

Report on Legislative Consent Memoranda for the Data (Use and Access) Bill

March 2025

1. Introduction

1. On 2 January 2025, the Cabinet Secretary for Economy, Energy and Planning ('the Cabinet Secretary') laid a Legislative Consent Memorandum for the Data (Use and Access) Bill ('the LCM') before the Senedd.
2. On 7 January 2025, the Business Committee agreed to refer the LCM to 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 Legislation, Justice and Constitution Committee for scrutiny, with a reporting deadline of 7 March 2025.
3. On 28 January, the Business Committee agreed to extend the reporting deadline to 14 March.

Our approach

4. The Committee considered the LCM on 5 February. The Committee considered the LCM only as it relates to Part 3 of the UK Bill, given that these are the matters that fall within the Committee's remit.



2. The Data (Use and Access) Bill

5. The Data (Use and Access) Bill (“the Bill”) was introduced in the House of Lords on 23 October 2024 and began Report Stage on 21 January 2025.

Policy objective

6. According to the Legislative Consent Memorandum:

“The UK Government’s stated policy objectives are to harness the power of data for economic growth, support a modern digital government, and improve people’s lives. It indicates that the Bill has been designed to achieve these three objectives with measures included to start delivering its commitment to better serve the British public through science and technology.”

7. The Bill makes provision to:

- allow for the secure sharing of customer data, e.g., held by a communications provider or financial services provider, upon the customer’s request, with authorised third-party providers. •
- establish a legislative structure for the provision of digital verification services in the UK.
- provide a legislative framework to support the operation of the National Underground Asset Register.
- reform the way in which births and deaths are registered in England and Wales, enabling the move from a paper-based system to registration in an electronic register.
- reform parts of the UK’s data protection and privacy framework to maintain high standards of protection, whilst addressing a lack of clarity in existing legislation that impedes the safe development and deployment of some new technologies.
- facilitate the flow and use of personal data for law enforcement and national security purposes.
- reform the regulator, the Information Commissioner, including its governance structure, duties, enforcement powers, reporting

requirements, data protection complaints processes and its development of statutory codes of practice.

- provide the Gas and Electricity Markets Authority with flexibility to determine the best process to follow in appointing the successor licensee for providing smart meter communication services.
- extend data sharing powers under section 35 of the Digital Economy Act 2017 to include businesses.
- amend the Online Safety Act 2023 to create a requirement for OFCOM, when notified of a child death by the Coroner (or Procurator Fiscal in Scotland) to issue an information notice to specified online service providers requiring them to retain certain information relating to the use of the service by the deceased child for a specified period.
- create a framework allowing researchers access to data relating to online safety held by tech companies.
- retain biometric information, including that received through international partner sharing.
- update regulations to make sure that the UK's trust services legal framework continues to function effectively.

Provisions for which consent is required

8. As stated earlier in this Report, the Committee confined its consideration to Part 3 of the Bill, given that only this part of the Bill is relevant to its remit.

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

9. The National Underground Asset Register (NUAR) is a digital map of underground pipes and cables. Part 3 of the Bill amends the New Roads and Street Works Act 1991 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.

10. Further amendments to the 1991 Act also seek to “update existing data sharing obligations related to buried apparatus to take advantage of the

opportunities provided by the data and technology developments that have happened since the previous legislative measures were made.”¹

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

12. Clause 57 (Information in relation to apparatus: England and Wales) amends section 79 of the 1991 Act, and replaces the existing (but not yet commenced) section 80 of that Act. The amendments to section 79, among other things, require “undertakers” to record certain information related to apparatus and to enter information into NUAR. Section 79 of the 1991 Act already imposes a number of record-keeping requirements on undertakers in relation to items of apparatus belonging to them. For example, section 79(1) requires that, as soon as reasonably practicable after specific events occur, an undertaker records the location of every item of apparatus belonging to them, including their nature (if known) and whether it is for the time being in use. The amendments made by the Bill impose a duty on undertakers to record other information beyond that which they are already required to record.

13. Existing provisions in section 79 confer powers to “prescribe” certain matters. In relation to Wales, these functions are already conferred on the Welsh Ministers. The Bill amends these provisions so that matters can be prescribed by the Secretary of State or the Welsh Ministers in relation to apparatus in streets in Wales, although the Secretary of State is required to consult the Welsh Ministers in relation to the exercise of these powers.

14. The new section 80 imposes duties on persons executing works of any description in a street to take other certain steps where they identify missing or incorrect information in existing records, or where they find apparatus and cannot ascertain its owner. A person who fails to take these steps commits a criminal offence. The Secretary of State is provided with regulation-making powers to prescribe matters where this duty will not apply. This power is not extended to the Welsh Ministers, who must instead be consulted before this power is exercised by the Secretary of State. This removes existing but uncommenced powers from the Welsh Ministers in relation to Wales.

15. Clause 57(9) revokes the Street Works (Records) (Wales) Regulations 2005, which prescribe the form of records of apparatus placed in streets to be kept by undertakers in accordance with the provisions of section 79 of the 1991 Act. Clause

¹ Paragraph 31 of the Bill’s Explanatory Notes

57(8) extends the application of the Street Works (Records) (England) Regulations 2002 so that they apply to both England and Wales, rather than just England.

16. Clause 60(1) (Pre-commencement consultation) provides that a requirement to consult (under a provision which is inserted into the 1991 Act by clauses 56 or 57) may be satisfied by consultation undertaken before the day on which the Bill is passed.

17. Schedule 1 (National Underground Asset Register (England and Wales): monetary penalties) inserts a new Schedule 5A into the 1991 Act which makes provision about monetary penalties for non-compliance with the requirements to pay a fee and provide information set out in the new Part 3A of that Act.

Delegated powers

18. The Bill contains numerous provisions which confer regulation-making powers on the Secretary of State and the UK 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 concurrently 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.

Welsh Government's position on consent

19. In the LCM, the Welsh Government expresses support for the policy intention behind the Bill. However, it also expresses concerns from a constitutional perspective and explains that the Welsh Government is engaging with the UK Government on these matters at both Ministerial and official levels.

20. The LCM set out, in the Welsh Government's view, the key matters to be resolved in relation to Part 3, including:

- The requirement placed by clause 56 (National Underground Asset Register: England and Wales) on the Secretary of State to consult the Welsh Ministers prior to making regulations under the new Part 3A of the 1991 Act, as inserted by the Bill.
- The provision of concurrent regulation-making powers under clause 57(3) (Information in relation to apparatus: England and Wales) to the Secretary of State and the Welsh Ministers, with a requirement being placed on the Secretary of State to consult with the Welsh Ministers

before making regulations under section 79 of the New Roads and Street Works Act 1991.

- The provision of regulation-making powers to the Secretary of State only under amendments made to section 80 of the 1991 Act by clause 57(4) of the Bill, with a requirement being placed on the Secretary of State to consult the Welsh Ministers before making regulations under that section.
- The revocation of Senedd-approved legislation, namely the Street Works (Records) (Wales) Regulations 2005², by clause 57(9) of the Bill, and the extension of the application of the Street Works (Records) (England) Regulations 2002³ so that they apply to both England and Wales, rather than just England.

3. The Committee's conclusion

At the time of reporting, the Welsh Government was not in a position to recommend that consent should be granted. While the Cabinet Secretary expressed support for the policy intent behind the Bill, she remained concerned about several constitutional matters arising from the Bill, including those set out in paragraph 20 of this Report.

The Committee endorses the Cabinet Secretary's position on these matters. Further, the Committee believes these matters must be resolved before the Senedd is asked to give its consent to the provisions in the Bill.

Finally, given the significance of these proposals to local authorities, the Committee seeks the Cabinet Secretary's reassurance that the WLGA has been consulted on the proposals and their potential impact in Wales.

² S.I. 2005/1812 (W. 142)

³ S.I. 2002/3217