

LEGISLATIVE CONSENT MEMORANDUM

Digital Economy Bill

1. This Legislative Consent Memorandum is laid under Standing Order (“SO”) 29.2. SO29 prescribes that a Legislative Consent Memorandum must be laid, and a Legislative Consent Motion may be tabled, before the National Assembly for Wales if a UK Parliamentary Bill makes provision in relation to Wales for any purpose within, or which modifies the legislative competence of the National Assembly.
2. The Digital Economy Bill (the “Bill”) was introduced in the House of Commons on 5 July 2016. The Bill can be found at:
<http://services.parliament.uk/bills/2016-17/digitaleconomy.html>

Policy Objective

3. The UK Government’s stated policy objective is to make the UK a world leader in digital provision – a place where technology continually transforms the economy, society and government.

Summary of the Bill

4. The Bill is sponsored by the Department for Culture, Media and Sport.
5. The Bill contains measures on providing a broadband universal service for the United Kingdom, additional powers for Ofcom in respect of information provision, consumer switching and automatic compensation in relation to communication matters, a new Electronic Communications Code and other communications infrastructure matters, measures to introduce better controls on online pornography and to protect citizens from nuisance calls, measures related to digital intellectual property, powers to share data between public authorities and some measures relating to the BBC.
6. The Bill makes provision to:
 - give every household a legal right to request fast broadband connection;
 - give consumers and businesses better information about communication services, easier switching and compensation if things go wrong;
 - cut the costs for new infrastructure and simplify planning rules;
 - stronger enforcement of direct marketing laws, and civil penalties for online pornographers who do not verify the age of their customers;
 - remove legal barriers to digital government while reinforcing data protection laws.

Provisions in the Bill for which consent is required

7. The Bill is in 7 parts. The consent of the National Assembly for Wales is sought for certain of the provisions included in the Bill at introduction and introduced by amendment at Committee and Report Stage on data sharing by public authorities contained in Part 5: Digital Government.
8. As introduced there were a number of issues about which clarification was sought. Subsequent amendments to the Bill were tabled by Matt Hancock MP, Minister of State for Digital and Culture during Committee Stage and appear on the notice of amendments as at 18 October 2016. Further amendments were tabled for Report stage by Karen Bradley, MP, Secretary of State for Culture, Media and Sport and appear in the Notices of Amendments as at 21 November 2016.
9. The latest version of the Bill [Bill 87 2016-17 as amended in Committee] is available at the Bill documents link above. For ease of reference and consistency, all references to clause numbers are to that version of the Bill, regardless of whether they were included in the Bill at introduction or by amendment.
10. Part 5, Chapter 1: Public service delivery (clauses 29 to 37) makes provision for specified public authorities, including those in Wales, to share data for the purposes of improving the delivery of public services. The clauses provide a permissive data sharing gateway to enable public authorities specified in regulations, to share personal information for tightly constrained reasons which will also be prescribed in regulations. To use the gateway, the proposed sharing of information must be for the purpose of objectives which will be set out in regulations. For an objective to be specified in regulations it must meet two conditions. The first condition is that it should be for the purpose of the improvement or targeting of a public service provided to individuals or households, or the facilitation of the provision of a benefit (whether or not financial) to individuals or households. The second condition is that the objective has as its purpose the improvement of the well-being of individuals or households. The Bill provides the Welsh Ministers with the executive powers to specify the bodies in Wales to which the data sharing provisions in relation to improving public services will apply. Similarly the Welsh Ministers will be enabled to specify in regulations the objectives for which specified Welsh public authorities can disclose information where those objectives fall within the legislative competence of the National Assembly. The UK Ministers retain the power to specify objectives on a UK wide basis, but there is a duty on UK Ministers to consult with the Welsh Ministers on issues that impact on Wales. Any regulations made by the Welsh Ministers under chapter 1 must be approved by resolution of the National Assembly.
11. Clause 30 of the Bill provides for data sharing to support the targeting of fuel poverty support schemes and authorises the disclosure of information to gas and electricity suppliers for the purpose of enabling them to provide assistance to people under government mandated fuel poverty support

schemes. An amendment to clause 30 allows for information to also be disclosed to gas and electricity suppliers in connection with grant schemes made by the Welsh Ministers under section 15 of the Social Security Act 1990 to assist people living in fuel poverty through improvements in energy efficiency.

12. Part 5, Chapter 3: Debt owed to the public sector (clauses 40 to 47) makes provision for specified public authorities, including those in Wales, to share data for the purposes of helping individuals to more effectively manage their debt owed to the public sector. The relevant provisions will enable specified public authorities to share information to help improve efficiency and create a more informed view of a customer's individual circumstances, and their ability to pay. The Bill provides the Welsh Ministers with the executive powers to specify the bodies in Wales to which the provisions in relation to debt owed to the public sector will apply. Regulations made by the Welsh Ministers must be approved by resolution of the National Assembly.
13. Part 5, Chapter 4: Fraud against the public sector (clauses 48 to 55) makes provision for specified public authorities, including those in Wales, to share data for the purposes of tackling fraud against public sector organisations. The relevant provisions will enable specified public authorities to share information to detect and prevent losses to the public sector from fraudulent activity. The Bill provides the Welsh Ministers with the executive powers to specify the bodies in Wales to which the provisions in relation to fraud against the public sector will apply. Regulations made by the Welsh Ministers must be approved by resolution of the National Assembly.
14. There are a number of safeguards in the Bill to ensure schemes to better manage debts and prevent fraud operate safely. In accordance with codes of practice that will be issued under the Bill any new information sharing arrangements must first be piloted and carefully assessed. Clauses 45 and 53 of the Bill provide that after three years there will be a review of the operation of chapters 3 and 4 relating to the sharing of data for the purposes of debt and fraud by the relevant UK Minister. In carrying out this review the Minister must consult, amongst others, the Welsh Ministers. On completion of the review the Minister must publish a report of its outcome and a copy of the report must be laid before the National Assembly for Wales. The Bill includes power for the Minister to amend or repeal the provisions within chapters 3 and 4 depending on the outcome of the review. In recognition of the fact that the Welsh Government may be making active use of these powers exclusively for devolved purposes, amendments have been introduced to clauses 45, 47, 53 and 55 requiring the UK Minister to obtain the consent of the Welsh Ministers to any regulations which amend or repeal chapters 3 and 4, or which make amendments to those chapters which affect the way in which data is shared between Welsh public bodies.

15. Part 5, Chapter 5: Sharing for research purposes (clauses 56 to 63) makes provision for use of de-identified (de-personalised) data held by public authorities to which the provisions in chapter 5 apply, to support accredited researchers to access and link data in secure facilities to carry out research for public benefit. The Statistics Board (that is, the UK Statistics Authority) must accredit those hoping to make use of the powers in the Bill to conduct research, including those public authorities providing the data, any organisations involved in the de-identification process, and the individual researchers. Accreditation is to ensure that those handling the data are doing so for a proper purpose and have in place the necessary safeguards to protect data.
16. It is the view of the Welsh Government that consent is required for these provisions because they fall within the legislative competence of the National Assembly for Wales in so far as they relate to the subjects of education, vocational, social and physical training and the careers services (subject heading 5); environmental protection, including pollution, nuisances and hazardous substances (subject heading 6); fire and rescue services (subject heading 7); promotion of health; prevention, treatment and alleviation of disease, illness, injury, disability and mental disorder and the provision of health services, including medical, dental, ophthalmic, pharmaceutical and ancillary services and facilities (subject heading 9); housing and encouragement of home energy efficiency and conservation, otherwise than by prohibition or regulation (subject heading 1); powers and duties of local authorities and their members and officers and local government finance (subject heading 12); access to information held by open access public authorities (subject heading 14); social welfare including social services; protection and well-being of children (including adoption and fostering) and of young adults; and care of children, young adults, vulnerable persons and older persons, including care standards (subject heading 15); and devolved taxes (subject heading 16A) in Part 1, Schedule 7 to the Government of Wales Act 2006.

Reasons for making these provisions for Wales in the Digital Economy Bill

17. This Bill covers both devolved and non-devolved matters and the majority of the provisions in relation to data sharing will extend to England, Northern Ireland, Scotland and Wales. The proposed legislation will allow data sharing for specified purposes between specified public authorities (including cross border data sharing). Making these provisions for Wales in this Bill will facilitate the sharing of data between organisations across the UK, including between devolved and non-devolved agencies, which will be of benefit to Wales. Research and statistics often require a UK wide approach to ensure consistency. In terms of coherence it is considered that legislating via a UK wide Bill is the most effective way of proceeding with this matter, as ensuring that there is consistent legislation would minimise the risk of unnecessary barriers being put in place by organisations.

Financial implications

18. There are no significant financial implications for Wales. Data sharing between public service organisations may result in efficiency savings.

Conclusion

19. It is the view of the Welsh Government that it is appropriate to deal with these provisions in this UK Bill as it represents the most practicable and proportionate legislative vehicle to provide a UK wide approach to ensure consistency for data-sharing which can only be done in a UK bill.

Mark Drakeford AM
Cabinet Secretary for Finance and Local Government
November 2016