

Rt Hon Mark Drakeford MS
First Minister of Wales

15 March 2024

Dear Mark

Report on the Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 3) on the Data Protection and Digital Information Bill

Thank you for your letter dated 8 March 2024, which we considered at our meeting on 11 March, responding to our report on the Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 3) on the Data Protection and Digital Information Bill (report on Memorandum No. 3). We welcome the responses you have provided to the recommendations in our report on Memorandum No. 3.

This letter will arrive with you shortly before your planned resignation as the First Minister of Wales. I would like to take the opportunity to thank you for your engagement with the Committee in respect of the significant and important matters which fall within our respective responsibilities.

Your letter raises a number of issues on which we would be grateful to receive further clarity and detail. As such, we look forward to receiving a response from your successor to the questions in the Annex at the earliest opportunity and in good time to assist our consideration of any further supplementary legislative consent memoranda for the Bill.

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

Yours sincerely,

Huw Irranca-Davies

Huw Irranca-Davies

Chair



Annex

Question 1. On the subject of legislative consent, to date we have held opposing views on whether the purpose of clauses 74 and 78 (clauses 54 and 56 as introduced) relating to Digital Verification Services (DVS) make provision within the legislative competence of the Senedd. The Welsh Government remains of the view that these provisions are within the Senedd's legislative competence, in so far as these clauses relate to devolved matters of public services, economy and business. You also state that:

"Indeed, on 6 February Julia Lopez MP, Minister of State for Data and Digital Infrastructure, wrote to update me on their own devolution analysis on this Part of the Bill. Previously their position had been that provisions within this Part of the Bill were reserved under the internet services reservation and therefore did not require consent of the Senedd. Her letter noted that under the Welsh Devolution Guidance Note consent should be sought when conferring or imposing reserved functions on a devolved Welsh authority. She added that as a result, whilst UKG maintain that these functions are reserved, UKG are now of the view that agreement should be sought for clause 74 and clause 78(3)."

a) Please would you share with us the correspondence received on 6 February 2024 from Julia Lopez MP, the Minister of State for Data and Digital Infrastructure.

Your letter highlights the continued view of the UK Government that clauses 74 and 78 are reserved. However, you also explain that it is the UK Government's Devolution Guidance Note, **Parliamentary and Assembly Primary Legislation Affecting Wales**, which includes a requirement for consent to be sought when provisions in a Bill confer or impose *reserved* functions on a devolved Welsh authority. This appears to be a different requirement to that of the Sewel convention, which recognises that the UK Parliament will not normally legislate in relation to Wales in regard to *devolved* matters. It also differs from the requirements of the Senedd's Standing Orders, specifically Standing Order 29.1 which states that, for the purpose of engaging Standing Order 29, a "relevant Bill" must make provision for any purpose "within the legislative competence of the Senedd" (or modify the Senedd's legislative competence).

b) We would welcome your views on the different criteria and approaches that appear to be applied by the UK Government, the Welsh Government and the Senedd's Standing Orders when assessing whether a Bill's provisions require the Senedd's legislative consent.

Question 2. Recommendation 2 in our report on Memorandum No. 3 reiterates a recommendation we had previously made in our **first report**, that we should be provided with the Welsh Government's assessment of the devolved implications of the regulation-making powers in Part 3 of the Bill. While we acknowledge that the response provided sets out a factual explanation about the regulation-making powers in Part 3, we do not consider that it provides an assessment of their devolved

implications. Please would you provide details of any devolved implications of the regulation-making powers given to the Secretary of State and the Treasury in Part 3 of the Bill.

Question 3. In response to recommendation 3 in our report on Memorandum No. 3, which relates to your “constitutional policy concerns” with the National Underground Asset Register (NUAR) provisions in the Bill, you state that you wrote to the Minister of State on 23 January 2024 setting out the Welsh Government’s concerns around the UK Government’s proposed legislative approach and the impact of the NUAR provisions on Welsh Ministers’ powers.

a) Please would you share with us the correspondence sent on 23 January 2024 to the Minister of State for Data and Digital Infrastructure.

b) In her letter on 6 February 2024, did the Minister of State address the Welsh Government’s concerns regarding the NUAR provisions? If not, have the concerns been addressed in subsequent correspondence (i.e. the 1 March 2024 letter referred to in the responses to recommendations 8 and 10) or is the Welsh Government still awaiting a response on this matter?

Question 4. In response to recommendation 8 and recommendation 10 in our report on Memorandum No. 3, you refer to correspondence received from the Minister of State on 1 March 2024 in respect of the UK Government declining to share with the Welsh Government a copy of its risk assessment on the potential impact of the Bill on the UK’s EU data adequacy decision, and in respect of the UK Government’s engagement with the European Commission on the Bill. Please would you share with us the correspondence received on 1 March 2024.