

# Supplementary Legislative Consent Memorandum

## Data Protection and Digital Information Bill

### Background

1. This memorandum has been lodged by Shirley-Anne Somerville, Cabinet Secretary for Social Justice, under Rule 9B.3.1(c) of the Parliament's standing orders. The Data Protection and Digital Information Bill was introduced in the House of Commons on 8 March 2023. The Bill can be found at: [Data Protection and Digital Information Bill - Parliamentary Bills - UK Parliament](#)
2. While the Bill contains a range of provisions in relation to data protection and digital information matters, a number of the specific provisions have impacts on Scotland which, under the Scottish Parliament's standing orders, require a legislative consent motion to be moved.
3. A separate LCM<sup>1</sup> was previously lodged on the 15 May 2023, under Rule 9B.3.1(a) and a supplementary LCM<sup>2</sup> on the 14 September 2023, under Rule 9B.3.1(c) by the Cabinet Secretary for Wellbeing Economy, Fair Work and Energy supported by the Minister for Small Business, Innovation, Tourism and Trade in relation to other discrete data protection provisions within the Bill relating to devolved matters.

### Content of the Data Protection and Digital Information Bill

4. The Bill was originally published following the outcome of a UK Government (UKG) consultation, 'Data: a new direction'<sup>3</sup>, 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. The Bill was introduced to the UK Parliament 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.
5. The UK Government has published an impact assessment for the Bill<sup>4</sup>.

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<sup>1</sup> [Legislative Competence Memorandum \(parliament.scot\)](#)

<sup>2</sup> [Supplementary Legislative Consent Memorandum \(parliament.scot\)](#)

<sup>3</sup> [Data: a new direction - GOV.UK \(www.gov.uk\)](#)

<sup>4</sup> [Data Protection and Digital Information Bill: updated impact assessment \(publishing.service.gov.uk\)](#)

6. The Bill was amended by the UK Government on 29 November 2023 to include a power to require information for social security purposes. These provisions were informed by the 2022 publication 'Fighting Fraud in the Welfare System'<sup>5</sup>.

## Provisions which relate to Scotland

7. This second supplementary memorandum relates to Clause 128<sup>6</sup> and Schedule 11 of the Bill; 'Power to require information for social security purposes'. Clause 128 and Schedule 11 of the Bill will allow the UK Government to issue information notices requiring third parties such as banks to provide information relating to all accounts they hold linked to those in receipt of welfare benefits. Schedule 11 also contains provisions in relation to the publication and revision of a Code of Practice in relation to information notices, penalties for noncompliance, appeals and amendments to the Proceeds of Crime Act 2002.

8. As the effect of the provisions in Clause 128 and Schedule 11 are to amend the confidentiality requirements of financial institutions, the UK Government considers that these provisions relate solely to matters reserved under Head A3 of schedule 5 of the Scotland Act 1998 (financial and economic matters). However, the Scottish Government's view is that the purpose of the provisions is to require information for social security purposes, and the provisions impact on benefits which, under Head F1 of schedule 5 of the Scotland Act 1998, are devolved.

9. The proposed powers will be applicable to Scottish residents in receipt of devolved benefits administered by the DWP under agency agreement on behalf of Scottish Ministers. Therefore, the Scottish Government considers that legislative consent is required.

## Reasons for seeking a legislative consent motion

10. The Scottish Government recommends consent because it has concluded that any devolved implications of these provisions are theoretical only. The DWP have indicated that full roll out of these powers is unlikely before the agency agreements have ended. Further to this, the DWP have also confirmed that their initial focus when testing and rolling out the powers is going to be on Universal Credit and there is no intention to use these powers in relation to devolved benefits still administered by DWP under agency agreement.

11. This means that there will be no direct impacts in practice on Scottish social security cases as a result of these powers.

12. The Scottish Government considers that legislative consent will be important to protect the associated agency agreements between DWP and the Scottish Government. If the agreements were ended before the agreed dates because the

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<sup>5</sup> [Fighting Fraud in the Welfare System - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/publications/fighting-fraud-in-the-welfare-system)

<sup>6</sup> [Data Protection and Digital Information Bill \(parliament.uk\)](https://www.parliament.uk/bills/2022-23/data-protection-and-digital-information-bill)

DWP took the view that the Scottish Parliament's refusal of consent undermined the principle governing the agency agreements (that all benefits delivered by DWP are done so under a single legal framework), it would no longer be possible to follow the carefully planned process of transferring cases from DWP to Social Security Scotland. The agency would be unable to meet the huge increase in client and benefit caseload. It would also significantly negatively impact on delivery of the wider social security programme, jeopardising the safe and secure transfer of benefits which Scottish Ministers have long considered a priority.

13. This legislation is not relevant to the Scottish Government's policy to maintain alignment with the EU, primarily because each EU member state has its own social security laws. EU rules co-ordinate these social security systems between member states to support freedom of movement, but this legislation is not relevant to social security co-ordination specifically.

## Consultation

14. The UK Government consulted upon the Data Protection and Digital Information Bill in 2021<sup>7</sup>. This consultation ran for 10 weeks and received 2,924 responses.

## Financial implications

15. There are no cost or financial issues arising as a result of legislative consent being granted to these provisions.

## Conclusion

16. In relation to Clause 128 and Schedule 11 of the Data Protection and Digital Information Bill, the Scottish Government recommends consent for these provisions.

## Draft Legislative Consent Motion

17. The draft motion, which will be lodged by the Cabinet Secretary for Social Justice, is:

18. "That the Parliament agrees that Clause 128 and Schedule 11 of the Data Protection and Digital Information Bill, introduced in the House of Commons on 8 March 2023, relating to the power to require information for social security purposes, so far as these matters fall within the legislative competence of the Scottish Parliament should be considered by the UK Parliament."

Scottish Government  
April 2024

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<sup>7</sup> [Data: a new direction - government response to consultation - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/data-protection-and-digital-information-bill)

This Supplementary Legislative Consent Memorandum relates to the Data Protection and Digital Information Bill (UK legislation) and was lodged with the Scottish Parliament on 17 April 2024

# Data Protection and Digital Information Bill – Supplementary Legislative Consent Memorandum

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