

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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