

The Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 3) on the Data (Use and Access) Bill

May 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 and had its first reading in the House of Commons on 6 February 2025. Committee stage in the Commons concluded on 4 March 2025. At the time of writing this report, Report stage and third reading were scheduled to take place on Wednesday 7 May.

The Welsh Government's Legislative Consent Memorandum

5. 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.

6. On 2 January 2025, Rebecca Evans MS, the Cabinet Secretary for Economy, Energy and Planning (the Cabinet Secretary), laid before the Senedd a Legislative Consent Memorandum (the Memorandum) in respect of the Bill.⁴

7. We took evidence from the Cabinet Secretary on the Memorandum on 3 February 2025.⁵

8. We reported on the Memorandum on 7 March 2025 (our first report).⁶

9. Paragraphs 14 to 16 of our first report set out the provisions of the Bill which, at the time, the Welsh Government considered to require the Senedd's consent.

10. Paragraphs 17 to 27 of our first report describe the delegated powers in the Bill which are conferred on the Secretary of State, the Treasury, and the Welsh Ministers to act in devolved areas.

11. Paragraphs 28 to 32 of our first report set out the Welsh Government's position on the Bill, as set out in the Memorandum.

12. Paragraphs 33 to 75 of our first report highlight the evidence we took from the Cabinet Secretary on the Memorandum.

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

⁴ Welsh Government, [Legislative Consent Memorandum, The Data \(Use and Access\) Bill](#), January 2025

⁵ [Legislation, Justice and Constitution Committee](#), 3 February 2025

⁶ Legislation, Justice and Constitution Committee, [Report on the Welsh Government's Legislative Consent Memorandum on the Data \(Use and Access\) Bill](#), March 2025

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

14. The Cabinet Secretary responded to our first report on 24 April 2025.⁷

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

15. The Cabinet Secretary laid a Supplementary Legislative Consent Memorandum (Memorandum No. 2) in respect of the Bill on 12 March 2025.⁸

16. Memorandum No. 2 relates to amendments tabled to the Bill for House of Commons Committee stage, which commenced on 4 March 2025.

17. We reported on Memorandum No. 2 on 2 April 2025 (our second report).⁹

18. Paragraphs 17 to 25 of our second report provide an update on the position since the publication of the Memorandum, and highlight the provisions in the Bill for which the Senedd's consent is required.

19. Our second report contained two conclusions and four recommendations.

20. The Cabinet Secretary responded to our second report on 24 April 2025.¹⁰

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

21. The Cabinet Secretary laid a further Supplementary Legislative Consent Memorandum (Memorandum No. 3) in respect of the Bill on 3 April 2025.¹¹

22. Memorandum No. 3 relates to amendments tabled to the Bill for House of Commons Report stage.

23. The Welsh Government's view set out in the Memorandum was that the Senedd's consent was required for clauses 1 to 13 and 18 to 26 (in Part 1 – Access to Customer Data and Business Data), clauses 45, 47 and 49 (in Part 2 – Digital Verification Services (DVS) - Information Gateway), clauses 56, 57, 60(1) and

⁷ [Letter from the Cabinet Secretary for Economy, Energy and Planning](#), 24 April 2025

⁸ Welsh Government, [Supplementary Legislative Consent Memorandum \(Memorandum No. 2\) on the Data \(Use and Access\) Bill](#), March 2025

⁹ Legislation, Justice and Constitution Committee, [Report on the Welsh Government's Supplementary Legislative Consent Memorandum \(Memorandum No. 2\) on the Data \(Use and Access\) Bill](#), April 2025

¹⁰ Letter from the Cabinet Secretary for Economy, Energy and Planning, 24 April 2025

¹¹ Welsh Government, [Supplementary Legislative Consent Memorandum \(Memorandum No. 3\) on the Data \(Use and Access\) Bill](#), April 2025

Schedule 1 (in Part 3 – National Underground Asset Register (NUAR)), and clause 121 (in Part 7 – Information to improve public service delivery).¹² Memorandum No. 2 outlined amendments to clauses 8 and 10, which were provisions already identified in the Memorandum as provisions requiring the Senedd's consent.

24. At paragraphs 7 to 20 of Memorandum No. 3, the Cabinet Secretary provides an update on the Welsh Government's position since the publication of the Memorandum and Memorandum No. 2.

25. Again, the Cabinet Secretary confirms that officials for the Welsh Government and UK Government have continued to have regular contact on the Bill.

26. At paragraph 8 of Memorandum No. 3 the Cabinet Secretary states:

“The following government amendments, tabled on 25 March, were assessed by Welsh Government as requiring legislative consent of the Senedd:

- *Gov 1, which amends Part 3, clause 56 – National Underground Asset Register: England and Wales*
- *Gov 2, Gov 3 and Gov 4, which amend Part 3, clause 57 – Information in relation to apparatus: England and Wales*
- *Gov 5 which removes the amendments to the New Roads and Street Works Act 1991 (NRSWA 1991) at section 80(8) and (9) which had revoked the Street Works (Records) (Wales) Regulations 2005 and applied the Street Works (Records) (England) Regulations 2002 to Wales.”*

27. The UK Government's amendment Gov 1 to clause 56 provides that the Secretary of State must obtain the consent of the Welsh Ministers before making regulations under Part 3A of the NRSWA 1991 (as inserted by clause 56) in relation to any provision that would be within the legislative competence of the Senedd if contained in an Act of the Senedd.

28. At paragraph 14 of Memorandum No. 3 the Cabinet Secretary states:

¹² Clause numbering relates to the Bill as introduced to the House of Lords on 23 October 2024

“As amendment Gov 1 amends clause 56 by making provision for the first time in respect of a consent requirement when making regulations, legislative consent is required.”

29. As noted in paragraph 17 of Memorandum No. 3, the UK Government amendments Gov 2, 3 and 4 amend clause 57, as follows:

- Amendment Gov 2 provides that the Secretary of State must obtain the consent of the Welsh Ministers before making regulations under section 79 of the NRSWA 1991 in relation to any provision that relates to apparatus in streets in Wales;
- Amendment Gov 3 provides that the Secretary of State must obtain the consent of the Welsh Ministers before making regulations under section 80 of the NRSWA 1991 in relation to any provision that relates to apparatus in streets in Wales.
- Amendment Gov 4 is consequential on amendment Gov 3 and removes a requirement to consult with Welsh Ministers before regulations can be made under section 80 of the NRSWA 1991.

30. At paragraph 18 of Memorandum No. 3 the Cabinet Secretary states:

“As amendments Gov 2, Gov 3 and Gov 4 amend clause 57 by making provision for the first time in respect of a consent requirement when making regulations under section 79 and 80 respectively, legislative consent is required.”

31. The UK Government's amendment Gov 5 also amends clause 57. As noted in paragraph 19 of Memorandum No. 3, amendment Gov 5 removes provision within clause 57 which revokes the Street Works (Records) (Wales) Regulations 2005. The amendment also removes provision applying the Street Works (Records) (England) Regulations 2002 to Wales. In Memorandum No. 3 the Cabinet Secretary states:

“This provision was previously assessed as requiring legislative consent and was included in the LCM laid on the Bill on 2 January.

The effect of this amendment is to return the legislative position to the status-quo for both of those pieces of subordinate legislation. Following the removal of clause 57 sub-sections (8)

and (9), the Senedd is asked to note that consent as set out in the LCM laid on the 2 January is therefore no longer required for that provision.”¹³

32. At paragraph 21 of Memorandum No. 3 the Cabinet Secretary confirms that the UK Government's position as regards which provisions of the Bill engage the legislative consent process has not changed since the laying of the Memorandum.

33. At paragraphs 26 to 35 of Memorandum No. 3 the Cabinet Secretary outlines the Welsh Government's current position on the Bill, and confirms that the Welsh Government remains supportive of the UK Government's policy intent behind the Bill.

34. In Memorandum No. 3 the Cabinet Secretary confirms that discussions with the UK Government on clauses 1 to 13 and 18 to 26 (Access to Customer Data and Business Data), clause 49 (Digital Verification Services), and clauses 56, 57, 60(1) and Schedule 1 (NUAR) have now concluded.¹⁴

35. At paragraph 29 of Memorandum No. 3 the Cabinet Secretary states:

“I can now inform the Senedd that as a result of these discussions, the amendments tabled by the UK Government to Part 3 of the Bill on 25 March 2025... provide constitutional safeguards regarding provisions within this part of the Bill.”

36. Specifically in relation to the NUAR provisions in Part 3 of the Bill, at paragraphs 30 to 33 of Memorandum No. 3 the Cabinet Secretary states:

“The legislative approach taken in Part 3 of the Bill had caused Welsh Government the most concern from a constitutional perspective, particularly as this is an area of the Bill where Welsh Government and UK Government are in full agreement on the need for legislative consent.

As originally drafted, Part 3 of the Bill included two separate consultation provisions, the provision of concurrent powers without a consent mechanism and also revoked the Street Works (Records) (Wales) Regulations 2005, extending the equivalent regulations in England to Wales.

¹³ Memorandum No. 3, paragraphs 19 and 20

¹⁴ Memorandum No. 3, paragraphs 28 and 29

Together amendments Gov 1 to Gov 5 tabled on 25 March have addressed Welsh Government's constitutional concerns on Part 3 of the Bill as follows:

- *The consultation provision under clause 56 has been changed to a consent mechanism;*
- *the consultation provision under clause 57(3) has been changed to a consent mechanism; and,*
- *the consultation provision under clause 57(4) has been changed to a consent mechanism.*

In addition, clause 57, sub-sections (8) & (9) have been removed, retaining the Street Works (Records) (Wales) Regulations 2005, rather than revoking and applying the equivalent England only provisions to both England and Wales."

37. The Cabinet Secretary concludes that:

- it is appropriate to deal with the provisions identified in the Welsh Government's legislative consent memoranda in this UK Bill "as the Bill represents the most effective way for these provisions to come into force";
- the amendments tabled to Part 3 of the Bill on 25 March 2025 "demonstrate a significant concession on the part of the UK Government" and "will ensure devolved interests remain protected in the development of further subordinate legislation surrounding the creation of the NUAR";
- in recognition of the positive impacts of the Bill, and the constitutional safeguards introduced in Part 3, she recommends the Senedd supports the Bill and gives its consent.¹⁵

38. The Cabinet Secretary recommends that the Senedd gives its consent to the relevant provisions in the Bill while also stating that "Concerns do remain though in relation to the impact the Bill may have on the UK's Data Adequacy status".¹⁶

¹⁵ Memorandum No. 3, paragraphs 37 to 39

¹⁶ Memorandum No. 3, paragraph 34

2. Committee Consideration

39. We considered Memorandum No. 3 at our meeting on 28 April 2025, and resolved to agree our report outside of the meeting.¹⁷

Our view

Legislative consent

40. We note the Welsh Government's assessment of the amendments to the provisions within the Bill that require the consent of the Senedd, as set out in Memorandum No. 3.

41. We also note that there continue to be differences of opinion between the Welsh and UK governments as regards which provisions in the Bill require the Senedd's consent.

Conclusion 1. We continue to agree with the Welsh Government's assessment (as set out in the Memorandum, Memorandum No. 2 and Memorandum No. 3) of the provisions within the Bill (and amendments to those provisions) which require the consent of the Senedd in accordance with Standing Order 29.

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

42. We note that the amendments made to Part 3 of the Bill which are the subject of Memorandum No. 3:

- provide that the Secretary of State must obtain the consent of the Welsh Ministers before making regulations under Part 3A of the NRSWA 1991 (as inserted by this clause 56) in relation to any provision that would be within the Senedd's legislative competence if contained in an Act of the Senedd;
- provide that the Secretary of State must obtain the consent of the Welsh Ministers before making regulations under sections 79 and 80 of the NRSWA 1991 in relation to any provision that relates to apparatus in streets in Wales (and consequently removes a requirement to consult with Welsh Ministers before regulations can be made under section 80 of NRSWA 1991);

¹⁷ [Legislation, Justice and Constitution Committee](#), 28 April 2025

- remove provision within clause 57 which would have revoked the Street Works (Records) (Wales) Regulations 2005 and also removes provision that would have applied the Street Works (Records) (England) Regulations 2002 to Wales, effectively returning the legislative position to the status quo for both of those pieces of subordinate legislation.

Conclusion 2. In our first report we said that the revocation of Senedd-agreed secondary legislation, namely the Street Works (Records) (Wales) Regulations 2005, and the extension of the equivalent regulations in England to Wales, is inappropriate.¹⁸ As such, UK Government amendment Gov 5 (tabled for Commons Report Stage) is to be welcomed.

Conclusion 3. In our first report we concluded that the new regulation-making powers provided to the Secretary of State in the NUAR provisions are not appropriate.¹⁹ The UK Government amendments Gov 1 to 4 (tabled for Commons Report Stage) deliver an improvement to the Bill as introduced to the UK Parliament. However, were there to be disagreement between the Welsh and UK governments as to whether a provision made under Part 3A falls within the legislative competence of the Senedd and therefore a dispute as to whether the provision engages the consent mechanism now provided for in the Bill, it is not clear how such disputes would be resolved.

Conclusion 4. While a consenting role for the Welsh Ministers is a marked improvement to the requirements of Part 3 of the Bill, a role solely for the Welsh Ministers in the exercise of delegated powers by the UK Government which affect devolved interests would still mean that the Senedd would be bypassed in these matters.

Conclusion 5. While we acknowledge the consenting role for the Welsh Ministers before regulations under Part 3A and sections 79 and 80 of the NRSWA 1991 are made by the Secretary of State in relation to any provision that would be within the Senedd's legislative competence, it remains the case that clauses 56 and 57 of the Bill as amended will still confer delegated powers that are to be exercisable in devolved areas solely by the Secretary of State. This is unwelcome.

¹⁸ Report on the Welsh Government's Legislative Consent Memorandum on the Data (Use and Access) Bill, Conclusion 6

¹⁹ Report on the Welsh Government's Legislative Consent Memorandum on the Data (Use and Access) Bill, Conclusion 5

Matters of concern in Parts 1 and 2 of the Bill which are not resolved

43. We highlighted in our first report that 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 Data Protection and Digital Information Bill, the Welsh Government said 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".²⁰

44. In the Memorandum, the Cabinet Secretary also stated that she considered clause 49 in Part 2 of the Bill does not align with the Welsh Government's principles on UK legislation.²¹

45. In her response to the relevant recommendations in our first report, we note that the Cabinet Secretary confirms:

- in relation to Part 1 of the Bill, the Welsh Government requested that the Welsh Ministers be given a formal role in relation to establishing Smart Data schemes;
- in relation to Part 2 of the Bill, the Welsh Government requested that clause 49 was amended to provide the Welsh Ministers with a formal role in relation to the preparation and publication of a code of practice on DVS.²²

46. In that response, we also note that the Cabinet Secretary subsequently directs us to Memorandum No. 3 for the Welsh Government's updated position on these matters.²³

47. However, in Memorandum No. 3 the Cabinet Secretary does not address the constitutional concerns that have previously been outlined in relation to these Parts, nor does she provide detail on the discussions that have taken place between the Welsh and UK governments in relation to those provisions.

²⁰ Welsh Government, Supplementary Legislative Consent Memorandum on the Data Protection and Digital Information Bill (Memorandum No. 4), April 2024, paragraph 26

²¹ Memorandum, paragraphs 37 and 39

²² Letter from the Cabinet Secretary for Economy, Energy and Planning, 24 April 2025, responses to recommendation 2 and 3 in our first report

²³ Letter from the Cabinet Secretary for Economy, Energy and Planning, 24 April 2025, responses to recommendation 2 and 3 in our first report

48. In Memorandum No. 3, it would appear that the Cabinet Secretary is suggesting that amendments to the provisions of concern in Parts 1 and 2 of the Bill have not been pursued by the Welsh Government because the UK and Welsh government “were not aligned on the devolution analysis” on these parts of the Bill.²⁴

Conclusion 6. We consider it important to highlight that the Welsh Government's concerns with similar provisions about customer and business data and the disclosure of information in the previous UK Government's Data Protection and Digital Information Bill meant that the Welsh Government recommended to the Senedd that consent to that Bill be withheld.

Conclusion 7. We acknowledge that the amendments tabled to Part 3 of the Bill for Commons Report Stage satisfy the Cabinet Secretary's concerns as regards the relevant provisions in that Part. Nonetheless, the Cabinet Secretary has also expressed concerns about the constitutional propriety of provisions in Parts 1 and 2 of the Bill. We are not satisfied that the Cabinet Secretary has offered a convincing argument as to why these concerns, and the lack of progress that appears to have been made in discussions with the UK Government on those provisions, should be conceded.

UK-EU obligations

49. In addition to the outstanding matters of concern with Parts 1 and 2 of the Bill, we note that the Cabinet Secretary confirms in Memorandum No. 3 that concerns also remain in relation to the impact the Bill may have on the UK's Data Adequacy status.

50. Concerns previously expressed by the Welsh Government in relation to the loss of these adequacy decisions include concerns relating to trade and the impact on public service delivery, with a particular focus on risks from a health perspective.²⁵

51. In her response to the relevant recommendations in our first and second reports, we note that the Cabinet Secretary confirms:

- The concerns regarding the impact of the Bill on EU data adequacy have been raised by the Welsh Government with the UK Government at

²⁴ Memorandum No. 3, paragraph 38

²⁵ Memorandum No. 1, paragraphs 41 to 45

both Ministerial and official level, including the most recent meeting of the Inter-Ministerial Group on UK-EU Relations on 3 December 2024.²⁶

- The Secretary of State for the Department for Science, Innovation and Technology (DSIT) has held three meetings with the former and current European Commissioner for Justice to discuss data adequacy, with the most recent meeting being with Commissioner McGrath on 29 January 2025. The Cabinet Secretary states that “As adequacy is not devolved, Welsh Government has not been party to these discussions.”²⁷
- The Welsh Government requested a copy of the UK Government’s risk assessment on the potential impact of the Bill on EU data adequacy. However, the UK Government said it does not consider it appropriate to share the assessment with the Welsh Government, citing the importance of discretion whilst the European Commission’s review is underway.²⁸
- None of the amendments drawn to the Senedd’s attention in Memorandum No. 2 or Memorandum No. 3 impact the data protection regime and, as such, the Welsh Government’s assessment of the impact of the Bill on the Trade and Cooperation Agreement provided to Senedd Committees on 5 February 2025 still stands.²⁹

Conclusion 8. It is unclear to us how the Cabinet Secretary intends to address and seek resolution of the Welsh Government’s continuing concerns in relation to the potential loss of the UK’s current adequacy decisions. Given that these concerns relate to trade and the impact on public service delivery, with a particular focus on risks from a health perspective, this situation is regrettable.

Overall concerns

52. In our second report we noted that none of the significant concerns expressed by the Cabinet Secretary in the Memorandum, or by us in our first

²⁶ Letter from the Cabinet Secretary for Economy, Energy and Planning, 24 April 2025, response to recommendation 5 in our first report

²⁷ Letter from the Cabinet Secretary for Economy, Energy and Planning, 24 April 2025, response to recommendation 5 in our first report

²⁸ Letter from the Cabinet Secretary for Economy, Energy and Planning, 24 April 2025, response to recommendation 5 in our first report

²⁹ Letter from the Cabinet Secretary for Economy, Energy and Planning, 24 April 2025, response to recommendation 2 in our second report

report, had been addressed by the amendments to the Bill which were the subject of Memorandum No. 2.³⁰

Conclusion 9. We are both disappointed and troubled that the Bill has reached the final amending stage in the UK Parliament and there remain significant issues with the Bill's provisions as they relate to devolved matters.

53. In our second report we highlighted our concerns about the Welsh Government's handling of Bills introduced to the UK Parliament which make provision that has regard to devolved matters. Such are our ongoing concerns that we described this handling as "increasingly flawed and inadequate".³¹

54. The Cabinet Secretary laid Memorandum No. 3 before the Senedd on Thursday 3 April, just as the Senedd was entering a three-week recess period. We acknowledge that the amendments outlined in Memorandum No. 3 were tabled on 25 March and, therefore, this supplementary memorandum was laid in accordance with the timescales set out in Standing Order 29.

55. Nonetheless, this fact does not mitigate or alleviate the pressure and responsibility falling to Senedd Committees to report on serious matters so that the Senedd as a whole is able to make an informed decision as to whether or not to grant consent to the Bill.

Conclusion 10. The granting of consent to the UK Parliament to pass a Bill which has regard to devolved matters is a responsibility which falls to the Senedd. The Senedd's ability to discharge this responsibility is hindered when the Welsh Government does not provide the Senedd with robust and timely information in legislative consent memoranda. We are concerned that sub-optimal memoranda - as regards both their quality and timeliness - increase the risk that the Senedd may make legislative consent decisions it would not ordinarily make had it been able to consider key information within an appropriate timeframe.

³⁰ Report on the Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 2) on the Data (Use and Access) Bill, paragraph 48

³¹ Report on the Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 2) on the Data (Use and Access) Bill, Conclusion 2