

The Data Protection and Digital Information (No. 2) Bill Legislative Consent Memoranda No.3

February 2023

Introduction

- 1.** The Welsh Government laid a Legislative Consent Memorandum No.3 (“LCM No.3”) in respect of the Data Protection and Digital Information (No. 2) Bill before the Senedd on 11 December 2024.¹
- 2.** The Business Committee referred the LCM No.3 to this Committee and to the Legislation, Justice and Constitution Committee to consider, with a reporting deadline of 2 February 2024.

1. Our approach

- 3.** The Committee considered LCM No.3 at its meeting on 17 January 2024.²
- 4.** Our previous reports and responses are available on the Senedd website.³

¹ [Supplementary Legislative Consent Memorandum \(Memorandum No.3\) Data Protection and Digital Information Bill](#)

² [Culture, Communications, Welsh Language, Sport, and International Relations Committee meeting -- 17 January 2024](#)

³ [Legislative Consent: Data Protection and Digital Information Bill](#)

2. The Data Protection and Digital Information (No. 2) Bill

5. The Data Protection and Digital Information (No. 2) Bill⁴ (“the Bill”) was introduced into the House of Commons on 8 March 2023.

6. The main policy objective of the Bill, as described in the accompanying Explanatory Notes,⁵ is to:

*“...update and simplify the UK’s data protection framework with a view to reducing burdens on organisations while maintaining high data protection standards”.*⁶

7. The Bill also contains provisions, amongst others, to reform the regulator (the Information Commissioner), establish a framework for the provision of Digital Verification Services (DVS) in the UK, and reform the way in which births and deaths are registered in England and Wales.

8. The original Data Protection and Digital Information Bill⁷ was laid in the House of Commons on 18 July 2022. However, this Bill was paused prior to its second reading and subsequently withdrawn on 8 March 2023. The Bill replaces the original Data Protection and Digital Information Bill.

3. Provisions for which consent is being sought

9. Standing Order 29⁸ provides that the Welsh Ministers must lay a legislative consent memorandum where a UK Bill makes provision in relation to Wales:

- a. for any purpose within the legislative competence of the Senedd (apart from incidental, consequential, transitional, transitory, supplementary or savings provisions relating to matters that are not within the legislative competence of the Senedd); or

⁴ [Data Protection and Digital Information \(No. 2\) Bill](#)

⁵ [Explanatory Notes for Data Protection and Digital Information \(No. 2\) Bill](#) – 7 December 2023

⁶ [Explanatory Notes for Data Protection and Digital Information \(No. 2\) Bill](#) – 7 December 2023

⁷ [Data Protection and Digital Information Bill](#)

⁸ [Standing Orders of the Welsh Parliament](#) – Standing Order 29

b. which modifies the legislative competence of the Senedd.⁹

10. LCM No.3 describes the changes made to the Bill at Committee stage in the Commons which, in the view of the Welsh Government, require the Senedd's legislative consent.

11. It should be noted that LCM No.3 refers to clauses as numbered prior to the Bill's re-publication on being brought from the Commons to the Lords.

Amendments 79-80 – Digital Verification Services (DVS)

12. Amendments 79 and 80 amend clauses 56 (54 as introduced, now 74) and 60 (56 as introduced, now 78), which make provision about the sharing of information for the purpose of providing Digital Verification Services (DVS).

13. LCM No.3 does not provide any detail on these specific amendments. The impact of this is expanded upon and reflected in our conclusion at the end of the report. . Rather, it focuses on the purpose of clauses 56 and 60. In any case, the amendments are intended to clarify that a “public authority” for the purpose of those clauses means persons whose functions are entirely, or partly, functions of a public nature.

14. The Welsh Government is of the view that the purpose of clauses 56 and 60 is to enable the provision of DVS, rather than regulate the provision of that service.¹⁰ It therefore considers that an LCM is required for amendments relating to those clauses.

15. However, LCM No.3¹¹ briefly explains that the UK Government are not in agreement that the amendments require the legislative consent of the Senedd as it is of the view that the “internet services” reservation applies. This is reflected in the Explanatory Notes that accompany the current version of the Bill.¹²

16. Our view has consistently been that the purpose of clauses 56 and 60 is to facilitate the provision of a digital service. That service will invariably be provided online. As such, we consider that the “internet services” reservation is engaged.

⁹ [Standing Orders of the Welsh Parliament](#) – Standing Order 29

¹⁰ [Supplementary Legislative Consent Memorandum \(Memorandum No.3\) Data Protection and Digital Information Bill](#) – paragraph 17

¹¹ [Supplementary Legislative Consent Memorandum \(Memorandum No.3\) Data Protection and Digital Information Bill](#) – paragraph 18

¹² [Explanatory Notes for Data Protection and Digital Information \(No. 2\) Bill](#) – paragraphs 1311-1312 - 7 December 2023

17. Whilst the test under Standing Order 29.1(i) is not whether the Senedd has the legislative competence to pass the exact same provision (a provision can have a devolved purpose but still fail one of the tests of legislative competence), the amendments do not, in our minds, make provision for any purpose within the legislative competence of the Senedd.

18. It is noted that in all Memoranda to the Bill, including LCM No.3, no other provisions in Part 2 of the Bill, which relate to DVS, have been identified as requiring the legislative consent of the Senedd.¹³ Following its consideration of original Legislative Consent Memorandum related to this Bill,¹⁴ the Legislation, Justice and Constitution Committee wrote to the Welsh Government on 15 May 2023, requesting further information as to why legislative consent was not sought in relation to other substantive clauses of Part 2.¹⁵

19. A response was received on 14 June 2023, which stated (in response to question 1) the Welsh Government’s view that the purpose of clauses 54 (now 74) and 56 (now 78) is to facilitate the provision of DVS and improve the service offered to the user, rather than regulate the provision of the service (which it considered was the purpose of the other clauses in Part 2 of the Bill).¹⁶

20. This view was reiterated in the Welsh Government’s response jointly to both committee reports on 5 September 2023.¹⁷ In addition, that response considered that the “telecommunications” reservation does not apply to material that is transmitted, but rather relates to the means by which communications are transmitted and that, on this basis, clauses 56 and 60 (now 74 and 78) relate to devolved matters of public services, economy and business. However, the response did not address the “internet services” reservation.¹⁸

Conclusion 1. We disagree with the Welsh Government that clauses 56 and 60, and amendments 79 and 80 to those clauses, relating to Digital Verification Services, require the consent of the Senedd.

Part 3: Customer Data and Business Data (Smart Data)

¹³ [Legislative Consent: Data Protection and Digital Information Bill](#)

¹⁴ [Legislative Consent Memorandum: Data Protection and Digital Information \(No.2\) Bill](#)

¹⁵ [Legislation, Justice and Constitution Committee letter to the Welsh Government on Legislative Consent Memorandum: Data Protection and Digital Information \(No. 2\) Bill](#) – 15 May 2023

¹⁶ [Welsh Government response to Legislation, Justice and Constitution Committee’s report on Legislative Consent Memorandum No.2 report](#) – 14 June 2023

¹⁷ [Welsh Government response to Supplementary Legislative Consent Memorandum No.2 report](#)

¹⁸ [Legislative Consent: Data Protection and Digital Information Bill](#)

21. Part 3 of the Bill makes provision about sharing customer and business information to improve data portability (Smart Data). These clauses allow for the secure sharing of data, upon the customer's request, with authorised third-party providers (ATPs), who would then use the data to provide services to the customer, including automatic account switching, personalised market comparisons and account management services. The customer can be a consumer or a business.

22. LCM No.3 identifies various amendments to Part 3 for which the Welsh Government is of the view that Senedd consent is required.¹⁹ These are:

- NC27, 103, 109, 126, 133: Interface bodies (and consequential amendments);
- NC31: Liability in damages;
- NC32: Other data provision;
- Amendments 82 to 196: various amendments to Part 3.²⁰

23. It is noted that LCM No.3 lacks detail as to the effect of these amendments. The impact of this is expanded upon and reflected in our conclusion at the end of the report.

24. Amendment NC27 inserts a new clause that enables regulations under Part 3 of the Bill to make provision about bodies (known as "interface bodies") providing facilities or services used for providing, publishing or processing customer data or business data, or setting standards or making other arrangements in connection with such facilities or services. This may include (but is not limited to) provision about the body's composition and governance, and provision about how the body carries out its functions. Amendments 103, 109, 126 and 133 are consequential to Amendment NC27, as are other amendments which are not specified as such in LCM No.3. Regulation making powers under Part 3 would be exercisable by the Secretary of State or the Treasury.

¹⁹ [Supplementary Legislative Consent Memorandum \(Memorandum No.3\) Data Protection and Digital Information Bill](#) – paragraph 12

²⁰ [Supplementary Legislative Consent Memorandum \(Memorandum No.3\) Data Protection and Digital Information Bill](#) – paragraph 12

25. Amendment NC31 inserts a new clause to enable regulations under Part 3 to provide that certain persons are not liable in damages when exercising functions under such regulations.

26. Amendment NC32 inserts a new clause to enable the regulation-making powers under Part 3 to be used to supplement existing subordinate legislation which requires customer data or business data to be provided to customers and others.

27. The other amendments to Part 3 mainly consist of technical and consequential amendments. However, others add to the provisions that can be set out by regulations made under Part 3, such as Amendment 140 which enables regulations to require decision-makers (i.e. those specified persons who may decide whether a person satisfies the conditions for authorisation or approval in order to receive customer data and business data) to have procedures for handling complaints. Although not indicated in LCM No.3, others are consequential to Amendment NC27 regarding interface bodies (in addition to Amendments 103, 109, 126 and 133), such as Amendments 156 and 157.

28. LCM No.3 explains that the Welsh Government is of the view that:

“as LCMs were previously laid in relation to those provisions, a further LCM is required for amendments to the same.”²¹

29. The Welsh Government has stated its view in previous memoranda that provisions in Part 3 of the Bill relate to the devolved purpose of business and economy.

30. LCM No.3 goes on to state that the Welsh Government is awaiting the UK Government’s assessment of the need for legislative consent in respect of the amendments relating to Part 3.²² However, it is noted that the Explanatory Notes that accompany the Bill state as follows in relation to Smart Data schemes, which are covered by Part 3 of the Bill²³:

²¹ [Supplementary Legislative Consent Memorandum \(Memorandum No.3\) Data Protection and Digital Information Bill](#) – paragraph 12

²² [Supplementary Legislative Consent Memorandum \(Memorandum No.3\) Data Protection and Digital Information Bill](#) – paragraph 19

²³ [Explanatory Notes for Data Protection and Digital Information \(No. 2\) Bill](#) – paragraph 1318 - 7 December 2023

“While many aspects of the proposals are reserved, some areas are devolved (e.g. where the customer is a business and not an individual [...]). Therefore a LCM is required in all three Devolved Administrations.”²⁴

Conclusion 2. We agree that legislative consent is required for the amendments relating to Part 3 of the Bill.

Amendments NC39-42, NS2, 215 – The National Underground Asset Register

31. Through Amendments NC39-42 and NS2, new clauses are inserted into the Bill which make amendments to, and insert a new Part and Schedule into, the New Roads and Street Works Act 1991 (“the 1991 Act”). These require, and make provision in connection with, the keeping of a register of information relating to apparatus in streets, to be called the National Underground Asset Register (“NUAR”). Amendment 215 is consequential to Amendments NC39, NC40 and NS2.

32. The Bill puts the NUAR on a statutory footing. The Explanatory Notes that accompany the Bill explain²⁵ that the NUAR is a:

“...digital map that aims to improve both the efficiency and safety of underground work by providing secure access to location data about pipes, cables and other types of apparatus installed in streets.”²⁶

33. The Explanatory Notes set out²⁷ the UK Government’s rationale for introducing these clauses, stating that:

“...currently there is no standardised method [...] with multiple organisations having to be contacted for each dig, providing information in varied formats, scales, quality and on different timelines resulting in a complex process for installing, maintaining,

²⁴ Explanatory Notes for Data Protection and Digital Information (No. 2) Bill – paragraph 1318 - 7 December 2023

²⁵ Explanatory Notes for Data Protection and Digital Information (No. 2) Bill – paragraph 48 - 7 December 2023

²⁶ Explanatory Notes for Data Protection and Digital Information (No. 2) Bill – paragraph 48 - 7 December 2023

²⁷ Explanatory Notes for Data Protection and Digital Information (No. 2) Bill – paragraphs 46-49 - 7 December 2023

operating and repairing buried apparatus” and, as such, “The measures aim to simplify and expedite the process by which apparatus data is shared by requiring undertakers to share their data in a prescribed manner through NUAR.”²⁸

34. The subject matter of the 1991 Act is a devolved matter. Its purpose was to amend the law relating to roads so as to enable new roads to be provided by new means, to make provision with respect to street works, and for connected purposes.

35. The functions of the Secretary of State under the 1991 Act relating to Wales, except under section 167(3) (Crown application), were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). These functions of the Assembly were subsequently transferred to the Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006.²⁹

36. Also, for the reasons set out below regarding the return of delegated powers as per Amendment NC42, the identified amendments will modify the legislative competence of the Senedd, as per Standing Order 29.1(ii).³⁰

Conclusion 3. We are of the view that legislative consent is required for Amendments NC39-42, NS2 and 215.

37. The Welsh Government is also of the view that this is a matter of devolved competence.³¹

38. LCM No.3 also explains that the Welsh Government are still awaiting the UK Government’s assessment of the need for legislative consent in respect of the new provisions pertaining to the NUAR.³² However, it is noted that the Explanatory Notes that accompany the Bill state as follows³³:

²⁸ [Explanatory Notes for Data Protection and Digital Information \(No. 2\) Bill](#) – paragraphs 46-49 - 7 December 2023

²⁹ [Government of Wales Act 2006](#)

³⁰ [Standing Orders of the Welsh Parliament](#) – Standing Order 29

³¹ [Supplementary Legislative Consent Memorandum \(Memorandum No.3\) Data Protection and Digital Information Bill](#) – paragraph 14

³² [Supplementary Legislative Consent Memorandum \(Memorandum No.3\) Data Protection and Digital Information Bill](#) – paragraph 19

³³ [Explanatory Notes for Data Protection and Digital Information \(No. 2\) Bill](#) – paragraphs 1309-1310 - 7 December 2023

“Legislative competence for the subject matter of Part 3 of the New Roads and Street Works Act 1991 (which concerns street works) is devolved to Wales. As these provisions make amendments to Part 3 of the 1991 Act in relation to this devolved subject matter, an LCM will be required from Wales.

In addition, some existing functions in this area, currently exercisable by the Welsh Ministers in relation to Wales, will be transferred so as to be solely exercisable by the Secretary of State in relation to England and Wales. As this approach will modify the executive competence of the Welsh Ministers this provides an additional basis on which an LCM will be required from Wales.”³⁴

Delegated Powers

39. These amendments to the Bill provide various regulation making powers to the Secretary of State under the new Part 3A of the 1991 Act. As an example, this includes a power to make regulations to make provision in connection with making information kept in NUAR available under a licence or without a licence³⁵, make provision in relation to fees required to be paid by undertakers in connection with NUAR³⁶, and make provision requiring undertakers having apparatus in a street to provide certain information to the Secretary of State.³⁷

40. These regulation making powers apply in relation to Wales in a devolved area. As the regulation making powers would be exercisable by the Secretary of State, there is no requirement for the regulations to be laid before the Senedd.

41. Amendment NC39 does provide that, before making regulations under the new part 3A of the 1991 Act, the Secretary of State must consult the Welsh Ministers.

Return of delegated powers from Welsh Ministers to the Secretary of State and revocation of Senedd subordinate legislation

³⁴ [Explanatory Notes for Data Protection and Digital Information \(No. 2\) Bill](#) – paragraphs 1309-1310 - 7 December 2023

³⁵ As per the new section 106B of the 1991 Act, to be inserted by the Bill

³⁶ As per the new section 106C of the 1991 Act, to be inserted by the Bill

³⁷ As per the new section 106D of the 1991 Act, to be inserted by the Bill

42. Notably, in Amendment NC42, regulation making powers under section 79 of the 1991 Act, so far as exercisable in relation to Wales, are to be transferred from the Welsh Ministers back to the Secretary of State.

43. Section 79(1) of the 1991 Act provides that an “undertaker” (meaning a person entitled to carry out street works in relation to the apparatus³⁸ in a street by virtue of a statutory right or a street works licence³⁹) must keep a record of the location of every item of apparatus belonging to them as soon as reasonably practicable after placing it, altering its position, locating it, or being informed of its location, “*except in such cases as may be prescribed*”. This power to except is currently exercisable by the Welsh Ministers in relation to Wales but would be transferred back to the Secretary of State by virtue of Amendment NC42.

44. Section 79(2) of the 1991 Act provides that the records required to be kept by virtue of section 79(1) must be kept up to date and in such form and manner “*as may be prescribed*”. Again, the power to prescribe the form and manner of those records is currently exercisable by the Welsh Ministers but would be transferred back to the Secretary of State by virtue of Amendment NC42.

45. Section 79(1A) would be inserted into the 1991 Act by section 46 of the Traffic Management Act 2004 (“the 2004 Act”). However, section 46 of the 2004 Act has not yet been brought into force. Section 79(1A) of the 1991 Act would provide that undertakers may include in their records the location of any item of apparatus belonging to them which is not required to be included in that record “*except in such cases as may be prescribed*”. Were section 46 of the 2004 Act to be brought into force, the power to except would currently be exercisable by the Welsh Ministers. However, Amendment NC42 provides that the power is to be transferred back to the Secretary of State.

46. Amendment NC40 does provide that, before making regulations under sections 79 or 80 of the 1991 Act, the Secretary of State must consult the Welsh Ministers.

47. The National Assembly for Wales (as it was) exercised its powers (now exercisable by the Welsh Ministers) in section 79 of the 1991 Act to make the

³⁸ “Apparatus” is defined for the purposes of Part 3 of the 1991 Act as “*any structure for the lodging therein of apparatus or for gaining access to apparatus*” (section 105(1) of the 1991 Act), with “*apparatus*” including (but not limited to) “*a sewer, drain or tunnel*” (section 89(3) of the 1991 Act). The same definition applies to the new Part 3A of the 1991 Act, to be inserted by the Bill, courtesy of the new clause 106(1) of the 1991 Act, also to be inserted by the Bill). Given the statutory definition, this would also include (but is not limited to) pipes, ducts, cables, covers etc.

³⁹ As per section 48(5) of the 1991 Act

Street Works (Records) (Wales) Regulations 2005. Those Regulations came into force on 1 December 2005 and remain in force. In relation to Wales, they prescribe the form of records of apparatus placed in streets to be kept by undertakers.

48. Amendment NC42 revokes the Street Works (Records) (Wales) Regulations 2005. It also extends the application of the Street Works (Records) (England) Regulations 2002, which currently applies in respect of England only and makes similar provision to the form and manner of records of apparatus, to Wales.

49. The Explanatory Notes that accompany the Bill state as follows⁴⁰:

“In order for NUAR to operate effectively across England and Wales, it is necessary to ensure consistency in approach across both of these parts of the United Kingdom. As such, powers to make regulations which supplement the provision made by these clauses (and the sections of the 1991 Act they amend) are only exercisable by the Secretary of State, who will make provision in respect of both England and Wales.

Currently, the existing powers to make regulations in section 79 of the 1991 Act are exercisable by the Welsh Ministers in relation to Wales. Given the need for a consistent approach, this clause transfers these regulation-making powers to the Secretary of State, who will be able to make provision in respect of both England and Wales. As set out below, wherever the Secretary of State proposes to make regulations in exercise of these powers, the Secretary of State must first consult the Welsh Ministers so as to ensure their views are taken into account.

Separate regulations have previously been made, by the Secretary of State and the Welsh Assembly, in exercise of these powers in section 79 of the 1991 Act. To reflect the new approach as set out above, subsection (3) of clause 141 amends the Street Works (Records) (England) Regulations 2002 so as to extend and apply to both

⁴⁰ [Explanatory Notes for Data Protection and Digital Information \(No. 2\) Bill](#) – paragraphs 972-974 - 7 December 2023

England and Wales, whilst subsection (4) revokes the Street Works (Records) (Wales) Regulations 2005.”⁴¹

50. The Welsh Government has indicated that it has “*constitutional policy concerns*” around regulation making powers under section 79 of the 1991 Act, so far as exercisable in relation to Wales, being transferred from Welsh Ministers back to the Secretary of State.⁴²

51. LCM No.3 indicates that discussions are being held at an official level between the Welsh and UK Governments to “*understand this in more detail*”⁴³. However, it does not elaborate further on the Welsh Government’s concerns, despite the First Minister’s view that it is not appropriate for him to recommend consent be given by the Senedd to the amendments relating to the new NUAR.⁴⁴

52. We think it is noteworthy that discussions are currently being held at an official level, rather than at Ministerial level, in relation to this subject as an escalation in discussions may have aided transparency. This is also despite the fact that LCM No.3 indicates that Ministerial level engagement has taken place in relation to other aspects of the Bill.⁴⁵

4. Welsh Government position on the Bill

53. The Welsh Government does not consider it appropriate to recommend consent be given in relation to any of the amendments identified by LCM No.3 “*until further discussions have been held with UKG...*” in relation to its concerns. The Welsh Government’s position is set out at paragraphs 20-22, and 24, of LCM No.3.⁴⁶

⁴¹ Explanatory Notes for Data Protection and Digital Information (No. 2) Bill – paragraphs 972-974 - 7 December 2023

⁴² Supplementary Legislative Consent Memorandum (Memorandum No.3) Data Protection and Digital Information Bill – paragraph 22

⁴³ Supplementary Legislative Consent Memorandum (Memorandum No.3) Data Protection and Digital Information Bill – paragraph 22

⁴⁴ Supplementary Legislative Consent Memorandum (Memorandum No.3) Data Protection and Digital Information Bill – paragraph 24

⁴⁵ Supplementary Legislative Consent Memorandum (Memorandum No.3) Data Protection and Digital Information Bill – paragraph 6

⁴⁶ Supplementary Legislative Consent Memorandum (Memorandum No.3) Data Protection and Digital Information Bill – paragraphs 20 – 22, and 24

54. It explains that the concerns outlined in the two previous LCMs remain in relation to the devolved implications of⁴⁷:

- a. The regulation making powers being given to the Secretary of State and Treasury under Part 3 of the Bill;
- b. The powers given to the Secretary of State and Treasury to publish a Code of Practice under clause 56 (now 78) in relation to the disclosure of information under DVS.⁴⁸

55. The Welsh Government also states that concerns remain in relation to the:

"...impact the Bill may have on the UK's Data Adequacy status and the independence of the Information Commissioner's Office."⁴⁹

56. In relation to the new clauses relating to the NUAR, the Welsh Government expresses constitutional policy concerns:

"...around regulation making powers under section 79 of the 1991 Act, so far as is exercisable in relation to Wales, being transferred from Welsh Ministers to the Secretary of State. Discussions are being held at an official level between WG and UKG to understand this in more detail."⁵⁰

5. Financial implications

57. LCM No.3 states the financial implications as follows:

"It is likely that there will be financial implications for Wales as a result of the new NUAR provisions. UKG are currently considering some form of charging model for use of the NUAR, based on a not-for-profit cost recovery model option. This may include some form of reduced

⁴⁷ Supplementary Legislative Consent Memorandum (Memorandum No.3) Data Protection and Digital Information Bill – paragraph 20

⁴⁸ Supplementary Legislative Consent Memorandum (Memorandum No.3) Data Protection and Digital Information Bill – paragraph 20

⁴⁹ Supplementary Legislative Consent Memorandum (Memorandum No.3) Data Protection and Digital Information Bill – paragraph 21

⁵⁰ Supplementary Legislative Consent Memorandum (Memorandum No.3) Data Protection and Digital Information Bill – paragraph 22

charges or exemption for public sector bodies and small and micro businesses. Officials are asking UKG for more details on this, the likely costs for Wales and what this will mean in practice.”⁵¹

6. Conclusion

58. It is our view that legislative consent:

- a. is not required for Amendments 79-80 (Digital Verification Services);
- b. is required for Amendments NC27, NC31, NC32 and 82-196 (Customer and Business Data (Smart Data)), and Amendments NC39-42, NS2 and 215 (the National Underground Asset Register).

59. The Welsh Government has concluded that it is not appropriate to recommend consent for any of the provisions outlined in LCM No.3 until it has held further discussions with the UK Government.⁵²

60. The current version of the Bill has implications in relation to devolved executive competence, particularly in relation to the return of delegated powers under section 79 of the 1991 Act (as amended by the Bill) from the Welsh Ministers to the Secretary of State. Whilst the Secretary of State is required to consult the Welsh Ministers before making regulations under this delegated power (as per section 80 of the 1991 Act, as amended by the Bill), no consent mechanism would be put in place.

61. Likewise, delegated powers are exercisable by the Secretary of State or the Treasury in devolved areas in Part 3 of the Bill, and the new Part 3A, and section 80, of the 1991 Act. In regard to these powers exercisable under the 1991 Act, the Secretary of State must consult the Welsh Ministers, but their consent is not required.

62. By extension, this has an impact on the role of the Senedd as regulations made under the returned power in the amended section 79 of the 1991 Act would not be required to be laid before the Senedd. Instead, they would be laid before Parliament. Likewise, regulations made by the Secretary of State or the

⁵¹ [Supplementary Legislative Consent Memorandum \(Memorandum No.3\) Data Protection and Digital Information Bill](#) – paragraph 23

⁵² [Supplementary Legislative Consent Memorandum \(Memorandum No.3\) Data Protection and Digital Information Bill](#) – paragraphs 20 – 22, and 24

Treasury under Part 3 of the Bill, or section 80 or the new Part 3A of the 1991 Act, (which engage devolved areas) would not be required to be laid before the Senedd.

63. Similarly, Amendment NC42 revokes the Street Works (Records) (Wales) Regulations 2005 and, in its place, extends the application of the Street Works (Records) (England) Regulations 2002, which currently apply in relation to England only, to Wales.

64. The Welsh Government indicates its concerns as regard the return of regulation making powers as per Amendment NC42, but explains that discussions are being held at an official level, rather than at Ministerial level.⁵³

65. Finally, Standing Order 29.3(ii) states that a legislative consent memorandum must, “*specify the extent to which the Bill makes (or would make) relevant provision*”.⁵⁴ It is noted that LCM No.3 lacks detail in relation to the effect of many of the amendments identified as requiring legislative consent, particularly in regard to amendments to Part 3 of the Bill and those concerning DVS. This inhibits transparency and has a detrimental impact on the ability of the Senedd to effectively scrutinise LCM No.3 and the effect of UK Parliament legislation in relation to devolved matters, and hold the Welsh Government to account.

Conclusion 4. The lack of detail and transparency in LCM No.3 about the amendments to the Bill identified as requiring the legislative consent of the Senedd has hindered our ability to assess the policy implications of these changes.

66. With regards to Data Adequacy, we previously recommended that:

“In light of the potential risks outlined by the Welsh Government to the UK’s EU data adequacy decision, we call on the Welsh Government to provide regular updates to the Committee on the Bill’s impact on UK-EU relations, including intergovernmental

⁵³ [Supplementary Legislative Consent Memorandum \(Memorandum No.3\) Data Protection and Digital Information Bill](#) – paragraph 22

⁵⁴ [Standing Orders of the Welsh Parliament](#) – Standing Order 29

discussions on the Bill as it progresses through the UK Parliament and on an ongoing basis should it be enacted.”⁵⁵

67. In response, the First Minister noted that:

“I will continue to provide updates on the potential impact of the Bill on EU-UK relations through the LCM process, in particular regarding concerns around the EU’s data adequacy decision, until such time that I am content that the Bill will not impact on EU data adequacy.”⁵⁶

68. The First Minister has since shared with us an academic report on understanding the risks to cross border transfers of personal data between the UK and EU.⁵⁷ No commentary accompanied the report to indicate the Welsh Government’s view of its findings, but we welcome this proactive information sharing by the First Minister.

Conclusion 5. We welcome the proactive steps taken by the First Minister to share information relating to the UK’s EU Data Adequacy decision.

69. It should be noted that we also welcomed the First Minister’s response to the recommendation outlined above in our Annual Report on International Relations.⁵⁸ In that report, we also called on the Welsh Government to routinely include detailed analysis of the Trade and Cooperation Agreement (TCA) where EU-UK matters are cited in memoranda, as provided during the scrutiny of the Bill.

70. In response, the Welsh Government accepted this recommendation by noting:

“The example of the potential impact of the Data Protection and Digital Information (No.2) Bill on the TCA is a very good one for cases

⁵⁵ [Culture, Communications, Welsh Language, Sport, and International Relations Committee report on The Data Protection and Digital Information \(No. 2\) Bill Legislative Consent Memoranda No.1 and No.2 – July 2023](#)

⁵⁶ [Welsh Government response to Supplementary Legislative Consent Memorandum – 5 September 2023](#)

⁵⁷ [Understanding the risks to cross border transfer of personal data: EU-UK Data Adequacy – LSE Law School and Maynooth University, National University of Ireland Maynooth – September 2023](#)

⁵⁸ [Culture, Communications, Welsh Language, Sport, and International Relations Committee Annual Report on International Relations – November 2023 – paragraph 52](#)

where proposed UK legislation needs to take account of the Agreement. I am happy to agree that Welsh Government LCMs on Bills that impact on the TCA should set out our assessment of such an impact.”⁵⁹

Conclusion 6. We note that subsequent memoranda do not contain an updated assessment of the TCA in relation to amendments made to the Bill.