Part 3 of the Bill which are yet to be resolved with the UK Government.

56. During our evidence session with the Cabinet Secretary she told us that the Welsh Government has “no objection to the policy direction being set out by the UK Government”, and that the Welsh Government has been working with the Geospatial Commission for a number of years on these matters.⁵¹

57. An official accompanying the Cabinet Secretary stated:

“So, the national underground asset register is going to provide a statutory framework for data sharing around pipes and cables underground; it will help save money, save lives—and I'm sure committee will be aware of that. We've been working with the Geospatial Commission since 2021, when they first talked about piloting this on a non-statutory basis, because we could see the benefits there for us in working with them, because the negotiations with some of the undertakings, such as telecoms and so on, would be best done if we can work together and get a consistent flow of data from those providers, which will support both the national underground asset register and our own policy objectives, such as work we are doing around the strategic infrastructure steering group, where we're looking at future planned works, so we can understand what digging undertakings are planning to do. We can bring that back, then, into our own data flows for future infrastructure works. We've already seen examples where that has saved money. So, the policy objectives are aligned. We're quite content for the Geospatial Commission to lead on a national underground asset register that brings together data from organisations and undertakings that may cross boundaries. But, at the same time, we can see the benefit in having shared data standards, interoperability, which work across both private sector and

⁵¹ LJC Committee, 3 February 2025, RoP [44]

public sector organisations to provide that information in a single, standard way.”⁵²

58. We expressed concern to the Cabinet Secretary that an apparent consequence of the Welsh Government “sort of piggybacking on this UK Government thing”⁵³ was that the Welsh Ministers were losing powers to the Secretary of State. The Cabinet Secretary told us that the Welsh Ministers would be able to set their own regulations, but added:

“So, these are the key areas that we're in discussions with the UK Government on now. So, one of our principles that you'll be very familiar with is around consenting rather than consulting, so it's those particular areas that we're in discussion on at the moment.”⁵⁴

59. The Cabinet Secretary also said:

“We think that we would have the competence to deliver the provisions in Wales, which are similar in effect, but we don't have plans to do that at this point, and we're taking advantage of an opportunity that there is for us, and I do think that, in this case, that kind of consistency across borders is useful, certainly for business and others, and we do have that good relationship with the Geospatial Commission. We've been very involved in the piloting of the work and so on. So, I don't sense that this is an area where something is being done to us. It's something that we're collaborating on.”⁵⁵

60. If the Welsh Government finds itself in a position where it is unable to reach agreement with the UK Government on the outstanding issues with the NUAR provisions, we asked the Cabinet Secretary what the implications would be for her recommendation to the Senedd on whether legislative consent should be given. The Cabinet Secretary responded:

“Well, we would not want to be in a position where we would be withdrawing from the shared asset register, because of the value that it provides to us and all of the work that we have done in developing it so far. So, I really want to have that

⁵² LJC Committee, 3 February 2025, RoP [45]

⁵³ LJC Committee, 3 February 2025, RoP [46]

⁵⁴ LJC Committee, 3 February 2025, RoP [49]

⁵⁵ LJC Committee, 3 February 2025, RoP [51]

ongoing space to have those discussions with the UK Government, with a view to resolving it to our satisfaction. (...)

I think the point is that, as of now, we haven't made a recommendation to the Senedd, and we're not going to do that until we have clarity and have those opportunities to continue what have been useful discussions. And, as I say, the UK Government already saw some of our arguments in respect of the first Bill and amended their approach to this one.”⁵⁶

61. When asked whether “symbolically, visually and conceptually, are we on some slippery slope here, where ‘England and Wales’ is coming through once again as a constitutional concept to areas that we had thought were devolved long ago” and whether she agreed that something would need to be done about the UK Government breaching the Welsh Government’s principles, the Cabinet Secretary said:

“It goes back to that point about the principles being the right ones and ones that we should be looking to adhere to with all UK legislation, because they're set out for any UK Government. Just because we share the party of the UK Government, actually—well, we might not, for the next time this legislation is looked at in Westminster. So, I think that we need to be looking to protect ourselves, regardless.”⁵⁷

62. Given this response from the Cabinet Secretary, we asked her to confirm if she would recommend that consent be refused if the Welsh Government’s principles are breached. The Cabinet Secretary responded:

“Well, yes, I would hope that we would be in that position. You do have to weigh up a range of things, then, don't you, in terms of whether there's a policy risk in not agreeing. But then these are difficult things to balance, then, aren't they? We would always, always want to be in the position where we can negotiate a positive outcome.”⁵⁸

63. We also highlighted to the Cabinet Secretary that Scotland operates a different model, and it has the Scottish Community Apparatus Data Vault which

⁵⁶ LJC Committee, 3 February 2025, RoP [57] and [61]

⁵⁷ LJC Committee, 3 February 2025, RoP [98]

⁵⁸ LJC Committee, 3 February 2025, RoP [100]

makes underground pipe and cable information accessible via the Scottish Road Works Register (SRWR). The Cabinet Secretary responded:

*"You're absolutely right that Scotland was ahead of the game on this. There will be, I'm sure, discussions in future as to how things operate most smoothly across borders."*⁵⁹

64. An official accompanying the Cabinet Secretary added:

*"I think there are advantages of working with the Government in London on this, as I said earlier, in terms of the effectiveness, value for money and the fact that you can have these agreements with relatively large companies together, rather than us all discussing separately. Scotland, before the UK Government brought this in, had those discussions with some of the major corporations, I'm sure, and with the local authorities themselves. But if we look at this in terms of being consistent, we don't need to go again and ask the same questions. If we look at the local authority level, that data will be able to flow once. So, we can gather the data, and they will get the data with the same standards and the open standards that help all of us to do what we need with the data. I haven't had the conversation with Scotland in terms of the benefits for them, but I'm sure that's something that we could do to understand those advantages. But that's where I'm coming from on the policy side."*⁶⁰

65. The official also confirmed that the outcome of discussions with Scottish Government officials would be brought back to the Committee.⁶¹

UK-EU obligations

66. The European Commission has the power to determine whether a country outside the European Union offers adequate levels of data protection. It can issue an adequacy decision which means that no further safeguards are necessary for the flow of personal data from the EU, Norway, Liechtenstein and Iceland to third countries, such as the UK.

⁵⁹ LJC Committee, 3 February 2025, RoP [84]

⁶⁰ LJC Committee, 3 February 2025, RoP [85]

⁶¹ LJC Committee, 3 February 2025, RoP [87]

67. The UK successfully obtained an adequacy decision on 28 June 2021 following its withdrawal from the EU. The UK's adequacy decision was the first to include a sunset provision, meaning it is time-limited to four years, up to June 2025. Concerns were raised that the DPDI Bill, as introduced by the former UK Government, posed a risk to the UK's adequacy status because its provisions would have removed or reduced safeguards provided by the UK's data protection regime.

68. In its Legislative Consent Memorandum on the DPDI Bill, the Welsh Government raised concerns that the loss of the UK's current adequacy decision was a "key concern from a trade perspective".⁶² The Welsh Government later agreed with Senedd Committees that the loss of adequacy would likely impact other areas of data sharing, including law enforcement.⁶³

69. The Welsh Government's concerns appeared to grow and, in its Supplementary Legislative Consent Memorandum (Memorandum No. 4) on the DPDI Bill, the Government expressed concerns that there were "a number of provisions considered as being challenging and having the potential of a review by the [European] Commission and legal challenge in the Court of Justice of the European Union".⁶⁴

70. In addition to the terms of the UK's EU adequacy decision, the DPDI Bill also intersected with UK-EU obligations in the Trade and Co-operation Agreement (TCA), specifically on personal data protection, cross-border data transfers, and law enforcement cooperation. The Memorandum does not include an assessment of the Bill's interaction with the TCA.

71. In our evidence session with the Cabinet Secretary, we raised with her the previous concerns about the UK's EU adequacy decision, and asked her to provide an overview of how the Bill engages with the TCA, and how it differs from the DPDI Bill. The Cabinet Secretary told us that the Welsh Government has had "some good discussions with the UK Government, and the UK Government remains positive that there will be no implications to the EU data adequacy decision by the Bill". The Cabinet Secretary added:

⁶² Welsh Government, Legislative Consent Memorandum on the Data Protection and Digital Information No.2 Bill, March 2023, paragraph 34

⁶³ Letter from the then First Minister of Wales to the Legislation, Justice and Constitution Committee and to the Culture, Communications, Welsh Language, Sport, and International Relations Committee, 5 September 2023

⁶⁴ Welsh Government, Supplementary Legislative Consent Memorandum on the Data Protection and Digital Information Bill (Memorandum No.4), April 2024, paragraph 28

"And, actually, our own officials and the advice that I've received are very much of the view that the Bill won't have an immediate or direct impact on the UK's compliance with the TCA.

*The data protection provisions within the TCA are quite broad and high level and, as such, the changes to the UK data protection framework proposed by the Bill are unlikely to impact on the UK's compliance with the TCA. I suppose our concerns, really, are around that futureproofing, in the sense of not wanting to be in a difficult position, where you see the UK's divergence from the data protection regime currently in place across the EU and the UK, and what that might mean then. So, our concerns are really precautionary, rather than based on detail. We would like to see further information forthcoming from the UK Government in this space, particularly around the risk assessments that they've undertaken. So, I would say that."*⁶⁵

72. We noted that, in the Memorandum, the Cabinet Secretary states that the loss of data adequacy could impact on public service delivery with significant risks to the health sector. Given these serious concerns, we asked the Cabinet Secretary about the Welsh Government's own assessment of the Bill. The Cabinet Secretary responded:

"If the UK were to lose our data adequacy status, implementation of the safeguards required by the EU would mean quite considerable additional administrative work and reporting requirements for business, for example. But then also in respect of public service delivery, it would have an impact where service delivery relies on that flow of personal data from the EU. It could impact on education or local government services, for example. And those risks are even more significant from a health perspective, potentially impacting the delivery of NHS services and co-operation with the EU on health matters.

Again, our concerns, really, are precautionary—what might happen in the event of the loss of data adequacy. We've given this a lot of thought over the years, because when we were heading to a potential no-deal Brexit, we worked very hard to

⁶⁵ LJC Committee, 3 February 2025, RoP [67] and [68]

*ensure that our public bodies were ready for such a scenario. I'm not suggesting by any stretch of the imagination that's where we are at the moment, because the UK Government is very confident that this isn't an issue. But as I say, we like to consider all options."*⁶⁶

73. The Cabinet Secretary also confirmed with us that she has not seen the UK Government's risk assessment.⁶⁷

74. We noted that the UK's EU adequacy decision expires in June, and asked the Cabinet Secretary if she is aware of UK-EU discussions on its renewal, particularly in light of the reset in relations. We also asked if the renewal of the decision has been discussed at the inter-ministerial group on UK-EU relations. The Cabinet Secretary responded with information relating to discussions between the UK and EU, rather than between the UK's four governments at the inter-ministerial group:

"I know that there have been significant discussions between the UK Government and the EU. So, I know that Peter Kyle, the Secretary of State for Science, Innovation and Technology, has met the previous European commissioner for justice twice, and I know that he has written to the new commissioner as well to have a conversation, and has requested a meeting to explore issues around data adequacy. I'm also aware that officials in the Department for Science, Innovation and Technology and the Home Office are engaging with EU officials on this matter, and I know that the Secretary of State also provided the House of Lords European Affairs Committee with a letter that sets out some of the work that they've been undertaking.

*As data adequacy isn't devolved to the Senedd, we haven't been personally involved in those particular discussions, but I know officials have been provided with information from those discussions that are ongoing at the moment. And just to reassure colleagues that I've been raising issues around data adequacy with counterparts in the UK Government as well."*⁶⁸

75. On 5 February 2025, after our evidence session with the Cabinet Secretary, she wrote to us providing a copy of the updated assessment in relation to any

⁶⁶ LJC Committee, 3 February 2025, RoP [73] and [74]

⁶⁷ LJC Committee, 3 February 2025, RoP [77]

⁶⁸ LJC Committee, 3 February 2025, RoP [70] and [71]

potential impact of the Bill on the TCA.⁶⁹ In that letter, the Cabinet Secretary again said that the Bill will not have a direct or immediate impact on the UK's compliance with the TCA. However, the Cabinet Secretary also said:

"... we are concerned that this Bill could signal the beginning of the UK's divergence from the data protection regime currently in place across the EU by diluting the protections provided by UK legislation set out in the General Data Protection Regulation (GDPR) and the Data Protection Act 2018 (DPA). (...)

Our view is that there a number of provisions within this Bill that potentially undermine the current data protection framework, and therefore may threaten relevant adequacy decisions.

The key concerns relate to:

- *provisions which will dilute a data subjects' rights, such as the dilution of protections around automated decision-making;*
- *the addition of duties for the Information Commissioner which may impact upon the requirement for the Commissioner's complete independence, free of direct or indirect external influence;*
- *the different standard of treatment of international data transfers compared to the EU, which may be an impediment to adequacy should this matter be litigated; and,*
- *the totality of the Secretary of State's regulation-making powers result in a high degree of control around data protection with limited safeguards. (...)*

*The UK government has provided assurances that it sees no threat to the adequacy agreement by the Bill. However, we have no evidence to prove or disprove this. Welsh Ministers have requested that the UK government shares a copy of its risk assessment on this matter, but we have not had it."*⁷⁰

⁶⁹ ~~Letter from the Cabinet Secretary for Economy, Energy and Planning~~, 5 February 2025

⁷⁰ Letter from the Cabinet Secretary for Economy, Energy and Planning, 5 February 2025, Annex 1

2. Committee consideration

76. As we note above, we considered the Memorandum at our meeting on 13 January 2025 and we took evidence from the Cabinet Secretary on 3 February 2025.

77. We agreed our report at our meeting on 17 February 2025.⁷¹

Our view

Legislative consent

78. We note the Welsh Government's assessment of the provisions within the Bill that require the consent of the Senedd, as set out in the Memorandum.

79. We also note that there are differences of opinion between the Welsh and UK governments as regards which provisions in the Bill require the Senedd's consent. In particular, the UK Government is of the view that clause 12 does not engage the legislative consent process.

80. Earlier in the report, we noted the UK Government's view that the economic and monetary policy reservation in paragraph 15 of Schedule 7A to the 2006 Act applies to clause 12. For the reasons outlined in the Memorandum, the Welsh Government disagrees that this reservation applies. Regardless, we note that a provision need only have "*regard to devolved matters*" in relation to Wales in order to engage the legislative consent process under Standing Order 29. It is our understanding that clause 12 has the potential to modify the public functions of Devolved Welsh Authorities by providing a power for public authorities to impose a levy for the purposes of meeting costs incurred in relation to Smart Data schemes.

81. In relation to the rest of Part 1 of the Bill (excluding clauses 14 to 17), we note the UK Government's view that this Part is otherwise devolved to the extent that it does not relate to the regulation of the sale and supply of goods and services to consumers. The Welsh Government does not agree that this reservation, nor any other reserved matter in Schedule 7A to the 2006 Act, is engaged by these provisions. Nonetheless, as there is agreement that the majority of Part 1 is

⁷¹ ~~Legislation, Justice and Constitution Committee~~, 17 February 2025. The Committee agreed its draft report subject to some minor changes to be agreed outside of Committee.

devolved, at least to an extent, in our view these provisions have “*regard to devolved matters*” for the purposes of the legislative consent process.

82. We note that there appears to be agreement between the Welsh and UK governments that the Senedd’s consent is not required in relation to clauses 14 to 17 as they are reserved under the “*financial services*” reservation in paragraph 17 of Schedule 7A to the 2006 Act.

83. In relation to the ‘information gateway’ provisions in Part 2 of the Bill, we note that there is disagreement between the Welsh and UK governments as to whether these provisions engage the “*internet services*” reservation in paragraph 84 of Schedule 7A to the 2006 Act, although both governments agree that consent is required for clauses 45, 47 and 49 of the Bill. As the provisions modify the executive competence of Devolved Welsh Authorities and afford extra protection in relation to information held by the Welsh Revenue Authority, it is our view that the legislative consent process is engaged.

84. In responding to our request for clarification as to why the Cabinet Secretary is only seeking the Senedd’s consent for three clauses in Part 2 of the Bill, we note that the Cabinet Secretary considers that the remaining provisions in Part 2 are captured by the reservation relating to the ‘regulation of the sale and supply of... services to consumers’ in paragraph 72 of Schedule 7A to the 2006 Act. This view is not set out clearly in the Memorandum, which we find disappointing.

85. In the Memorandum, and specifically in relation to Part 2 of the Bill, the Cabinet Secretary puts forward a view that neither the ‘*internet services*’ or ‘*fiscal, economic and monetary policy*’ reservations in the 2006 Act apply to the Part 2 provisions. We are unclear why the Welsh Government’s assessment as regards the ‘*consumer protection*’ reservation has not been explained in the Memorandum. We also note that, in the Explanatory Notes to the Bill, the UK Government does not mention the ‘*consumer protection*’ reservation in relation to Part 2 of the Bill. Instead, the focus of the Explanatory Notes is on the ‘internet services’ reservation.

Conclusion 1. For reasons of transparency, it is disappointing that the Memorandum does not set out the Welsh Government’s full assessment as to the reservations in the 2006 Act that it considers apply to the provisions in Part 2 of the Bill.

Conclusion 2. We agree with the Welsh Government's assessment, as set out in the Memorandum, of the provisions within the Bill which require consent of the Senedd in accordance with Standing Order 29.

86. We also note that the Cabinet Secretary has not, in the Memorandum, expressly stated the Welsh Government's position as to whether the Senedd's consent should be granted to the relevant provisions in the Bill. We explore this further in the following paragraphs.

Intergovernmental working and resolving constitutional concerns

87. We note that there has been sustained engagement on the development of the Bill at Ministerial and official level across the UK and Welsh governments.

88. As regards the laying of the Memorandum, Standing Order 29.2 provides that a member of the government must lay a memorandum in relation to any UK Government Bill that is a relevant Bill on its introduction to the first House, "normally no later than 2 weeks after introduction". We note that, despite the intergovernmental working, the Cabinet Secretary did not lay the Memorandum before the Senedd until 10 weeks after the Bill was introduced to the UK Parliament.

89. We acknowledge that the Business Committee has subsequently been able to set a reporting deadline which has allowed the relevant Senedd Committees more than two months within which to scrutinise the Memorandum. Nonetheless, we are not convinced by the reasoning put forward by the Cabinet Secretary to explain why such a lengthy period was needed to prepare the Memorandum, particularly when most of the Bill's provisions have been transferred from the previous UK Government's DPDI Bill which was subject to several consent memoranda and considerable intergovernmental discussion.

Conclusion 3. The time it took the Welsh Government to lay the Memorandum leads us to have concerns that any supplementary legislative consent memoranda, which will be required should the Bill be amended in a way that engages the legislative consent process, may not be laid in a timely fashion. Given the Bill is now progressing through the House of Commons, where the UK Government has more of an influence on the scrutiny timetable, we are also concerned that Senedd Committees will not be afforded sufficient time to fully consider a supplementary memorandum which may be required if significant changes are proposed or made to the Bill.

Recommendation 1. The Cabinet Secretary should ensure that any supplementary legislative consent memoranda, which may be required because of amendments being proposed or made to the Bill in the UK Parliament, are laid before the Senedd as soon as possible to give Senedd Committees the best possible chance of considering the legislative changes as they apply to devolved matters.

90. We also note that the Cabinet Secretary states her view in the Memorandum 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”.

91. Nonetheless, we note that the Cabinet Secretary considers that several provisions in the Bill do not align with the Welsh Government's principles on UK legislation and, consequently, the Cabinet Secretary has not as yet provided a recommendation to the Senedd on whether it should give its consent to the relevant provisions in the Bill.

Conclusion 4. We remain uncertain as to why significant constitutional issues were not addressed and resolved before the Bill was introduced to the UK Parliament. Given the engagement between governments, it is regrettable that there are outstanding matters of concern.

92. We consider issues that arise in specific provisions in the Bill in the following paragraphs.

Comments on Part 1 of the Bill – Access to Customer Data and Business Data

93. We note that the Welsh Government is supportive of the policy intent behind Part 1 of the Bill.

94. We also note that the provisions in Part 1 of the Bill, giving to the Secretary of State and HM Treasury regulation-making powers in an area which is devolved, are a key matter of concern to the Cabinet Secretary. Furthermore, as a matter which is yet to be resolved, we acknowledge that the Cabinet Secretary considers that these provisions do not align with the Welsh Government's principles on UK legislation.

95. Although many of the powers conferred in Part 1 of the Bill are subject to the affirmative procedure, there would be no requirement to lay subordinate legislation in this area before the Senedd as those powers are conferred on the Secretary of State and the Treasury. We also note that there is no role, including a consultative role, provided for the Welsh Ministers under these provisions.

96. We further note that regulations made under clause 12 may modify the public functions of Devolved Welsh Authorities by providing a power for public authorities to impose a levy for the purposes of meeting all or part of the costs incurred by those persons (namely decision-makers, interface bodies, enforcers and public authorities) so that the expenses of a Smart Data scheme may be met by the relevant sector without incurring a cost to the taxpayer.

97. As we note earlier in the report, the Welsh Government's concerns with the powers delegated to the Secretary of State and HM Treasury in Part 1 of the Bill are not new concerns. When similar provisions were included in the previous UK Government's DPDI Bill, the Welsh Government was engaging with the UK Government and seeking changes that would satisfy concerns relating to the devolved implications of these powers.

98. The Welsh Government went as far to say that "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".⁷²

Recommendation 2. The Cabinet Secretary should update the Committee and the Senedd as soon as possible on the specific changes to Part 1 of the Bill that are being sought by the Welsh Government, and provide details of the progress of discussions with the UK Government.

Comments on Part 2 of the Bill – Digital Verification Services (DVS)

99. We note that the Welsh Government is supportive of the policy intent behind Part 2 of the Bill.

100. We also note that clause 49 in Part 2 of the Bill, which provides the Secretary of State with powers to prepare and publish a Code of Practice that would be applicable to Welsh public authorities, is another key matter of concern to the Cabinet Secretary. Furthermore, as a matter which is yet to be resolved, we acknowledge that the Cabinet Secretary considers that clause 49 does not align with the Welsh Government's principles on UK legislation.

101. Public authorities sharing data for DVS purposes must have regard to the Code of Practice published under clause 49. This code would apply to Devolved Welsh Authorities. We further note that, under clause 49(5), the Secretary of State is required to consult with the Welsh Ministers when preparing or revising the

⁷² Welsh Government, Supplementary Legislative Consent Memorandum on the Data Protection and Digital Information Bill (Memorandum No.4), April 2024, paragraph 26

Code. Again as the power rests with the Secretary of State, there would be no requirement to lay the draft code before the Senedd.

102. Again, the Welsh Government's concerns with the powers delegated to the Secretary of State in clause 49 of the Bill to prepare and publish a UK-wide Code of Practice regarding DVS that would be applicable to Welsh public authorities are not new concerns because similar provisions in the DPDI Bill also troubled the Welsh Government.

103. In our reports on the legislative consent memoranda on the DPDI Bill, we asked the Welsh Government to provide us with 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.⁷³ The Committee did not receive a detailed assessment as requested.

Recommendation 3. The Cabinet Secretary should update the Committee and the Senedd as soon as possible on the specific changes to clause 49 in Part 2 of the Bill that are being sought by the Welsh Government, and provide details of the progress of discussions with the UK Government.

Comments on Part 3 of the Bill – National Underground Asset Register (NUAR)

104. We note that the Welsh Government is supportive of the policy intent behind Part 3 of the Bill, which includes provisions that amend the 1991 Act by inserting a new Part 3A into that Act to put the NUAR on a statutory footing.

105. As we highlighted when considering the Welsh Government's legislative consent memoranda on the DPDI Bill, the subject matter of the 1991 Act is a devolved matter.

106. We acknowledge the Cabinet Secretary's statement that some concerns with the previous UK Government's DPDI Bill have been resolved, namely the removal of the NUAR provisions on transferring regulation-making powers under section 79 of the 1991 Act from the Welsh Ministers to the Secretary of State.

107. However, again we note that there are several provisions in Part 3 of the Bill which are key matters of concern to the Cabinet Secretary and, without yet being resolved, we acknowledge that the Cabinet Secretary considers that clauses 56,

⁷³ Report on the Welsh Government's Legislative Consent Memoranda on the Data Protection and Digital Information Bill, recommendation 1, and Report on the Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 3) on the Data Protection and Digital Information Bill, recommendation 1

57(3), 57(4), and 57(9) do not align with the Welsh Government's principles on UK legislation.

108. We note that clause 56 places a duty on the Secretary of State to keep a register of information relating to apparatus in streets in England and Wales, and that the form and manner of the NUAR is to be prescribed in regulations. Other provisions enable the Secretary of State to make regulations in relation to that register, such as in relation to the initial upload of information, access to information, fees payable by undertakers, the provision of information, monetary penalties, and arrangements for third parties to exercise functions. We acknowledge that the Secretary of State is required to consult with the Welsh Ministers before making regulations under these powers, but no equivalent and/or concurrent powers are provided to the Welsh Ministers.

109. We highlight that, in responding to our report on the Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 3) on the DPDI Bill, the Welsh Government stated:

*"Whilst a 'consult' mechanism is included within the NUAR provisions, this places no binding commitment on the UK Government to take our views into account following consultation and does not suitably reflect devolution. This is not considered to be constitutionally acceptable and cannot compensate for the removal of powers which Welsh Ministers already hold."*⁷⁴

110. Earlier in the report we noted that, in the Memorandum, the Cabinet Secretary states that, under clause 57(2) and (3) of the Bill, the amendments to be made to section 79 of the 1991 Act provide the Secretary of State and the Welsh Ministers with concurrent regulation-making powers. This is true to an extent. Powers under section 79(1) to (2) of the 1991 Act as amended would be exercisable concurrently in relation to apparatus in streets in Wales. However, and again as we highlight in the previous Chapter, other new powers inserted into section 79 of the 1991 Act are exercisable solely by the Secretary of State.

111. Although the current section 80 of the 1991 Act contains delegated powers exercisable by the Welsh Ministers (relating to a duty on persons undertaking works in streets to inform undertakers of the location of apparatus when located

⁷⁴ Letter from the then Cabinet Secretary for Economy, Energy and Welsh Language, Jeremy Miles, MS, 16 April 2024

during the execution of works, including how those records are kept and any exceptions to that duty), we note that section 80 has never been commenced.

112. We further note that many of the existing powers in sections 79 and 80 of the 1991 Act are currently solely exercisable by the Welsh Ministers in relation to Wales. As such, the amendments and insertions made to these provisions by the Bill amount to a modification of the Welsh Ministers' executive competence and, by extension, have a knock-on effect on the scrutiny role of the Senedd in relation to the making of subordinate legislation in this area.

Conclusion 5. We do not consider that the new regulation-making powers provided to the Secretary of State in the new National Underground Asset Register provisions are appropriate.

Conclusion 6. The revocation of Senedd agreed secondary legislation, namely the Street Works (Records) (Wales) Regulations 2005, and extension of the equivalent regulations in England to Wales is inappropriate.

Recommendation 4. The Cabinet Secretary should update the Committee and the Senedd as soon as possible on the specific changes to clauses 56, 57(3), 57(4), and 57(9) in Part 3 of the Bill that are being sought by the Welsh Government, and provide details of the progress of discussions with the UK Government.

Comments on Part 7 – Information to improve public service delivery

113. We note that the Welsh Government is supportive of the policy intent behind Part 7 of the Bill.

114. We further note that clause 121 of the Bill extends a pre-existing Henry VIII power exercisable by the Welsh Ministers by amending section 35 of 2017 Act, and that this power is subject to the affirmative procedure.

UK-EU obligations

115. As the Committee responsible for considering the constitutional impacts of external affairs, we considered the DPDI Bill from the perspective of UK-EU governance and international obligations compliance, and we have adopted the same approach with the consideration of the Memorandum.

116. We understand that cooperation on personal data protection is one of eight bases of cooperation on which the TCA operates. Further duties on personal data protection are included in the TCA, in particular with regards to law enforcement cooperation.

117. We note the assurances provided by the Cabinet Secretary, that the Welsh Government is of the view that the Bill is compliant with the TCA.

118. We welcome the Cabinet Secretary's agreement to continue to provide assessments of the TCA in future legislative consent memoranda and acknowledge the efforts made to promptly provide an assessment of the TCA separately on this occasion. Such assessments should be included in legislative consent memoranda in the first instance, rather than in separate correspondence in future to assist Committees in their scrutiny.

119. We note the Welsh Government's view that the Bill could signal the beginning of the UK's divergence from the data protection regime currently in place across the EU by diluting the protections provided by UK legislation.

Conclusion 7. We reiterate our previous position in relation to the DPD Bill, namely that we share the Welsh Government's concerns that the Bill poses a risk to the UK's data adequacy decision which is due to expire in June 2025.

120. Whilst we acknowledge the Cabinet Secretary's updates on discussions with the UK Government, we are uncertain as to what extent these matters have been discussed at relevant intergovernmental forums, in particular the Interministerial Groups on UK-EU relations and on trade. Recent correspondence on these groups has provided insufficient detail to determine what discussions have taken place.

Recommendation 5. The Cabinet Secretary should clarify whether the UK-EU dimensions of the Bill are being discussed at relevant intergovernmental forums, including the Interministerial Groups on UK-EU relations and on trade, and provide a summary of those discussions.

121. We note that there is limited information available to the Senedd on the renewal process of the UK's data adequacy decision.

Recommendation 6. The Cabinet Secretary should outline to the Senedd the renewal process for the UK's data adequacy decision.