

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

May 2025

## 1. Background

1. The Data (Use and Access) Bill (“the Bill”) was introduced in the House of Lords on 23 October 2024. It is sponsored by the Department for Science, Innovation and Technology.

2. The long title of 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 signatures, electronic seals and other trust services; and for connected purposes.”*

- 3.** Standing Order 29.1 provides that the Welsh Ministers must lay a Legislative Consent Memorandum where a UK Bill makes provision in relation to Wales that has regard to devolved matters.
- 4.** The Cabinet Secretary for Economy, Energy and Planning, Rebecca Evans MS (“the Cabinet Secretary”), laid a Legislative Consent Memorandum (“the LCM”) on 2 January 2025.<sup>1</sup>
- 5.** On 7 January 2025, the Business Committee referred the LCM to the Economy, Trade, and Rural Affairs Committee (“the Committee”) as well as the Culture, Communication, Welsh Language, Sport and International Relations Committee, the Climate Change, Environment, and Infrastructure Committee, the Equality and Social Justice Committee and the Legislation, Justice and Constitution Committee with a reporting deadline of 7 March. This was subsequently extended until 28 March.<sup>2</sup>

## 2. The LCM

- 6.** Paragraph 6 of the LCM sets out the policy objectives of the Bill.

### **Provisions for which consent is sought**

- 7.** Paragraphs 13 to 27 of the LCM list the clauses that the Welsh Government say require the Senedd’s consent under Standing Order 29. This Committee is particularly interested in Clauses 1-13 and 18-26 in Part 1 and clause 121 in Part 7 of the Bill as these fall within the policy remit of this Committee. A summary of these clauses is set out below.

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<sup>1</sup> Senedd.Wales, [Legislative Consent: Data \(Use and Access\) Bill](#), January 2025

<sup>2</sup> Senedd.Wales, [Legislative Consent: Data \(Use and Access\) Bill](#), January 2025

## **Clauses 1-13 and 18-26 - Access to Customer Data and Business Data**

**8.** Clauses 1-13 and 18-26 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.

**9.** Smart Data is the secure sharing of customer data, upon the customer's request, with authorised third-party providers (ATPs). ATPs can typically be defined as organisations who are neither the customer nor original service provider (e.g. banks) and are offering services to the customer. As an example, this could be used for automatic switching and account management. Open Banking is the only active example of a regime comparable to a 'Smart Data scheme'.

**10.** Paragraph 35 of the LCM explains that the policy intent for these provisions is to "improve data portability, enabling customers to make better use of their personal data; to benefit from a more competitive marketplace; helping consumers save and manage their money and services and to provide access to new and more innovative services in and across the sectors." Further information relating to the policy intent is provided in the Bill's Explanatory Notes.<sup>3</sup>

**11.** Together these clauses provide the Secretary of State and the Treasury with a number of regulation making powers. This would enable Smart Data schemes to be established via regulations, requiring suppliers and other relevant persons to share data in the manner prescribed in regulations. These regulations would specify the scope of the scheme, the data required to be published or shared by "data holders", the framework for the set up and management of the scheme, including the accreditation of third parties, provision of enforcement by a specified public body, and the payment of fees and levies. These provisions also enable the Secretary of State or Treasury to give financial assistance to enforcers to cover expenses.

## **Clause 121**

**12.** Clause 121 extends the data sharing powers in section 35 of the Digital Economy Act 2017, which permit specified public authorities (known as a "specified person" in the DEA) to share data to improve the delivery of public services to individuals and households for a "specified objective". This clause extends these powers to include improving the delivery of services to

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<sup>3</sup> In particular, see paragraphs 18-21

“undertakings”, meaning businesses and bodies established for charitable purposes.

**13.** Section 35 of the DEA contains delegated powers to (i) specify data sharing objectives, and (ii) specify public authorities that can share data for a specified objective. The DEA allows the “appropriate national authority”, which means the Welsh Ministers in relation to Welsh bodies, to make regulations to add “specified persons” and to specify “specified objectives”.<sup>4</sup>

**14.** By extending clause 121 to allow specified persons to share data for specified objectives to improve the delivery of public services to undertakings, this will have the consequence of extending a pre-existing Henry VIII power exercisable by Welsh Ministers by allowing greater scope as to the specified objectives that may be prescribed in regulations. In other words, the Welsh Ministers will be able to specify objectives designed to improve the delivery of services to undertakings, as well as individuals and households.

### Reasons for making these provisions for Wales in the Bill

**15.** Paragraph 34 of the LCM explains the reasons for making provision for Wales in this UK Bill:

*“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 of Wales Act 2006. As such, I believe it may be appropriate for these provisions to be made through a UK Bill.”<sup>5</sup>*

**16.** Paragraph 49 of the LCM goes on to state: “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.”<sup>6</sup>

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<sup>4</sup> Legislation.gov.uk [Digital Economy Act 2017](#)

<sup>5</sup> Senedd.Wales, [Legislative Consent: Data \(Use and Access\) Bill](#), January 2025

<sup>6</sup> Senedd.Wales, [Legislative Consent: Data \(Use and Access\) Bill](#), January 2025

## Welsh Government view on consent

**17.** In the LCM, the Welsh Government expresses support for the policy intention behind the Bill. However, it also raises some concerns, from a constitutional perspective, around consent. Specifically, paragraph 38 flags “Part 1, Access to Customer Data and Business Data, clauses 1-13 and 18-26 - provides the Secretary of State and HM Treasury with regulation making powers in an area which is devolved” as one of these concerns.

**18.** The LCM explains, at paragraph 50, that the Welsh Government is engaging with the UK Government on these matters at both Ministerial and official level. The LCM also states, at paragraph 37, that some of the Bill’s provisions, as currently drafted, do not align with the Welsh Government’s principles on UK legislation.<sup>7</sup>

**19.** The LCM does not expressly state the Welsh Government’s position as to whether consent should be granted. The Cabinet Secretary states, at paragraph 51 of the LCM, that she will provide further updates to the Senedd on the Welsh Government’s position in relation to the Bill following further engagement with the UK Government.

## UK Government view on consent

**20.** Paragraph 29 of the LCM sets out the UK Government’s view on consent regarding Part 1 of the Act:

*“UK Government are of the view that the general provisions under Part 1, Access to Customer Data and Business Data clauses 1-28 are reserved under the consumer protection reservation in Schedule 7A Section C6 GOWA 2006; but are in a devolved area in relation to business customers. Further that the ‘Smart Data’ provisions are reserved where it applies to the financial services sector, under the financial services reservation (Paragraph 17 of Schedule 7A to GoWA 2006). UK Government also consider the levy raising power under clause 12, Levy to be reserved under the fiscal economic and monetary policy reservation – Paragraph 15 of Schedule 7A to GoWA 2006.”<sup>8</sup>*

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<sup>7</sup> Senedd.Wales, [Legislative Consent: Data \(Use and Access\) Bill](#), January 2025

<sup>8</sup> Senedd.Wales, [Legislative Consent: Data \(Use and Access\) Bill](#), January 2025

## Financial implications

**21.** At paragraph 46 of the LCM, the Welsh Government states that:

*“Part 1, Access to Customer Data and Business Data - includes powers to impose fees on data holders and others and to impose a levy on data holders and others. The UK Government indicates these are intended to cover the costs incurred by decision-makers and enforcers in exercising their functions. It states the provisions aim to ensure schemes are self-funding and not reliant on public funds.”<sup>9</sup>*

## EU Data Adequacy

**22.** The European Commission has the power to determine whether a country outside the European Union offers adequate levels of data protection. An adequacy decision means that no further safeguards are necessary for the flow of personal data from the EU, Norway, Liechtenstein and Iceland (the European Economic Area) to third countries, such as the UK.<sup>10</sup>

**23.** The EU adopted two adequacy decisions for the UK on 28 June 2021, one under the General Data Protection Regulation (GDPR) and the other under the Law Enforcement Directive (LED). Unless extended, the decisions would last until 27 June 2025.<sup>1112</sup>

**24.** Paragraphs 41-45 of the LCM raise concerns about the Bill’s impact on data adequacy. This Bill contains several elements of the Data Protection and Digital Information Bill which fell as a result of the last general election.<sup>13</sup> The LCM references concerns the Welsh Government had during the passage of that Bill and states:

*“These concerns were in relation to provisions which were seen to weaken the independence of the Information Commissioner and undermine individual rights, as well as provisions which amended the statutory definition of personal data, which presented a risk that a broader range of health and social care data could have been included in the scope of free trade agreements. These provisions were*

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<sup>9</sup> Senedd.Wales, [Legislative Consent: Data \(Use and Access\) Bill](#), January 2025

<sup>10</sup> [Comission.europa.eu Adequacy Decisions](https://comission.europa.eu/Adequacy/Decisions)

<sup>11</sup> [European Commission Implementing Regulation \(EU\) 2021/1772](#)

<sup>12</sup> [European Commission Implementing Decision \(Eu\) 2021/1773](#)

<sup>13</sup> [Parliament.uk Data Protection and Digital Information Bill](#)

*considered as being challenging and having the potential of a review by the Commission and legal challenge in the Court of Justice of the European Union.”<sup>14</sup>*

**25.** Paragraph 43 of the LCM specifically highlights a risk that the loss of adequacy may negatively impact Welsh trade:

*“Any potential loss of EU data adequacy is a key concern from a trade perspective as this would be a major threat for Welsh exporting businesses whose main overseas market continues to be the EU. There are a significant number of high-value Welsh businesses which rely on smooth data transfers with the EU, particularly multinationals with parent or sister companies based in EU countries. If the UK lost its data adequacy status, implementation of the safeguards required by the EU would mean additional administrative and reporting requirements for EU businesses and disruption for Welsh businesses, as they would also need to undertake additional, potentially costly, compliance activities.”<sup>15</sup>*

**26.** Paragraph 45 sets out the Welsh Government's position as:

*“This new Bill contains some, but not all, of the provisions which caused concern previously. Welsh Government is currently undertaking a detailed assessment of the potential. Welsh Government are also engaged with UK Government on this matter.”<sup>16</sup>*

### 3. Supplementary Legislative Consent Memoranda

**27.** On 12 March 2025, the Welsh Government laid a Supplementary Legislative Consent Memorandum (the SLCM) before the Senedd.<sup>17</sup> On 3 April 2025, the Welsh Government laid a further Supplementary Legislative Consent

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<sup>14</sup> Senedd.Wales, [Legislative Consent: Data \(Use and Access\) Bill](#), January 2025

<sup>15</sup> Senedd.Wales, [Legislative Consent: Data \(Use and Access\) Bill](#), January 2025

<sup>16</sup> Senedd.Wales, [Legislative Consent: Data \(Use and Access\) Bill](#), January 2025

<sup>17</sup> Senedd.Wales, [Legislative Consent: Data \(Use and Access\) Bill](#), January 2025



Memorandum (SLCM No.2) before the Senedd.<sup>18</sup> The Business Committee agreed that the reporting deadline for all LCMs related to the Bill would be 2 May 2025.<sup>19</sup>

**28.** The SLCMs provide an update on the Welsh Government's position since the publication of the LCM, relating to UK government amendments tabled on 26 February (the SLCM) and 25 March (SLCM No.2).

**29.** The SLCM notes that the Welsh Government has assessed that the following amendments made to Part 1 of the Bill – Access to Customer Data and Business Data – require the legislative consent of the Senedd:

- Amendments 1, 2, 3 and 5, which amend Part 1, clause 8 - Enforcement of Regulations.
- Amendment 6, which amends Part 1, clause 10 - Financial penalties.<sup>20</sup>

**30.** SLCM No.2 sets out the government amendments made to Part 3 of the Bill – National Underground Asset Register – which the Welsh Government has assessed as requiring the consent of the Senedd.<sup>21</sup>

**31.** Paragraph 24 of SLCM No.2 confirms that: “Concerns do remain though in relation to the impact the Bill may have on the UK’s Data Adequacy status, as set out in the first LCM laid on the Bill.”<sup>22</sup>

**32.** Paragraph 34 of SLCM No.2 states:

*“On 18 March, the EU Commission proposed an extension to its adequacy decisions until 27 December 2025. The extension is intended to provide sufficient time for the Commission to complete its review of the adequacy decisions once the Bill has completed its passage through the UK Parliament.”<sup>23</sup>*

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<sup>18</sup> Senedd.Wales, [Legislative Consent: Data \(Use and Access\) Bill](#), January 2025

<sup>19</sup> Senedd.Wales, [Legislative Consent: Data \(Use and Access\) Bill](#), January 2025

<sup>20</sup> Welsh Government, [Supplementary Legislative Consent Memorandum \(Memorandum No.2\): Data \(Use and Access\) Bill](#), March 2025, paragraph 8

<sup>21</sup> Welsh Government, [Supplementary Legislative Consent Memorandum \(Memorandum No.3\): Data \(Use and Access\) Bill](#), April 2025, paragraph 8

<sup>22</sup> Welsh Government, [Supplementary Legislative Consent Memorandum \(Memorandum No.3\): Data \(Use and Access\) Bill](#), April 2025, paragraph 24

<sup>23</sup> Welsh Government, [Supplementary Legislative Consent Memorandum \(Memorandum No.3\): Data \(Use and Access\) Bill](#), April 2025, paragraph 34



**33.** However, Paragraphs 38 and 39 of SLCM No.2 conclude with the Cabinet Secretary's recommendation that the Senedd should now give its consent to the Bill:

*"I recognise that the UK Government and Welsh Government were not aligned on the devolution analysis surrounding Parts 1 and Parts 2 of this Bill. However, the amendments tabled to the Part 3 of the Bill on 25 March, and which are the subject of this SLCM, demonstrate a significant concession on the part of the UK Government, and in my view will ensure devolved interests remain protected in the development of further subordinate legislation surrounding the creation of the NUAR.*

*Therefore, in recognition of the positive impacts of this Bill, and the constitutional safeguards introduced in Part 3, I recommend the Senedd supports this Bill and gives its consent."*<sup>24</sup>

**34.** A third SLCM was laid on 28 April 2025.<sup>25</sup>

## 4. Committee Consideration

### EU Data Adequacy

**35.** In February, the Cabinet Secretary wrote to the Chair of the Culture, Communications, Welsh Language, Sport and International Relations Committee providing an updated assessment in relation to any potential impact of the Bill on the Trade and Co-operation Agreement (TCA).<sup>26</sup> The assessment reiterates the Welsh Government's concerns regarding the impact the loss of EU data adequacy could have on Welsh business and trade, as discussed in the LCM and outlined above.

**36.** The letter states "Our view is that there [are] a number of provisions within this Bill that potentially undermine the current data protection framework, and

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<sup>24</sup> Welsh Government, Supplementary Legislative Consent Memorandum (Memorandum No.3): Data (Use and Access) Bill, April 2025, paragraphs 38-39

<sup>25</sup> Senedd.Wales, Legislative Consent: Data (Use and Access) Bill, January 2025

<sup>26</sup> Letter from the Cabinet Secretary to the Chair of the Culture, Communication, Welsh Language, Sport and International Relations Committee, February 5 2025

therefore may threaten relevant adequacy decisions.” It goes on to list the provisions Welsh Government hold key concerns on.<sup>27</sup>

**37.** The letter goes on to say:

*“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. Officials also will continue to seek assurances from the UK government on this matter.”<sup>28</sup>*

**38.** The Cabinet Secretary gave evidence to the Legislation, Justice and Constitution Committee (LJC) regarding the LCM on 3 February 2025. She told LJC Members that the Welsh Government 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.”<sup>29</sup>

**39.** However she highlighted concerns Welsh Government had around futureproofing and explained:

*“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.”<sup>30</sup>*

**40.** She went on to also explain that Welsh Government officials were “very much of the view that the Bill won't have an immediate or direct impact on the UK's compliance with the TCA (Trade and Cooperation Agreement).”

### Timing of the LCM

**41.** On 30 October the Cabinet Secretary wrote to the Llywydd notifying her of a possible delay in the LCM. The letter stated there were “a number of reasons for this which relate primarily to the complexity and length of the Bill, coupled with

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<sup>27</sup> Letter from the Cabinet Secretary to the Chair of the Culture, Communication, Welsh Language, Sport and International Relations Committee, February 5 2025

<sup>28</sup> Letter from the Cabinet Secretary to the Chair of the Culture, Communication, Welsh Language, Sport and International Relations Committee, February 5 2025

<sup>29</sup> Legislation, Justice and Constitution Committee, 3 February 2025, Paragraph 67

<sup>30</sup> Legislation, Justice and Constitution Committee, 3 February 2025, Paragraphs 73 & 74

the need to consider the issues encountered on the previous Data Protection and Digital Information Bill, which contained similar provisions to those within the new DUA Bill”<sup>31</sup>

**42.** However, the Committee notes the Scottish Government laid its LCM before the Scottish Parliament on 22 November 2024.<sup>32</sup>

### Our view

It is clear that the Welsh Government has serious concerns that the loss of the UK’s EU data adequacy decisions could pose significant challenges for Welsh businesses and subsequently affect Wales-EU trade, and that these concerns have not been allayed following discussions with the UK Government. We share those concerns.

We note the UK Government’s position, that the Bill poses no risk to adequacy. Nevertheless, we echo the statement made by the Cabinet Secretary, that we have no evidence to prove nor disprove this, as the UK Government continues to refuse to share its risk assessment with the Welsh Government and provide reassurance.

Although the UK may choose to diverge from the EU on data protection in future, this should be done in a considered manner which is planned and prepared for, with all options explored. The UK and Welsh Government must take all measures to avoid passive divergence in this area, and not to unintentionally slide into a situation where divergence has negative implications for Wales-EU trade. We note the European Commission’s proposed extension to its adequacy decisions until 27 December 2025.

We were concerned to read in the Cabinet Secretary’s assessment of the Bill as it relates to the Trade and Cooperation Agreement (TCA), that the Bill contains provisions that could potentially undermine data protection cooperation between the UK and the EU in future. We were somewhat reassured by the Cabinet Secretary’s more optimistic tone in her session with the LJC Committee. However, we note that the TCA assessment, received after this session, paints a more concerning picture.

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<sup>31</sup> ~~Letter from the Cabinet Secretary to the Llywydd~~, October 30 2024

<sup>32</sup> ~~Parliament.scot Data (use and access) Bill~~

As such the Committee would like to be kept up to date with discussions between the Welsh and UK Governments on the matter.

We were disappointed to see the LCM was laid almost two months later than the equivalent LCM in Scotland. Committees are already given very limited time to consider the significant policy and constitutional issues that are raised when the UK Parliament seeks to legislate in areas of devolved competence. The late laying of this LCM only exacerbates that. We note that the second SLCM was laid on 3 April, with a reporting deadline of 2 May, which significantly impacted our ability to undertake thorough scrutiny. We also note that a third SLCM was laid on 28 April 2025, which we did not have time to consider in advance of the reporting deadline.

We note that the Welsh Government now recommends that the Senedd gives its consent to the Bill, however the approach taken and the limited opportunity for scrutiny means we are not in a position to make a recommendation on consent as a Committee.

We also note that whilst the Welsh Government does now recommend that consent is given for the Bill, its concerns about the loss of EU data adequacy remain. We find it difficult to reconcile these two positions and would welcome further explanation from the Cabinet Secretary as to why she is minded to recommend consent while such serious concerns, described by the Welsh Government in the LCM as “a major threat” to Wales’ EU exports, remain unresolved.

**Recommendation 1.** The Welsh Government should continue discussions with the UK Government regarding the Bill and the UK’s EU Data Adequacy decision, including continued requests for the UK Government to share its risk assessment.

**Recommendation 2.** The Welsh Government should provide regular updates to this Committee on its discussions with the UK Government on EU Data Adequacy and any implications the Bill may have on trade until the UK’s adequacy status beyond December 2025 is secured.

**Recommendation 3.** The Cabinet Secretary should, during the Plenary debate on the Legislative Consent Motion, explain how her recommendation for consent for the Bill reconciles with the Welsh Government’s concerns about the loss of EU Data Adequacy.

**Conclusion 1.** The Committee is disappointed by the length of time it took the Welsh Government to lay the LCM, and the short timeframe for scrutiny of the second SLCM. One result for this is that the Committee has not had sufficient time to consider the issues with the level of detail Members would need to offer the Senedd a recommendation on consent.