

Legislative Consent Memorandum

Data (Use and Access) Bill

Background

1. This memorandum has been lodged by Kate Forbes MSP, Deputy First Minister and Cabinet Secretary for Economy and Gaelic, in accordance with Rule 9B.3.1(a) of the Parliament's standing orders.
2. The Data (Use and Access) Bill (the Bill) was introduced by the UK Government (UKG) in the House of Lords on 23 October 2024. The Bill is available on the UK Parliament website via this link: [Data \(Use and Access\) Bill \[HL\] - Parliamentary Bills - UK Parliament](https://bills.parliament.uk/bills/3825) (https://bills.parliament.uk/bills/3825)
3. The provisions in this Bill in relation to which consent is sought were previously in the UK Data Protection and Digital Information (No.2) Bill (the DPDI Bill) which fell at the time of the General Election. On 9 May 2024, the Scottish Parliament agreed that the relevant provisions in the DPDI Bill should be considered by the UK Parliament. Whilst the Bills are not identical, the provisions for which consent is sought are either replicated, or remain broadly the same, as detailed below.
4. The previous Legislative Consent Memorandums (LCM) are available at [Data Protection and Digital Information Bill | Scottish Parliament Website](https://www.parliament.scot/bills-and-laws/legislative-consent-memorandums/data-protection-and-digital-information-bill) (https://www.parliament.scot/bills-and-laws/legislative-consent-memorandums/data-protection-and-digital-information-bill)

Content of the Bill

5. The Bill makes provision for a variety of measures relating to the use of and access to data.
 - Part 1 concerns **Access to Customer Data and Business Data** and contains regulation-making powers that could be used to compel the secure sharing of customer data, for example, held by a communications or financial services provider, on the customer's request, with authorised third-party providers. Sometimes referred to as "smart data", such regulations could facilitate third party services for the consumer or business, such as efficient switching, personalised market comparisons, and account management.
 - Part 2 establishes a legislative structure for the provision of **Digital Verification Services** in the UK, where providers of those services wish to be registered on a government register. The provisions in the Bill aim to increase trust in and acceptance of digital identities across the UK to help grow the digital economy. Individuals can choose to use Digital Verification

Services to prove things about themselves in order to access a service. The intention is to make identity proving easier, cheaper and more secure and to enable the development of a trusted digital identity market in the UK.

- Part 3 provisions provide a legislative framework to support the operation of the **National Underground Asset Register** a digital map with location data about underground pipes and cables in England, Wales and Northern Ireland. Scotland currently has the only comprehensive underground (and above ground) asset register worldwide.
- Part 4 reforms the way in which **births and deaths are registered** in England and Wales, enabling them to be registered electronically.
- Part 5 seeks to reform elements of the current **UK data protection regime**. As they currently stand these changes are less extensive than the previous DPDI Bill. There is an emphasis on promoting research and development of modern technologies with the aim of supporting economic growth without harming high standards of protection. The Bill also seeks to make changes to the data protection regulatory body, the Information Commissioner's Office, in particular introducing chair, non-executive and chief executive roles, and strengthening enforcement powers. There are also provisions facilitating the flow and use of personal data for law enforcement and national security purposes
- Part 6 establishes a statutory corporation, the Information Commission with a new governance structure to replace the office of the Information Commissioner.
- Part 7 includes provisions:
 - On information standards for **health and adult social care in England**
 - Providing 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**.
 - Extending the data sharing powers in the Digital Economy Act 2017 so public authorities can **share data to better target services to businesses** (whether or not run for profit) and charities.
 - Amending the **Online Safety Act 2023** to create a requirement for OFCOM, when notified of a child death by the Coroner or Procurator Fiscal, 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.
 - For a regulation-making power to create a framework allowing **researchers access to data relating to online safety held by tech companies**.
 - The **retention of biometric information**, including that received through international partner sharing, to improve efficiency and limiting risk to national security.
 - Provisions which seek to update regulations to make sure that the UK's **trust services** legal framework continues to function effectively.

6. UKG has published impact assessments of the Bill: [Data \(Use and Access\) Bill \[HL\] publications - Parliamentary Bills - UK Parliament](https://bills.parliament.uk/bills/3825/publications) (https://bills.parliament.uk/bills/3825/publications)

Provisions which require the consent of the Scottish Parliament

Part 1 – Access to Customer Data and Business Data

Clauses 1-11, 13 and 18-26

7. These clauses create and relate to regulation-making powers to provide for the secure sharing of customer data, at the customer's request, with authorised third party providers of services. They concern control of and access to data, but are also about empowering consumers and facilitating a competitive marketplace. To the extent that they are a consumer protection measure, they will be reserved under the C7 consumer protection reservation¹, but to the extent that they concern business-to-business data transfers, they will be devolved. As the regulation-making powers can be used to compel any data holder to provide both customer data and business data to another business, it is not possible to neatly separate out the clauses in Part 1 into reserved and devolved clauses and the consent of the Scottish Parliament will be required in relation to clauses 1-11, 13 and 18-26. Clause 12 provides for the potential imposition, through regulations, of levies on data holders or third party recipients and as such is reserved under the fiscal, economic and monetary policy reservation (Head A1 of Schedule 5 of the Scotland Act 1998). Clauses 14-17 concern regulation of the financial services sector and as such are reserved under the financial services reservation (Head A3 of Schedule 5 of the Scotland Act 1998).

Part 2 – Digital Verification Services

Clause 45(3) - Power of public authority to disclose information to registered persons

8. The UKG does not agree that an LCM is required for clause 45(3) as they consider that, with the exception of clause 48, all of Part 2 of the Bill is reserved. The Scottish Government generally agrees with UKG's assessment of Part 2 of the Bill and, in particular, agrees with the exception of clause 48 which relates to a devolved and not reserved purpose. The Scottish Government, however, also consider clause 45(3) affects devolved purposes and is within the legislative competence of the Scottish Parliament.

9. This sub-clause allows public authorities to disregard any statutory or other restrictions on disclosure when disclosing information about individuals to regulated digital verification service providers. This includes disclosure provisions in statute for

¹ [Scotland Act 1998 - Schedule 5](https://www.legislation.gov.uk/ukpga/1998/46/schedule/5/part/II/crossheading/head-c-trade-and-industry_paragraph-wrapper24n2) (https://www.legislation.gov.uk/ukpga/1998/46/schedule/5/part/II/crossheading/head-c-trade-and-industry_paragraph-wrapper24n2)

devolved areas which means that it is a provision applying to Scotland which is for devolved purposes.

Clause 48 - Information disclosed by Revenue Scotland

10. This power provides safeguards for onward sharing of data from Revenue Scotland which has been provided for Digital Verification Services, creating a criminal offence of onward sharing of Revenue Scotland provided data without permission. UKG agrees Clause 48 relates to a devolved purpose and has been included to protect the confidential nature of information held by Revenue Scotland. This clause therefore engages the LCM process.

Part 7 – Other provision about use of, or access to, data

Clause 121 - Disclosure of information to improve public service delivery to undertakings

11. This clause amends section 35 of the UK Digital Economy Act 2017 to extend the public service delivery data sharing powers in the 2017 Act. The purpose of the proposed amendments is to support personal data sharing within the public sector to support the more effective delivery of public services to improve outcomes for “undertakings” which is defined to include any business, whether or not run for profit, along with any organisation established for charitable purposes.

12. The public service delivery powers in section 35 of the 2017 Act provide a legal gateway to enable specified public authorities, listed in Schedule 4 of the 2017 Act, to share information in relation to specified objectives. Such objectives must be set out in regulations and, currently, must be for the improvement or targeting of a public service or the provision of a benefit (financial or otherwise) to individuals or households. The amendments would extend the scope of the data sharing powers under section 35 so as to enable data sharing to improve public service delivery not only for individuals and households, but also for undertakings. The purpose of the proposed amendments is therefore to support personal data sharing within the public sector to improve public services for undertakings.

13. The 2017 Act allows the “appropriate national authority” (which is defined so as to include Scottish Ministers) to make regulations to add “specified persons” and “specified objectives”. The amendments therefore alter the scope of the Scottish Ministers’ power to specify, in regulations, objectives for which data may be shared to improve or target public services not only for individuals or households, but also undertakings. They also affect the purposes for which data related to devolved matters and functions could be shared, namely, to improve outcomes for undertakings as well as individuals and households. As such, the amendments make provisions applying to Scotland, which are for devolved purposes, and which alter the executive competence of the Scottish Ministers.

Reasons for seeking legislative consent

Part 1 – Access to Customer Data and Business Data

Clauses 1-11, 13 and 18-26 – Smart data

14. The provisions would allow UK Ministers to respond to the ever increasing economic value of data, ideally ensuring competitive markets and innovation with the aim of creating economic and consumer value. These matters are complex, and it is important that the same regulatory regime applies across the UK; simplifying the operations of businesses and ensuring that Scottish consumers and firms also benefit. These provisions relate partly to consumer protection, which is a reserved matter, and are only devolved insofar as they concern business-to-business data transfers. As a result, the Scottish Parliament could not legislate on these matters in a cohesive way. Given the importance of the same regulatory regime applying across the UK, there is no administrative efficiency or benefit in seeking a legislative vehicle to make similar or identical provisions in Scotland for part of the regime only.

15. **Consent is recommended.**

Part 2 – Digital Verification Services

Clause 45(3) - Power of public authority to disclose information to registered persons

16. Public authorities only have the power to use this legal gateway following a request by an individual to make a check against their data. The powers are permissive and public bodies either devolved or reserved are under no obligation to disclose information or to enter into data sharing agreements. By agreeing to this, Scottish citizens would not be disadvantaged as data held by the Scottish Ministers, equivalent to that held by UK bodies in England and Wales, would also be available for digital identity verification purposes.

17. The effect of this provision is to override any statutory restrictions on the disclosure of information which may have been (or will be) imposed by the Scottish Parliament within its area of devolved competence. This has the effect of altering the legislative competence of the Scottish Parliament therefore legislative consent is required. There is no administrative efficiency or benefit in seeking a legislative vehicle to make similar or identical provisions in Scotland for part of the regime only.

Clause 48 - Information disclosed by Revenue Scotland

18. The operation of Revenue Scotland is a devolved function. This power would be consistent with provisions in Revenue Scotland and Tax Powers Act and a similar provision also exists in section 64 of the Digital Economy Act 2017. This will ensure that the necessary protections are in place consistent with HMRC and the Welsh Revenue Authority.

19. **Consent is recommended.**

Part 7 – Other provision about use of, or access to, data

Clause 121 - Disclosure of information to improve public service delivery to undertakings

20. Legislative consent is needed as the amendments will extend regulation-making powers which could be exercised by the Scottish Ministers and relate to sharing of data related to devolved matters and functions.

21. While the data sharing powers are permissive and dependent on secondary legislation being taken forward, the Scottish Ministers are of the view that the proposed amendments could potentially provide benefits to business and the third sector including better targeted support, services, information and funding. More broadly, it allows for an effective sharing of data between public bodies to assist and improve the delivery of public services.

22. **Consent is recommended.**

Consultation

23. UKG consulted with the Information Commissioner's Officer as per the requirement under Article 36(4) of the UK General Data Protection Regulation (UK GDPR) to consult with the Information Commissioner's Office on policy proposals for legislative or statutory measures relating to the processing of personal data. In the response to the Bill, the Information Commissioner welcomed the Bill as "a positive package of reforms". [Information Commissioner's response to the Data \(Use and Access\) \(DUA\) Bill | ICO](https://ico.org.uk/about-the-ico/the-data-use-and-access-dua-bill/information-commissioner-s-response-to-the-data-use-and-access-bill/) (<https://ico.org.uk/about-the-ico/the-data-use-and-access-dua-bill/information-commissioner-s-response-to-the-data-use-and-access-bill/>)

24. UKG did not otherwise consult on the Data (Use and Access) Bill. There was a UK wide consultation on the DPDI Bill: "Data: a new direction". The government response to the consultation is at: [Data: a new direction - government response to consultation - GOV.UK](https://www.gov.uk/government/consultations/data-a-new-direction/outcome/data-a-new-direction-government-response-to-consultation#introduction) (<https://www.gov.uk/government/consultations/data-a-new-direction/outcome/data-a-new-direction-government-response-to-consultation#introduction>)

25. In relation to the Access to Customer Data and Business Data clauses, UKG said, "The government will work to ensure any regulations establishing and setting out the framework for future Smart Data schemes are appropriately scoped to maximise the benefits of data intermediaries while mitigating any risks they pose." Prior to this in 2018, UKG undertook a Smart Data Review which has also informed the position set out in the Bill: [Smart Data Review - GOV.UK](https://www.gov.uk/government/publications/smart-data-review) (<https://www.gov.uk/government/publications/smart-data-review>)

26. In relation to disclosure of information to improve public service delivery to undertakings, UKG recognised a balance of views on extending powers under section 35 of the Digital Economy Act 2017 to include businesses and concluded it would take the proposal forward. Any personal data sharing regulations made under

the new provisions would be subject to further public consultation and parliamentary scrutiny.

27. In relation to digital verification services, UKG's digital identity and attributes consultation was published on 19 July 2021, the findings informed the position set out in the Bill. The UKG response to the consultation was published on 10 March 2022: [Government response to the digital identity and attributes consultation - GOV.UK](https://www.gov.uk/government/consultations/digital-identity-and-attributes-consultation/outcome/government-response-to-the-digital-identity-and-attributes-consultation) (https://www.gov.uk/government/consultations/digital-identity-and-attributes-consultation/outcome/government-response-to-the-digital-identity-and-attributes-consultation)

Financial implications

28. There are no direct costs or financial issues arising as a consequence of legislative consent to these provisions. In relation to clause 121 (disclosure of information to improve public service delivery to undertakings), the Scottish Government understands that the UKG intends to put regulations in place as soon as possible after the Bill is passed which will involve engagement with Scottish Government officials. There may be a need for Scottish regulations to ensure Scottish bodies have the same access to any new data sharing powers as those in England and Wales. This would have minimal resource implications, with any costs factored into overall resource planning and agreed priorities.

Post EU scrutiny

29. While the Bill makes changes to the UK GDPR, which is an area regulated / harmonised at the EU level, the provisions within the scope of this LCM do not impact on the policy of EU alignment in Scotland.

30. Clauses 1-11, 13 and 18-26 concern regulation-making powers that could be used to compel the secure sharing of customer data. The extent to which alignment with EU law on data protection will be maintained will depend on the content of any regulations that may be made in due course.

31. Clause 45 creates a power to share data in respect of a digital verification service and sub-clause (3), for which consent is sought, provides that disclosure pursuant to that power does not breach restrictions on the disclosure of information (including those imposed by the Scottish Parliament). Domestic data sharing powers, or restrictions thereto, are not an area of law regulated by the EU / UK GDPR, and therefore it is not considered that consenting to this clause will have an impact on the policy of alignment.

32. Clause 48 creates safeguards for sharing of data by Revenue Scotland under the powers created by clause 45. As above, this is not an area of law regulated by the EU / UK GDPR, and therefore it is not considered to impact on the policy of alignment.

33. Clause 121 modifies a data sharing power in section 35 of the Digital Economy Act 2017. As above, this is not an area of law regulated at the EU / UK GDPR level and therefore is not considered to impact on the policy of alignment.

Conclusion

34. The Scottish Government recommends consent to the following provisions:
- Clauses 1-11, 13 and 18-26 – Access to Customer Data and Business Data
 - Clause 45(3) - Power of public authority to disclose information to registered Persons
 - Clause 48 - Information disclosed by Revenue Scotland
 - Clause 121 - Disclosure of information to improve public service delivery to Undertakings

Draft motion on legislative consent

35. The draft motion, which will be lodged by the Deputy First Minister and Cabinet Secretary for Economy and Gaelic, is:

“That the Parliament, in relation to the Data (Use and Access) Bill, consents to Clauses 1-11, 13, 18-26, 45(3), 48 and 121, so far as these matters fall within the legislative competence of the Scottish Parliament and alter the executive competence of Scottish Ministers, being considered by the UK Parliament.”

Scottish Government
November 2024

This Legislative Consent Memorandum relates to the Data (Use and Access) Bill (UK legislation) and was lodged with the Scottish Parliament on 22 November 2024

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