



Ein cyf/Our ref MA/JMEEW/5564/24

**Llywodraeth Cymru**  
**Welsh Government**

Chair of the Legislation, Justice and Constitution Committee

17 June 2024

Dear Chair

I am writing in response to the Legislation, Justice and Constitution Committee's (LJCC) report on the Supplementary Legislative Consent Memorandum (Memorandum No.4), laid on 13 May in respect of the Data Protection and Digital Information Bill ('the Bill').

As you will know, the plenary debate for the Legislative Consent Motion on the Bill was held on 14 May. During the debate I recommended that the Senedd withheld its consent for the Bill and the motion was not agreed.

You will also be aware that the Bill fell following the dissolution of the UK Parliament on 30 May.

I would like to thank the Committee for their detailed consideration of Memorandum No.4. I have considered the conclusions set out in the report and have responded to each of the recommendations below.

### **Legislative Consent**

I note that the Committee agreed that the amendments to the clauses (and Schedule) set out in Memorandum No.4 require the consent of the Senedd.

In respect of clauses 74 and 78, I also note that the Committee agreed that consent should be sought for clause 74 and clause 78(3), reflecting the UK Government's view that legislative consent should be sought when conferring or imposing reserved functions on a devolved Welsh authority.

### **Constitutional concerns**

I welcome the Committee's support in respect of the constitutional concerns the Welsh Government raised on the Bill. I agree with the Committee's conclusion that, were the Bill to have not fallen and been passed by the UK Parliament without the consent of the Senedd, this would have brought into question the operation of the Sewel Convention.

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

## Recommendations

### **Recommendation 1**

Should the Bill be enacted in its current form, the Cabinet Secretary should confirm if it is the Welsh Government's intention to bring forward provisions in a Bill that would re-delegate to the Welsh Ministers the regulation-making powers under section 79 of the New Roads and Street Works Act 1991 (subject to the Welsh Ministers consulting the appropriate UK Minister in accordance with paragraph 11(2) of Schedule 7B to the Government of Wales Act 2006).

#### **Response:**

The Bill fell following the dissolution of Parliament.

### **Recommendation 2**

The Cabinet Secretary should, during the relevant consent debate for the Bill, provide full details to explain his statement that a number of the Bill's provisions could impact on the UK's EU Data Adequacy status and have the potential to lead to legal challenge in the Court of Justice of the European Union.

#### **Response:**

I note in the report that the Committee found concerns around the potential for legal challenge in the Court of Justice of the European Union in respect of the Bill's impact upon the UK's EU Data Adequacy status, to be stark and concerning.

During the Legislative Consent Motion debate, I explained the provisions in the Bill which we consider to have the potential of a review by the European Commission, or legal challenge in the Court of Justice of the European Union. This included those provisions which were seen to weaken the independence of the Information Commissioner and undermine individual rights.

I went on to explain that as the Bill amended the statutory definition of personal data, there was a risk that a broader range of health and social care data could have been included in the scope of free trade agreements.

Although the Bill has fallen, the importance of retaining EU data adequacy remains and my officials will monitor the matter going forward.

### **Recommendation 3**

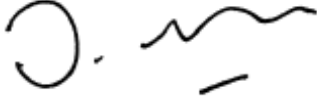
The Cabinet Secretary should make clear during the relevant consent debate for the Bill whether, in addition to the UK-EU obligations already cited, the Welsh Government considers the Bill has implications for other international arrangements such as the UK-US data bridge established in 2023. If so, the Cabinet Secretary should provide detailed information.

#### **Response:**

During the motion debate I set out my concerns that the Bill signalled the beginning of the UK's divergence from the data protection regime currently in place across the EU. Further, that this approach had the potential to undermine the data protection provisions in the Trade and Co-operation Agreement across a broad range of policy areas and could lead to the potential loss of EU data adequacy.

I am copying this letter to the Chair of the Culture, Communications, Welsh Language, Sport, and International Relations Committee.

Yours sincerely

A handwritten signature in black ink, consisting of a large 'J' followed by a series of wavy lines and a short horizontal stroke at the end.

**Jeremy Miles AS/MS**

Ysgrifennydd y Cabinet dros yr Economi, Ynni a'r Gymraeg  
Cabinet Secretary for Economy, Energy and Welsh Language