

DATA (USE AND ACCESS) BILL – MEMORANDUM LAID BEFORE THE ASSEMBLY UNDER STANDING ORDER 42(A) (4)(b)

Background

1. This memorandum has been laid before the Assembly by the Minister for Finance under paragraph (4)(b) of Standing Order 42A.
2. Standing Order 42A Legislative Consent Motions details the procedure for seeking the agreement of the Assembly to the Westminster Parliament considering provisions of a Bill that deals with a devolution matter. Paragraph (2) of Standing Order 42A prescribes that a legislative consent memorandum shall be laid in respect of any devolution matter or which a legislative consent motion is proposed. Under paragraph (4) of Standing Order 42A, the Minister whom the devolution matter concerns shall, normally not later than 10 working days after the relevant day, either:
 - (a) lay a legislative consent memorandum before the Assembly; or
 - (b) lay a memorandum before the Assembly explaining why a legislative consent motion is not sought.

Summary of the Bill and its policy objectives

3. The UK Government announced the 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. 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>

4. The Data (Use and Access) Bill was introduced in The House of Lords on 23 October 2024 and the Minister wrote to the DSIT Secretary of State (Rt Hon Peter Kyle) in November 2024 to agree in principle to the progressing of the Legislative Consent Motion, and the Committee for Finance was updated of this development at that time. The Bill aims to improve how data is used and shared across public and private sectors by:
- Enhancing data sharing between public bodies;
 - Supporting digital identity systems;
 - Clarifying rules on biometric data and automated decisions;
 - Strengthening protections for children's data and scientific research, while increasing penalties for misuse, especially in direct marketing
 - Reducing burdens on businesses and improve public trust in data use; and
 - Modernizing the UK's data framework without compromising privacy.

Provisions which deal with a Devolution Matter

5. There are three areas within the Bill containing a number of provisions that deal with a devolution matter, Smart Data (clauses 1-11, 13, 18-26 and amendments 1-31), the National Underground Asset Register (NUAR) (clauses 58-60 and amendment 34C), and amendment of Section 35 of the Digital Economy Act (DEA) 2017 (clause 123 and schedule 2). These areas are discussed in further detail below.

Smart Data

6. 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.

7. 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)

8. The Bill includes proposed provisions involving street works which is a devolved area. Under existing provisions in the Street Works (Northern Ireland) Order 1995, the Northern Ireland 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 UK 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 Northern Ireland Ministers.
9. 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 Northern Ireland Ministers to be concurrently exercisable by the Northern Ireland Ministers.

Amending Section 35 DEA 2017

10. 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

11. 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.
12. 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 Northern Ireland 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 UK 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 Northern Ireland 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 Northern Ireland Ministers to be concurrently exercisable by the Northern Ireland Ministers.

Amending Section 35 DEA 2017

16. 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 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. The Department for Infrastructure and the Department for the Economy 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. The provisions of the Westminster Bill are considered compatible with the Human Rights Act 1998.
20. The UK Government has 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.

21. 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. In particular, 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.
22. The Department undertook its own analysis of Article 2(1) Windsor Framework implications through the Departmental Solicitor's Office, within the three areas where the LCM process was engaged, resulting in broad agreement with UK Government's assessment that the Bill is compliant with Article 2(1) of the Windsor Framework in these areas.

Financial Implications

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

Summary of Regulatory Impact

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

Engagement to date with the Committee for Finance

25. The Department laid a Legislative Consent Memorandum (LCM) in the Business Office with respect to the Bill on 28 May 2025 under Standing Order 42A (4)(a). The Committee received an urgent briefing from relevant officials on the same day. It was and remains the Committee's understanding that the Bill had already passed the stage where any objections by the Assembly to the devolved provisions could be considered and amended. As a result, the Committee agreed to reserve its position on this LCM.

26. The Chairperson of the Committee wrote to the Minister for Finance on 30 May 2025 where he raised a number of queries on behalf of the Committee and the Minister provided a written response on 09 June 2025.
27. There was a further briefing with the Committee and officials on 10 June 2025 on the handling of the Legislative Consent process. At that briefing, officials indicated that the Minister had agreed that the Department would proceed but amend the current process, given the circumstances set out in paragraph 25, and this amended process is the subject of this Memorandum.

Conclusion

28. The Minister for Finance is of the considered view that the provisions outlined above, as contained within the Bill, fall within the devolved competence of the Assembly. It is a matter of sincere regret that the original LCM was not laid before the Assembly to allow sufficient time for meaningful consideration to the original motion of consent laid under Standing Order Standing Order 42A(4)(a). However this revised approach preserves a level of institutional respect and procedural integrity, and ensures that the Assembly remains appropriately informed and engaged, notwithstanding the absence of a formal consent motion.

Department of Finance

17 June 2025