

ECONOMY AND FAIR WORK COMMITTEE

**29th Meeting, 2023 (Session 6), Wednesday, 22
November 2023**

Legislative Consent Memorandum - Data Protection and Digital Information Bill LCM

Note by the Clerk

Introduction

1. The Data Protection and Digital Information (No.2) Bill was introduced in the House of Commons on 8 March 2023 and replaced the Data Protection and Digital Information Bill. The Bill was carried over and reintroduced in Session 2023-24, and renamed as the [Data Protection and Digital Information Bill](#).
2. The Scottish Government [lodged a Legislative Consent Memorandum \(LCM\)](#) on the Bill on 15 May 2023. The Presiding Officer has not received a letter from the Minister of Parliamentary Business explaining the delay in the LCM being lodged. Under rule 9B.3.5, the Parliamentary Bureau referred the LCM to this Committee.
3. The Committee considered its approach to the scrutiny of this LCM on 31 May 2023. Subsequent to this consideration, amendments to the Bill were tabled in the House of Commons. In response to these amendments, the Scottish Government lodged [a supplementary LCM](#) on 14 September 2023. Both LCMs are included as annexes to this paper.
4. The Bill makes changes to the legal regime for processing personal data and touches on a number of different policy areas. According to the UK Government, the Bill will reduce the administrative burden of data protection compliance on business and clarify the rules to encourage innovation and improve trust and confidence in the use of data in the public interest.
5. The Bill is currently at Report stage in the House of Commons. At the time of writing, a date for this stage has yet to be announced.
6. Today, the Committee will hear evidence from Richard Lochhead, Minister for Small Business, Innovation, Tourism and Trade on the Data Protection and Digital Information Bill LCM and the supplementary LCM. The Committee is then required to consider the evidence heard and report to the Parliament.

Legislative Consent Process

7. The requirement for an LCM is triggered where a UK Bill makes provision applying to Scotland for any purpose within the legislative competence of the Scottish Parliament or alters that legislative or executive competence of the Scottish Ministers.
8. The LCM prepared by the Scottish Government explains how the Bill will affect Scotland and why. For example, the Bill may—
 - change the law on a “devolved matter” (an area of policy which the UK Parliament has devolved to the Scottish Parliament); or
 - alter the “legislative competence” of the Scottish Parliament (its powers to make laws) or the “executive competence” of Scottish Ministers (their powers to govern).
9. If the Scottish Government recommends in its LCM that consent be given, it will normally be decided by a motion taken in the Chamber known as a Legislative Consent Motion. This motion is usually drafted by the Scottish Government. If, however, the Scottish Government does not recommend that consent be given, a debate on the LCM may be scheduled in the Chamber but this does not happen in every case.

Legislative Consent Memorandum

10. In the original LCM, the Scottish Government recommended that consent should be granted for the majority of the provisions.
11. Clause 54(3) enables public authorities to share personal data with digital verification service providers as a result of a user request for their services. The Scottish Government wants people to benefit from data held by Scottish public authorities when using digital verification services and so recommended that consent be given for this provision.
12. Clauses 61-77 focus on sharing data for the purposes of smart data initiatives. The clauses enable a customer to request that a business shares their personal data with a separate service provider. The provisions also cover the transfer of business data between businesses. The Scottish Government argues these provisions are technical and believes there is no benefit from legislating separately on them and so recommends that consent is given.
13. Clause 92 amends the UK [Digital Economy Act 2017](#) (the Act), Part 5 Section 35, to extend the public service delivery data sharing powers to improve outcomes for “undertakings” which is defined to include any form of business and charitable bodies.
14. However, Clause 93 of the Bill as originally drafted granted the Secretary of State the power to make regulations implementing international agreements on information sharing for law enforcement purposes. The Scottish

Government states that the implementation of international agreements in devolved areas is within devolved competence. In the original draft of the Bill there was no provision for Scottish Ministers to have concurrent powers in this area. It is for this reason that the Scottish Government recommended in the original LCM that consent for this provision be withheld.

Supplementary Legislative Consent Memorandum

15. The Scottish Government lodged a supplementary LCM [after amendments to the Data Protection and Digital Information \(No.2\) Bill](#) were published on 23 May, addressing the previous concerns the Scottish Government had in relation to Clause 93. The clause numbers relate to the new Data Protection and Digital Information Bill as introduced in Session 2023/24.
16. Clauses 99 (previously Clause 93), 100 and 115 confer parallel powers on Scottish Ministers and on the Secretary of State to make regulations in secondary legislation to implement future international agreements as they relate to the sharing of information for law enforcement purposes. The Scottish Government now recommends consent be given for these provisions.
17. The above amendments also create a new criminal offence of onward sharing of Revenue Scotland data provided for Digital Verification Services provisions without permission. Other amendments mean that Clause 55 ensures that the necessary protections are in place consistent with HMRC and the Welsh Revenue Authority. The Scottish Government recommends consent for Clause 55.

Scrutiny by other Scottish Parliament Committees

Delegated Powers and Law Reform Committee Consideration

18. The Delegated Powers and Law Reform Committee (DPLRC) considered the original LCM on 6 June and decided to write to the Secretary of State for Science, Innovation and Technology and the Cabinet Secretary for Wellbeing Economy, Fair Work and Energy. The DPLRC considered the responses received and [reported to this Committee on 29 June 2023](#).
19. The DPLRC found the powers in relation to Clauses 54(3), 61-77 and 92 acceptable in principle. The Committee noted that amendments have been made to the Bill giving Scottish Ministers a concurrent power under Clause 99 (previously Clause 93) and accepted the delegated power in principle.
20. The Committee highlighted that it remains the case that the Secretary of State may make regulations within devolved competence, alone. There is no requirement for the Secretary of State to obtain consent or to consult with Scottish Ministers before exercising the power.
21. The DPLRC considered the supplementary LCM on 3 October and [reported to this Committee on 5 October](#). The Committee reiterated the position it agreed at its meeting on 27 June 2023, as outlined in paragraphs 19 and 20 above.

For decision

22. After considering the evidence from the Minister, the Committee is invited to—

- a. reflect upon both the LCM and the Supplementary LCM and reach a view on whether it is content with their terms and report its findings to the Parliament.**
- b. agree to consider a draft report in private at a future meeting.**

**Economy and Fair Work Committee Clerks
17 November 2023**

Legislative Consent Memorandum

Data Protection and Digital Information (No. 2) Bill

Background

1. This memorandum has been lodged by Neil Gray, Cabinet Secretary for Wellbeing, Economy, Fair Work and Energy, under Rule 9.B.3.1(a) of the Parliament's standing orders, and is supported by Richard Lochhead, Minister for Small Business, Innovation and Trade. The Data Protection and Digital Information Bill (DPDI Bill) was introduced in the House of Commons on 18 July 2022, and re-introduced as the Data Protection and Digital Information Bill (No. 2) on 8 March 2023. The Bill can be found [here](#).

Content of the data protection and digital information Bill

2. The DPDI Bill was published following the [outcome of a UK Government \(UKG\) consultation](#), 'Data: a new direction', to which the Scottish Government (SG) provided views. The Bill covers a wide range of policy areas, including: data protection, smart data, digital verification and law enforcement data sharing.
3. The Bill was laid in parliament in Westminster on 18 July 2022 then paused before second reading on 5 September 2022. It was brought back on 8 March 2023 as the Data Protection and Digital Information (no. 2) Bill by the new [UKG Department for Science, Innovation and Technology](#), (DSIT) whose officials have informed Scottish Government that it moved to second reading on 17 April.
4. Data protection is reserved and all the general data protection provisions in the Bill extend to Scotland. The UKG has framed the recalibration of new privacy frameworks within the Bill as necessary, pro-growth reforms to enable data-driven innovation, reduce data protection-associated burdens on businesses, and empower people to take control of their data, within a trusted data regime. The proposed changes to data protection law are not as comprehensive as suggested in the UKG's recent response to its consultation, and represent a dilution rather than a radical change. Nevertheless, the dilution of accountability of organisations may be enough to prompt the EU to re-examine the UK adequacy decision which allows the free-flow of data.
5. The UKG has also published an [impact assessment](#) of the Bill.

Provisions which relate to Scotland and require legislative consent

Part 2 – Digital verification services

Clause 54(3) - Power of public authority to disclose information to registered persons

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

Part 3 – Customer data and business data

Clauses 61-77 – Smart data

7. These clauses provide for the secure sharing of customer data at the customer's request with authorised third party providers (TPP) of services such as automated account switching and management. These provisions are mainly about consumer protection which is reserved, but elements of the clauses concern business-to-business information transfer and are not caught by the consumer protection reservation. The provisions confer new duties on the Scottish Ministers where they are acting as a 'data holder', meaning a supplier of goods, services and digital content specified in the regulations.

Part 4 – Other provision about digital information – sharing of data

Clause 92 - Disclosure of information to improve public service delivery to undertakings

8. This clause amends the UK Digital Economy Act 2017 (the Act) Part 5 section 35, to extend the public service delivery data sharing powers in the Act 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.
9. The public service delivery powers in section 35 of the Act provide a legal gateway to enable specified public authorities, listed in Schedule 4 of the 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 made by clause 92 would extend the scope of the data sharing powers under section 35 so as to enable data sharing to improve public service delivery not just 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 businesses. The amendments do not facilitate personal data sharing for other reasons.

10. The Act allows the “appropriate national authority” to make regulations to add “specified persons” and “specified objectives”. The “appropriate national authority”, as defined in the Act is the Secretary of State or Minister for the Cabinet Office, Scottish Ministers, Welsh Ministers or the Department of Finance in Northern Ireland. 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.

Clause 93 – Implementation of agreements on sharing information for law enforcement purposes

11. This clause confers on the Secretary of State the power to make regulations in secondary legislation to implement future international agreements as they relate to the sharing of information for law enforcement purposes. The implementation of international agreements in devolved areas is a devolved function. Note that the [explanatory notes](#) to the Bill contain an error at page 125 in relation to this clause, and should state that the LCM process has been engaged. This discrepancy has been raised with the UK Government.

Reasons for seeking a legislative consent motion

Clause 54(3) - Power of public authority to disclose information to registered persons

12. 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 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.

13. Consent is recommended

Part 3 – Customer Data and Business Data

Clauses 61-77 – Smart data

14. The relevant sections of the Bill are highly technical and there is no administrative efficiency or benefit in seeking a legislative vehicle to make these provisions in Scotland. There would also be a requirement, if the powers are not enabled via a UK Bill, to regulate these matters via a devolved body.

15. Consent is recommended

Part 4 – Other provision about digital information – sharing of data

Clause 92 - Disclosure of information to improve public service delivery to undertakings

16. 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.

17. 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, which could further SG's agenda for the post-pandemic recovery and in particular support the implementation of a commitment in the National Strategy for Economic Transformation to introduce common data sets and systems to transform the way the public sector offers services and support to businesses and workers.

18. Consent is recommended.

Clause 93 – Implementation of agreements on sharing information for law enforcement purposes

19. This clause confers on the Secretary of State the power to make regulations in secondary legislation to implement future international agreements as they relate to the sharing of information for law enforcement purposes. The implementation of international agreements in devolved areas is a devolved function.

20. Consent is not recommended. If either parallel enabling powers were granted to the Scottish Ministers, or some form of a twin-track approach which gives the Scottish Ministers the option to either implement differently where they see fit, or

to allow the Secretary of State to implement in consultation with the Scottish Ministers, this would likely produce better future regulations for Crown Office and Police Scotland. The Scottish Ministers currently recommend that consent to this provision be withheld, with the caveat that the Scottish Ministers will lodge a supplementary LCM if a suggested amendment is agreed. If such an amendment were secured, the Scottish Ministers would retain policy control in a devolved area. The Scottish Ministers are currently in discussion with the Home Office regarding these amendments.

Consultation

21. The UKG digital identity and attributes consultation was published on 19 July 2021 as a route to seek views and feedback on their proposed approach to enabling the use of digital identities and attribute services in the UK economy.
22. In relation to Digital Verification Services, the Scottish Government welcomed the development of standards based approach, which would allow citizens to use services from the UK and Scottish Government. The response highlighted the importance of the citizen being a primary participant in the trust framework, recognising their rights over the use of their personal data.
23. The UKG response to the consultation was published on 10 March 2022 and set out legislative measures which include:
 - creating a governance framework to oversee a robust accreditation and certification process by which organisations can prove their adherence to the rules of the UK digital identity and attributes trust framework
 - enabling a permissive legal gateway so that trusted private sector organisations can check data held by public bodies for the purpose of identity and eligibility verification. The LCM relates to these provisions of the Bill.
 - establishing that digital identities and attributes have the same validity as physical proofs of ID, such as a passport
24. The Bill, of which the above provisions form a part, was published following the outcome of a UKG consultation, '[Data: a new direction](#)'. The SG provided a response to the consultation.
25. The Scottish Government's response focused on a commitment to retain high data protection standards and protections for individuals via continued alignment with the EU data protection standards. In particular, there was a view, including from public sector stakeholders who contributed as well, that the move away from these standards would endanger data adequacy agreements reached following Brexit, creating a unwelcome burden on public and private sector organisations who transfer data to and from the EU.
26. The UKG's response to this consultation was published on 10 September 2021 and has informed the development of this Bill. In its consultation response, the 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.”

“Any personal data sharing regulations made under the new provisions would be subject to further public consultation and parliamentary scrutiny.”

27. There is no mention of the power contained in the clause regarding implementation of agreements on sharing information for law enforcement purposes in UKG’s consultation summary.

Financial Implications

Clause 54(3) - Power of public authority to disclose information to registered persons & Clauses 61-77 – Smart data

28. There are no cost or financial issues arising as a consequence of legislative consent to these provisions.

Clause 92 - Disclosure of information to improve public service delivery to undertakings

29. Cabinet Office officials intend to put secondary legislation in place as soon as possible after the Bill is passed which will involve engagement with SG officials. Any regulations made under the new provisions would be subject to public consultation and also consultation with the Scottish Ministers. There may be a need for Scottish secondary legislation to ensure Scottish bodies have the same access to any new data sharing powers as those in England and Wales. Other impacts will be experienced should public authorities wish to utilise these powers for devolved data shares. In which case, there would be staffing costs associated with encouraging use of the powers, creating new objectives and the affirmative regulations to create the legal framework, as well as with talking to businesses to ensure the impact of any new regulations that may be laid under the proposed powers are understood. Costs would be factored into overall resource planning and agreed priorities

Clause 93 – Implementation of agreements on sharing information for law enforcement purposes

30. The Scottish Government Legal Directorate (SGLD) resource would be required to implement SSIs for future international agreements that relate to information sharing in connection with law enforcement.
31. Should the SG’s amendments be accepted, the Scottish Ministers would require to implement SSIs for future international agreements that relate to information exchange in connection with law enforcement, unless they relate to reserved

matters (such as terrorism) or agreement is reached with UKG to implement for Scotland. This would require SGLD resource, however SGLD have advised that they do not foresee resourcing issues for this.

Conclusion

Clause 54(3) - Power of public authority to disclose information to registered persons

Clauses 61-77 - Smart data

Clause 92 - Disclosure of information to improve public service delivery to undertakings

32. We recommend consent for these provisions.

Clause 93 - Implementation of agreements on sharing information for law enforcement purposes

33. We recommend that consent for this provision is withheld.

Draft Legislative Consent Motion

34. The draft motion, which will be lodged by the Cabinet Secretary for Wellbeing, Economy, Fair Work and Energy, is:

“That the Parliament agrees that the relevant provisions of the Data Protection and Digital Information (No. 2) Bill, introduced in the House of Commons on 18 July 2022, relating to Clauses 54(3), 61-77 and 92, so far as these matters fall within the legislative competence of the Scottish Parliament, should be considered by the UK Parliament.”

Scottish Government
May 2023

This Legislative Consent Memorandum relates to the Data Protection and Digital Information (No. 2) Bill (UK legislation) and was lodged with the Scottish Parliament on 15 May 2023

Data Protection and Digital Information (No. 2) Bill – Legislative Consent Memorandum

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Supplementary Legislative Consent Memorandum

Data Protection and Digital Information (No. 2) Bill

Background

1. This memorandum has been lodged by Neil Gray, Cabinet Secretary for Wellbeing Economy, Fair Work and Energy, under Rule 9B.3.1(c) of the Parliament's Standing Orders, and is supported by Richard Lochhead, Minister for Small Business, Innovation, Tourism and Trade. The Data Protection and Digital Information (No. 2) (DPDI (No. 2)) Bill was introduced in the House of Commons on 8 March 2023. The Bill can be found at [Data Protection and Digital Information \(No. 2\) Bill - Parliamentary Bills - UK Parliament](#).

Content of the Data Protection and Digital Information (No. 2) Bill

2. The DPDI (No. 2) Bill covers a wide range of policy areas, including: data protection, smart data, digital verification, and law enforcement data sharing. The majority of clauses in the DPDI (No. 2) Bill relate to reserved matters, however this memorandum notes that the Bill aims to depart from EU GDPR which runs contrary to the Scottish Government policy of aligning with the EU.

3. A Legislative Consent Memorandum for DPDI (No. 2) Bill (LCM-S6-36) was lodged on 15 May 2023. The LCM recommended consent to three of the four clauses that were within devolved competency. The only clause to which consent was not recommended was on law enforcement data sharing, amendments to which mean that the Scottish Government can now recommend consent. This is a Supplementary Legislative Consent Memorandum for amendments made on 23 May 2023 to clauses relating to law enforcement data sharing, and Digital Verification Services.

Provisions which relate to Scotland

Clauses 99, 100 and 115 – Implementation of agreements on sharing information for law enforcement purposes

4. This amendment grants powers to Scottish Ministers to make regulations relating to international law enforcement data sharing in devolved-only policy areas.

Clause 55 – Digital Verification Services

5. This amendment provides safeguards for onward sharing of data from Revenue Scotland which has been provided for Digital Verification Services purposes.

Reasons for seeking a legislative consent motion

Clauses 99,100 and 115– Implementation of agreements on sharing information for law enforcement purposes

6. Amendments mean that these clauses confer parallel powers on Scottish Ministers and on the Secretary of State to make regulations in secondary legislation to implement future international agreements as they relate to the sharing of information for law enforcement purposes. The implementation of international agreements in devolved areas is a devolved function. Prior to these amendments, consent was not recommended as the power was conferred solely on the Secretary of State.

7. The use of this power is currently hypothetical however, in the context of Scottish Government's EU alignment policy, if the UK and EU reached an agreement to do so, it could be used to bring Scotland closer to aligning with EU acquis on law enforcement data sharing.

Clause 55 – Digital Verification Services

8. Amendments mean that this power creates a new criminal offence of onward sharing of Revenue Scotland data which was provided for Digital Verification Services provisions without permission. The operation of Revenue Scotland is a devolved function. This power would be consistent with provisions in Revenue Scotland and Tax Powers Act (RSTPA) and a similar provision also exists in section 64 of the Digital Economy Act 2017. This amendment will ensure that the necessary protections are in place consistent with HMRC and the Welsh Revenue Authority.

Consent is recommended.

Consultation

9. The UK Government's (UKG) digital identity and attributes consultation was published on 19 July 2021 as a route to seek views and feedback on their proposed approach to enabling the use of digital identities and attribute services in the UK economy. The UKG response to the consultation was published on 10 March 2022 and set out legislative measures which include:

- creating a governance framework to oversee a robust accreditation and certification process by which organisations can prove their adherence to the rules of the UK digital identity and attributes trust framework;
- enabling a permissive legal gateway so that trusted private sector organisations can check data held by public bodies for the purpose of identity and eligibility verification. The LCM relates to these provisions; and
- establishing that digital identities and attributes have the same validity as physical proofs of ID, such as a passport.

10. The DPDI (No. 2) Bill, of which these provisions form a part, was published following the outcome of a UKG consultation, '[Data: a new direction](#)'. The Scottish Government provided a response to the consultation. The UKG's response to this consultation was published on 10 September 2021 and has informed the development of this Bill. In its consultation response, the 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.

Any personal data sharing regulations made under the new provisions would be subject to further public consultation and parliamentary scrutiny.”

11. There is no mention of the power contained in Clause 99 on the implementation of international agreements as they relate to law enforcement data sharing in the UKG's consultation summary.

12. There is no mention of the power contained in Clause 55 in the UKG's consultation summary.

Financial implications

13. The Scottish Government would be required to resource future SSIs, should the UK make agreements in future that relate to law enforcement data sharing. This is expected to be achievable within existing resources.

Conclusion

14. The Scottish Government recommends consent for these provisions:
- Clauses 99, 100 and 115– Implementation of international agreements on law enforcement data sharing because they will grant the power to Scottish Ministers to make regulations in secondary legislation to implement future international agreements as they relate to law enforcement data sharing; and
 - Clause 55 – Information disclosed by Revenue Scotland for Digital Verification Services because they will ensure that the necessary protections are in place for Revenue Scotland data.

Draft Legislative Consent Motion

15. The draft motion, which will be lodged by the Cabinet Secretary for Wellbeing Economy, Fair Work and Energy, is:

“That the Parliament agrees that the relevant provisions of the Data Protection and Digital Information (No. 2) Bill, introduced in the House of Commons on 8 March 2023, relating to Clauses 55, 99, 100 and 115 so far as these matters fall within the legislative competence of the Scottish Parliament, should be considered by the UK Parliament.”

Scottish Government
September 2023

This Supplementary Legislative Consent Memorandum relates to the Data Protection and Digital Information (No. 2) Bill (UK legislation) and was lodged with the Scottish Parliament on 14 September 2023

Data Protection and Digital Information (No. 2) Bill – Supplementary Legislative Consent Memorandum

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