

Jeremy Miles AS/MS
Ysgrifennydd y Cabinet dros yr Economi, Ynni a'r Gymraeg
Cabinet Secretary for Economy, Energy and Welsh Language



Ein cyf/Our ref MA/FM/0609/24

Llywodraeth Cymru
Welsh Government

Chair of the Legislation, Justice and Constitution Committee

13 May 2024

Dear Chair,

The Committee's report on the Supplementary Legislative Consent Memorandum (Memorandum No. 3) on the Data Protection and Digital Information Bill requested copies of three pieces of correspondence between the former First Minister and Julia Lopez, Minister of State for Data and Digital Infrastructure to inform your consideration of the legislative consent memoranda laid on the Bill.

The UK Government are content for the correspondence to be shared with the Senedd Committees. The correspondence is annexed to this letter.

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

Yours sincerely,

Jeremy Miles AS/MS
Ysgrifennydd y Cabinet dros yr Economi, Ynni a'r Gymraeg
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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.



Department for
Science, Innovation
& Technology

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Y Gwir Anrh/Rt Hon Mark Drakeford AS/MS
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1st March 2024

Dear Mark,

Thank you for your letter of 14 November 2023, to the Secretary of State for Science, Innovation and Technology, regarding the Data Protection and Digital Information (DPDI) Bill. I am responding as Minister of State to the Department with regards to the Data Protection and Digital Information (DPDI) Bill.

I would like to start by thanking both the First Minister and Welsh Government officials for their diligent work in engaging with the UK Government on these provisions already.

I am glad you agree that the DPDI Bill is an essential piece of legislation. It will make the UK's data laws among the most effective in the world, by maintaining high data protection standards while making common sense changes to put in place a pro-growth, innovation friendly data protection framework that will ensure that our regulation reflects the way real people live their lives and run their businesses. It will also enable the better use of data in health and adult social care, law enforcement and security across the UK, which will help all of those who use data to make our citizens' lives healthier, safer, and more prosperous.

My officials are currently engaging with their Welsh Government Official counterparts about a package of targeted changes to the DPDI Bill, which we would consider making, if you deemed them sufficient for the Welsh Government to be able to recommend consent to the bill in the Senedd. I look forward to your reply on this matter. I understand that your officials are advising you separately on this package.

In addition to this ongoing engagement, I would like to respond to the following specific issues set out in your letter:

Legislative consent and powers for Welsh Ministers (DVS)

You specifically referenced Part 2 of the DPDI Bill which the UK Government maintains is reserved under the Internet Services reservation. I am aware that the Welsh Government contests UK Government analysis with regard to certain measures in Part 2. I have written to you separately on this matter, on 6th February 2024, and I hope we may reach an agreed position. Alongside this, our officials remain in close on-going discussions to resolve these outstanding matters on the provisions in Part 2.

Proposed order making power and the exclusion of devolved authorities

Regarding the issue of reducing the burden on police to redact case files when sending them to CPS as part of the charging decision process and any possible order making power to this effect, the UK Government is still considering its approach. My officials continue to engage with



the Home Office to work through this matter, and will ensure that Welsh officials are informed of any further developments in this space.

Retention of EU data adequacy

I completely understand the strength of your concerns about ensuring our EU adequacy decisions are maintained. This is also a priority for the UK Government, as I and my fellow ministers have repeatedly made clear in public and on the floor of the House.

The UK Government's assessment of the reforms in the DPDI Bill is that they are compatible with maintaining adequacy. We maintain an ongoing dialogue with the EU and have a positive, constructive relationship. We have been proactively engaging with the European Commission since the start of the Bill's consultation process to ensure that they understand our reforms.

The European Commission itself recognises that countries can have independent data protection regimes and still succeed in maintaining high data protection standards. In January the EU published its review of 11 adequacy decisions (including those for New Zealand and Canada), which confirms that countries with independent approaches to data protection remain adequate. Even after our reform, the UK will continue to have one of the closest data protection regimes to the EU in the world. I would draw your attention to the similar [statements](#) made by the independent Information Commissioner, in his response to the DPDI Bill.

With regards to your request for us to share the details of our risk assessment with you, I must unfortunately decline. You will appreciate, it is important that officials have the ability to conduct candid discussions during the policy making process.

However, I would like to reassure you once again that the UK Government takes the matter of retaining our adequacy decisions incredibly seriously, as I know the Welsh Government does. To help provide as much information as possible on our approach, I have instructed my officials to host regular verbal briefings on this matter with Welsh Government counterparts. I understand the first of these has already taken place and I welcome and encourage their continuation.

Our officials have continued to engage regularly and are working closely to reach agreement on these provisions. With the outlined points above and our on-going discussions, I am confident that our governments can work collaboratively on this vital legislation, and hope that we can reach an agreed position on the Bill.



Julia Lopez MP
Minister for Data and Digital Infrastructure



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Rt Hon Mark Drakeford MS
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6 February 2024

Dear Mark,

I am writing to you about an update in devolution analysis on provisions in Part 2 of the Data Protection and Digital Information (DPDI) Bill.

Part 2 of the DPDI Bill regulates the provision of Digital Verification Services (DVS), which the UK Government maintains is reserved under the Internet Services reservation. As a result of updated devolution analysis I am seeking further agreement for two measures within Part 2.

The DVS provisions in this Bill aim to increase trust in and acceptance of digital identities across the UK to help make identity proofing easier, cheaper and more secure and to enable a trusted digital identity market to develop in the UK for those that choose to use it to prove things about themselves. To do this, the measures establish a framework of standards and governance for the provision of digital verification services in the UK.

Clause 74 of the Bill creates a permissive power for public authorities to share information with registered digital verification providers for the purpose of providing digital verification services. Clause 78(3) requires public authorities who decide to share information in reliance on the power in Clause 74 to have due regard to a Code of Practice.

The UK Government maintains that these functions are reserved, but in further consideration of the Welsh Devolution Guidance Note, which sets out that consent should also be sought when conferring or imposing reserved functions on a devolved Welsh authority, we have come to the view that it is appropriate to seek agreement to Clause 74 and Clause 78(3) - either through a Legislative Consent Motion or a statement made by the Welsh Ministers - noting that there is no procedure in the Senedd Standing Orders covering situations where a UK Parliament bill imposes reserved functions on devolved Welsh authorities. I hope you will be content to support this.

I would like to acknowledge and thank Welsh Government officials for their diligent work in engaging with those in DSIT on this matter already, and that officials are still in discussion on outstanding matters to resolve between our Departments on the DPDI Bill, including provisions in Part 2. I look forward to this collaboration continuing during the DPDI Bill's remaining stages and post Royal Assent during its implementation.

I look forward to continuing our work together on this vital legislation.

Julia Lopez MP
Minister for Data and Digital Infrastructure





Ein cyf/Our ref: IM/FM -/00016/24

Julia Lopez MP
Minister for Data and Digital Infrastructure
Department for Science, Innovation and Technology
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23 January 2024

Dear Julia Lopez,

I am writing in response to your letter dated 9 January, regarding the Data Protection and Digital Information (DPDI) Bill and the inclusion of a provision for the National Underground Asset Register.

I note that your devolution analysis indicated that legislative consent is required for the NUAR provisions and can confirm these were included in the Supplementary Legislative Consent Memorandum laid in the Senedd on 13 December.

Welsh Government officials have been actively engaged in the development of the new NUAR digital service. However, while we are supportive of the overall policy intent of the NUAR, we have significant concerns about the UK Government's proposed legislative approach to operationalise the service.

Under clause 141, Transfer of certain functions to Secretary of State, it is proposed that certain powers to make regulations under section 79 of the New Roads and Street Works Act (NRSWA) 1991 be transferred from the Welsh Ministers to the Secretary of State. These powers relate to information to be recorded about apparatus in streets.

In your letter you state the UK Government has proposed the transfer of powers to enable the Secretary of State to make the regulations that will set out the detail around how the NUAR will operate in practice. You believe this is needed to enable a consistent legislative framework across England and Wales to underpin the operation of the NUAR, ensuring the information entered into and shared through the NUAR will be "consistent in content and format in respect of all apparatus, irrespective of the country it is located within".

It is incredibly disappointing that, despite being involved in the development of the new NUAR digital service, we were not made aware of the proposed changes to Welsh Ministers' powers until the day before the amendments were tabled in Parliament. Exchanging views on provisions which engage the legislative consent process as early as possible, with the view to resolving consent issues before introduction, is one of the key principles of engagement as agreed by the Inter-ministerial Standing Committee.

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The regulation powers under the NRSWA 1991 sit with Welsh Ministers as part of devolution, with the powers originally transferred to the then National Assembly for Wales in 1999. The proposed removal of a devolved executive function from the Welsh Ministers represents a completely inappropriate reversal of devolution. Not only has this transfer been proposed without prior consultation with Welsh Ministers, it also shows little regard for the devolved competences of the Welsh Government and our legislature, going against the jointly agreed principles, as outlined within the [Review of Intergovernmental Relations](#), of mutual respect and trust.

While your letter states that consistency is crucial to ensure the NUAR operates effectively, I do not consider this to be a valid reason for the transfer of powers from Welsh Ministers. Welsh Ministers have exercised their powers under section 79 of the NRSWA 1991 and the form of records prescribed, and the exceptions prescribed for the recording of location, are consistent with those set out in the regulations applicable to England. There is no valid reason why this approach would differ in the future.

As such, I would argue that the removal of Welsh Ministers' powers would be a disproportionate approach to ensuring information consistency. There are other more pragmatic, proven means of inter-governmental working in place that allow us to discharge our functions in a coherent manner, whilst achieving shared policy objectives.

A 'consult' mechanism has been included within the NUAR provisions, which would require the Secretary of State to consult Welsh Ministers prior to exercising these powers in future. However, a consultation requirement places no binding commitment on the current or any future UK Government to take our views into account following consultation and does not suitably reflect devolution. Therefore, this is not constitutionally acceptable and cannot compensate for the removal of powers which Welsh Ministers already hold.

Furthermore, the amendments to section 79 of the NRSWA 1991 within the DPDI Bill do not set out that the "record of information" is to be used or recorded solely for the purposes of the NUAR. Nor is there anything to indicate that these records cannot be used for other purposes beyond the remit of the NUAR. This means that whilst the record of information is crucial for the NUAR, any regulations made by Welsh Ministers under their existing powers could have a purpose beyond that of the NUAR. This, again, suggests that the removal of Welsh Ministers' powers would be a disproportionate approach.

Finally, I am concerned our ability to control our own data in Wales will be negatively impacted by these provisions, where they provide for the Secretary of State to hold the data contained within the register of information. Bodies in Wales currently have access to such data and it is important the right to access the data and make changes to it, as and when required, is retained. The provisions, as drafted, could result in Welsh Government and Welsh public bodies being unable to freely access and use data generated in Wales.

The Welsh Government is supportive of NUAR from a policy perspective as it supports our Strategic Infrastructure Steering group (SIS) project in Wales, which improves efficiency in planned works between utility companies and local authorities, as well as improved planning for utility companies on future housing and industrial developments. We must be able to determine and collect the data that is required for our own priorities, which may mean that we require additional information to be recorded, compared to what is required in England for NUAR.

On a more positive note, I understand that our respective officials met on 11 January to discuss the concerns raised in this letter with the view to seeking a mutually agreeable way

forward on NUAR. I hope these discussions will achieve a positive outcome for Wales and I look forward to receiving further communication from you about this matter.

On a wider DPDI Bill perspective, Wales has other outstanding concerns and I wrote to the Secretary of State for Science, Innovation and Technology on these matters on 14 November. I still await a reply.

I am copying this to SoS Michael Gove, given his responsibilities for the Union.

A handwritten signature in black ink that reads "Mark Drakeford". The signature is written in a cursive, slightly slanted style.

MARK DRAKEFORD