

## **SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM (MEMORANDUM NO.3)**

### **Data (Use and Access) Bill**

1. This legislative consent memorandum (LCM) is laid under Standing Order (“SO”) 29.2. SO29 prescribes that a legislative consent memorandum must be laid, and a legislative consent motion may be tabled, before Senedd Cymru<sup>1</sup> if a UK Parliamentary Bill makes provision in relation to Wales which has regard to devolved matters.
2. The Data (Use and Access) Bill (“the Bill”) was introduced in the UK Parliament, the House of Lords, on 23 October 2024. I laid an LCM on 2 January 2025 and a Supplementary LCM (SLCM) on 12 March 2025.
3. On 25 March 2025, a number of government amendments were tabled to the Bill for House of Commons Report stage, a date for which is yet to be confirmed. These amendments make provision which have regards to devolved matters, as detailed in paragraphs 8 to 20 below.
4. The Bill, as amended at Public Bill Committee in the House of Commons, can be found at: [Data \(Use and Access\) Bill \[HL\]](#)

### **Policy Objective(s)**

5. 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.

### **Summary of the Bill**

6. 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.

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<sup>1</sup> Please note in accordance with Welsh Government policy we refer to the legislature in Wales as “Senedd Cymru” on first use and “the Senedd” thereafter unless the context stipulates otherwise.

- 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.

### **Update on position since the publication of the first LCM**

7. Officials for the Welsh Government and UK Government have continued to have regular contact on the Bill, including on specific parts relating to Access to Customer Data and Business Data, Digital Verification Services and the National Underground Asset Register (NUAR).
8. 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

9. Following legal analysis of the implications of these new amendments I consider this SLCM is required to be laid before the Senedd for the reasons set out in paragraphs 10 to 20 below.

Amendment Gov 1, clause 56 - National Underground Asset Register:  
England and Wales

10. Part 3 of the Bill – National Underground Asset Register - amends the NRSWA 1991, enabling the creation of the National Underground Asset Register (NUAR), a digital map of underground pipes and cables developed by the Geospatial Commission.
11. Clause 56 introduces a new part (Part 3A) into the NRSWA 1991 which deals with the details of the proposed NUAR. It includes specifying the data to be shared, the making available of information contained in it, the form of the register and the charging of fees and the provision of information by undertakers.
12. The need for legislative consent for Part 3 of the Bill, including clause 56, was set out in the LCM laid on the Bill on 2 January which stated that Welsh Ministers have executive competence in relation to the NRSWA 1991 (except s.167(3)) by virtue of article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999/672. Further, that no relevant reserved matters as set out in Schedule 7A to GoWA 2006 have been identified.
13. Amendment Gov 1 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 this clause) in relation to any provision that would be within the legislative competence of Senedd Cymru if contained in an Act of the Senedd.
14. 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.

Amendments Gov 2, Gov 3 and Gov 4, clause 57 - Information in relation to  
apparatus: England and Wales

15. Clause 57 amends the NRSWA 1991 so as to impose new duties on undertakers to keep records of, and share information relating to, apparatus in streets; and makes amendments consequential on those changes.
16. The need for legislative consent for Part 3 of the Bill, including clause 57, was set out in the LCM laid on the Bill on 2 January which set out that Welsh Ministers have executive competence in relation to the NRSWA 1991 (except s.167(3)) by virtue of article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999/672. Further, that no relevant reserved matters as set out in Schedule 7A to GoWA 2006 have been identified.

17. Amendments Gov 2, Gov 3 and Gov 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. This amendment removes a requirement to consult with Welsh Ministers before regulations can be made under section 80 of the New Roads and Street Works Act 1991.
18. 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.

Amendment Gov 5, clause 57 - Information in relation to apparatus: England and Wales

19. Amendment Gov 5 removes provision within clause 57 which revokes the Street Works (Records) (Wales) Regulations 2005 and also removes provision applying the Street Works (Records) (England) Regulations 2002 to Wales. was included in the Bill, as introduced. This provision was previously assessed as requiring legislative consent and was included in the LCM laid on the Bill on 2 January.
20. 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.

**UK Government view on the need for consent**

21. A summary of the UK Government's view on the need for consent in relation to Part 3 of the Bill was provided in the first LCM laid on 2 January and is also set out below. The UK Government have confirmed that this continues to be their position and applies to these amendments.
22. 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.

23. UK Government consider the Part 2 Digital Verification Services provisions to be reserved under the internet services reservation (Paragraph 84 of Schedule 7A to GoWA 2006). However, UK Government are of the view that the legislative consent process is engaged as follows:
- *Clause 45, Power of public authority to disclose information to registered Person* – which relates to a devolved purpose, and engages the legislative consent process as it has been included to protect the confidential nature of information held by the Welsh Revenue Authority.
  - *Clause 47 Information disclosed by the Welsh Revenue Authority* - which requires an LCM under the Devolution Guidance Note for Wales (DGNW) as it modifies functions of/confers functions on Devolved Welsh Authorities.
  - *Clause 49, Code of practice about the disclosure of information* - which requires an LCM under the DGNW as it modifies functions of/confers functions on Devolved Welsh Authorities.
24. UK Government agree that legislative consent is required for the provisions contained within Part 3, National Underground Asset Register, clauses 56, 57, 60(1) and Schedule 1 as they will alter the executive competence of the Welsh Ministers.
25. UK Government agree that legislative consent is required for Part 7, clause 121, Disclosure of information to improve public service delivery to undertakings.

### **Welsh Government position on the Bill**

26. The Welsh Government remains supportive of the UK Government's policy intent behind the Bill, which was summarised in the first LCM laid on the Bill.
27. 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.
28. The previous LCM outlined concerns in relation to the devolved implications of the following provisions:
- Part 1, Access to Customer Data and Business Data, clauses 1-13 and 18-26;

- Part 2, Digital Verification Services, clause 49; and,
  - Part 3 - National Underground Asset Register, clauses 56, 57, 60(1) and Schedule 1.
29. Discussions with the UK Government on these matters, at both Ministerial and official level, have now concluded. 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 (outlined in paragraphs 8 to 20 above) provide constitutional safeguards regarding provisions within this part of the Bill.
30. 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.
31. 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.
32. 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.
33. 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.

#### EU Data Adequacy

34. 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.
35. 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.

#### **Financial implications**

36. *Part 3, National Underground Asset Register* – the UK Government's intention is for the NUAR's running costs to be funded through fees paid by those who benefit from the service (and not the taxpayer). Through regulations the Secretary of State may create a fees scheme and may require undertakers with apparatus in a street to pay fees to fund the operation of the NUAR service. The intended approach is that the fees will be targeted at covering the operating and are not to generate additional revenue beyond this.

## **Conclusion**

37. It is my view 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.
38. 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.
39. 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.

**Rebecca Evans MS**

**Cabinet Secretary for Economy, Energy and Planning**

**3 April 2025**