

Julia Lopez MP

Minister of State for Data and Digital Infrastructure

15 March 2024

Dear Julia

### The Data Protection and Digital Information Bill

At our meeting of the Legislation, Justice and Constitution Committee on 11 March 2024 we considered a letter dated 8 March 2024 from the Rt Hon Mark Drakeford MS, the First Minister of Wales, in which he responds to my Committee's 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).

The letter raises a number of matters on which we would be grateful to receive further clarity. Any detail that you would be able to provide would be very helpful to my Committee as we consider the Welsh Government's legislative consent memoranda for the Bill. Given our work is time-critical and linked to the Bill's passage through the UK Parliament, we would welcome a response by 25 April 2024.

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

Yours sincerely,



Huw Irranca-Davies

Chair



## Annex

**Question 1.** On the subject of legislative consent, to date we have held opposing views to the Welsh Government 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. In his letter to us on 8 March 2024, the First Minister confirmed that the Welsh Government remained of the view that these provisions are within the Senedd's legislative competence, in so far as they relate to the devolved matters of public services, economy and business. The First Minister also told us:

*"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) To assist our understanding, please would you share with us the correspondence you sent to the Welsh Government on 6 February 2024.

In his letter, the First Minister highlights your continued view that clauses 74 and 78 are reserved. However, the First Minister also explains 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.** In response to recommendation 3 in our report on Memorandum No. 3, which relates to the Welsh Government's "constitutional policy concerns" with the National Underground Asset Register (NUAR) provisions in the Bill, the First Minister states that he wrote to you 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. Have you responded to the Welsh Government's concerns and, if so, will you share the correspondence with us? If not, when do you anticipate that you will respond to the Welsh Government?

**Question 3.** In response to recommendation 8 in our report on Memorandum No. 3, the First Minister told us that the Welsh Government has not received a copy of the UK Government's risk assessment on the potential impact of the Bill on the UK's EU data adequacy decision and that you had declined to share it because it is important for UK Government officials to be able to conduct candid discussions during the policy-making process. You will be aware that there may be implications for Wales should the adequacy decision be lost. Please would you share with us the correspondence you sent to the First Minister on 1 March 2024 and/or further explain your decision not to share your risk assessment with the Welsh Government.