

LEGISLATIVE CONSENT MEMORANDUM

DATA (USE AND ACCESS) BILL

Draft Legislative Consent Motion

1. The draft motion, which will be tabled by the Minister of Finance, is:

“That this Assembly endorses the principle of the extension of the provisions of the Data (Use and Access) Bill to this jurisdiction.”

Background

2. This memorandum has been laid before the Assembly by the Minister of Finance under Standing Order 42A(2). The Data (Use and Access) Bill (“the Bill”) was introduced in the House of Lords on 23 October 2024. The latest version of the Bill can be found at:

<https://bills.parliament.uk/bills/3825/publications>

Summary of the Bill and its policy objectives

3. The UK Government announced this new Bill in the King’s Speech on 17 July 2024. At the time the Bill was titled the ‘Digital Information and Smart Data Bill’. Many of the Bill’s provisions align with provisions included in the previous Data Protection and Digital Information (DPDI) Bill. The previous DPDI Bill was introduced in the House of Commons on 8 March 2023, but failed to complete its passage before Parliament was dissolved prior to the 2024 General Election.

4. The Bill has 3 objectives: harnessing the power of data for economic growth, supporting a modern digital government, and improving people's lives.
5. As the Bill measures will additionally seek to legislate in areas of devolved competence, to some extent this will require the engagement of the Legislative Consent Motion (LCM) process for Northern Ireland.

Provisions which deal with a Devolution Matter

6. There are three areas within the Bill containing a number of provisions that deal with a devolution matter, Smart Data, the National Underground Asset Register (NUAR), and Section 35 of the Digital Economy Act (DEA) 2017 Data Sharing Gateway. These areas are discussed in further detail below.

Smart Data

7. The Bill will establish a framework for setting up Smart Data schemes across the economy; "Smart Data" is the secure sharing of customer data with authorised third parties upon the customer's request. A Smart Data scheme would be established by the Secretary of State (SoS) or the Treasury via regulations under Part 1 of the Bill. A "scheme" would be underpinned by the regulatory provisions that these powers provide for, which will specify the scope of a scheme, including the companies defined as "data holders", and the data they will have to either publish or share with the customer or the customer's Authorised Third Party. It is proposed that the regulations will also establish the necessary framework for the setting up and ongoing management of the scheme, such as accreditation of third parties, and enforcement of the regulations.
8. The general Smart Data provisions also seek to legislate in areas of devolved competence except to the extent in which they apply to the financial services sector, in which they are reserved under the financial services reservation, Schedule 3 of the Northern Ireland Act 1998.

National Underground Asset Register (NUAR)

9. The Bill includes proposed provisions involving street works which is a devolved area. Under existing provisions in the 1995 Order, the Executive Ministers have regulation making powers relating to information which must be recorded about apparatus in streets. These powers are based on the previous approach whereby individual apparatus owners have to record information, maintain their own records and share information from those records with others. The Government is proposing to make these powers concurrently exercisable by the SoS, to reflect that these existing powers will be used by the SoS to implement NUAR but could also be used for other purposes by the Executive Ministers.
10. The proposed provisions will also confer several new regulation making powers on the SoS to implement NUAR. However, provision has been made for those powers that could also be used for other purposes by the Executive Ministers to be concurrently exercisable by the Executive Ministers.

Section 35 DEA 2017 Data Sharing Gateway

11. Existing powers under Section 35 of the DEA 2017 allow for data sharing that benefits households and individuals. The clause gives Ministers new powers to make regulations. Section 35 currently enables the disclosure of information between specified bodies for specified objectives relating to improved public service delivery to individuals and households. The proposed amendment to Section 35 expands the scope of the powers to also allow data sharing to improve public service delivery to businesses.

Reasons for making the Provisions

Smart Data

12. The Bill will establish a framework for setting up Smart Data schemes across the economy; “Smart Data” is the secure sharing of customer data with authorised third parties upon the customer’s request. A Smart Data scheme would be established by the Secretary of State (SoS) or the Treasury via regulations under Part 1 of the Bill. A “scheme” would be underpinned by the regulatory provisions that these powers provide for, which will specify the scope of a scheme, including the companies defined as “data

holders”, and the data they will have to either publish or share with the customer or the customer’s Authorised Third Party. It is proposed that the regulations will also establish the necessary framework for the setting up and ongoing management of the scheme, such as accreditation of third parties, and enforcement of the regulations.

13. The general Smart Data provisions are noted to seek to legislate in areas of devolved competence except to the extent in which they apply to the financial services sector, in which they are reserved under the financial services reservation, Schedule 3 of the Northern Ireland Act 1998.

National Underground Asset Register (NUAR)

14. The Bill includes proposed provisions involving street works which is a devolved area. Under existing provisions in the 1995 Order, the Executive Ministers have regulation making powers relating to information which must be recorded about apparatus in streets. These powers are based on the previous approach whereby individual apparatus owners have to record information, maintain their own records and share information from those records with others. The Government is proposing to make these powers concurrently exercisable by the SoS, to reflect that these existing powers will be used by the SoS to implement NUAR but could also be used for other purposes by the Executive Ministers.
15. The proposed provisions will also confer several new regulation making powers on the SoS to implement NUAR. However, provision has been made for those powers that could also be used for other purposes by the Executive Ministers to be concurrently exercisable by the Executive Ministers.

Section 35 DEA 2017 Data Sharing Gateway

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improved public service delivery to individuals and households. The proposed amendment to Section 35 expands the scope of the powers to also allow data sharing to improve public service delivery to businesses.

Reasons for utilizing the Bill rather than an Act of the Assembly

17. This is the most efficient methods of introducing of the relevant provision contained within the Westminster Bill.

Consultation

18. NICS departments have been consulted throughout the drafting of the Bill and their views have been considered. The Information Commissioner's Office have been engaged in the policy development process, in line with the requirements of article 36(4) of the UK GDPR.

Human Rights and Equality

19. In response to the proposed Bill the Northern Ireland Human Rights Commission (NIHCR) published a briefing that was issued to the House of Lords General Committee in March 2025 for their consideration. This briefing focussed on particular areas of concern regarding the possibility of future divergence between the UK and the EU data protection standards that might result in a diminution of the relevant rights pursuant to Windsor Framework Article 2 and subsequently raised a number of serious concerns in relation to the Bill.
20. This briefing was considered as the Bill progressed and the current UK Government position is that the provisions of the Bill are considered compatible with the Human Rights Act 1998. It should also be noted that the broad concerns raised by the NIHRC do not materially impact on the elements of the Bill in which the LCM process will be engaged.
21. The UK Government also committed to ensuring that certain rights, safeguards and equality of opportunity protections set out in the Belfast

(Good Friday) Agreement (B-GFA) and underpinned by EU laws, are not reduced following the UK's withdrawal from the EU. This commitment to "no diminution" of rights is set out in Article 2(1) of the Windsor Framework.

22. Furthermore, the UK Government undertook analysis of the Bill and are content it complies with the Government's commitments under Article 2(1) of the Windsor Framework. They consider that data protection rights and safeguards fall outside the scope of Article 2(1) of the Windsor Framework. They also consider that even if they were within scope, there are strong arguments that the Bill's provisions do not diminish these rights.
23. The Department undertook its own analysis of Article 2(1) Windsor Framework implications through the Departmental Solicitor's Office (DSO), resulting in broad agreement with UK Government's assessment that the elements of the Bill in which the LCM process will be engaged is compliant with Article 2(1) of the Windsor Framework.
24. The Minister of Finance raised a number of further questions in relation to wider issues around the Bill that are not devolved matters, and a response to these queries was provided by the Minister of State for Data Protection and Telecoms on 30 April 2025.
25. In progressing through the legislative process, the UK Government lost 5 opposition votes at Lords Report stage and 2 votes at Third Reading. Including consequential votes, 13 non-Government amendments have been written in the Bill, on 5 substantive issues at this time: NUAR, Sex/Gender (DVS), AI/Copyright, Scientific Research and Deepfakes.
26. Depending on which, if any of the proposed amendments are carried, a further LCM may be required as a number of the amendments are likely to deal with matters of devolved competence. If required, this further LCM process will be triggered once the full extent of the Bill is understood.

Financial Implications

27. No significant costs to the public purse are expected.

Summary of Regulatory Impact

28. No significant costs to businesses, community, voluntary, charitable and social enterprises/organisations are expected.

Engagement to date with the Committee for Finance

29. To date there has been no consultation with the Committee for Finance, however it is expected that there will be engagement to seek the views of the Committee for Finance as this Motion proceeds.

Conclusion

30. The view of the Minister for Finance is that in the interests of clear legislation, that so far as the provisions of the Bill deal with a devolution matter, they should extend to this jurisdiction.

Department of Finance

[Insert date of laying]