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Ysgrifennydd y Cabinet dros Gyllid a Llywodraeth Leol
Cabinet Secretary for Finance and Local Government



Llywodraeth Cymru
Welsh Government

John Griffiths AM
Chair, Equalities, Local Government and Communities Committee
National Assembly for Wales
Cardiff Bay
Cardiff
CF99 1NA

9 January 2017

Dear John,

Digital Economy Bill

I am writing in response to your letter of the 16 December regarding the Legislative Consent Memorandum for the above Bill. You asked two questions to assist the Committee in its consideration and I am providing a substantive response in this letter.

The extent to which the human rights implications of the relevant clauses of the Bill have been considered during the passage of the Bill through Parliament

Upon introduction of the Bill to the Lords, in accordance with section 19(1)(a) of the Human Rights Act 1998, Lord Ashton of Hyde (the Minister in charge of the Bill) declared that in his view the provisions of the Bill are compatible with the Convention rights.

Within the explanatory notes that accompany the Bill the UK Government addresses the matter of the Bill's compliance with human rights legislation. In relation to the relevant clauses the notes state;

"The digital government provisions cover a number of different areas but the broad purpose of the provisions is to provide for more effective data sharing between particular bodies in government in specified circumstances. The collection, storage and disclosure of identifying personal information by government about an individual in these circumstances will engage with that person's Article 8 rights. Any interference with an Article 8 right can be justified on the basis that it is in accordance with the law and is for a legitimate aim.

The digital government provisions are subject to detailed legislative frameworks and safeguards to ensure data is disclosed in specific circumstances by and to specified bodies for specified purposes. The safeguards also require the bodies to handle data in compliance with the Data Protection Act 1998 and the Regulation of Investigatory Powers Act 2000. The benefit of more effective data sharing between particular bodies provided for by Part 5 and

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

safeguards set out in each provision are considered to provide sufficient protection to persons whose Article 8 rights may be affected and Part 5 is considered to be compatible with the article.” (paragraphs 458 and 459).

The relevant clauses have also been discussed at the various stages of the consideration of the Bill.

The extent to which the Welsh Government is satisfied that the clauses comply with human rights law and how it reached its conclusion

The Welsh Government has reviewed the UK Government’s appraisal of the compliance of the relevant clauses with the convention rights as stated by Lord Ashton and as set out in the explanatory notes to the Bill, and is content.

As the committee has recognised, the Bill contains a number of safeguards designed to ensure the safe sharing of data. The relevant clauses will operate within the existing data protection framework established under Data Protection Act 1998, with the Bill explicitly providing that the sharing of personal information for the prescribed purposes must be in accordance with that Act (clause 33(8), 42(8), 50(8) and 58(2)). In addition, in relation to the sharing of personal data for the purposes of public service delivery, debt and fraud, further specific provision is made within clauses 34, 43 and 51 regarding the confidentiality of personal information. These clauses are aimed at ensuring that personal information received under the relevant powers may only be disclosed to appropriate persons and used for appropriate purposes, and the clauses introduce criminal offences for unlawful disclosure of personal information, where the unlawful disclosure is made knowingly or recklessly.

The Bill also provides for codes of practices to be issued regarding the disclosure of personal information under the relevant powers. Any such codes, which must be issued by the UK Government, must be consistent with the Information Commissioner’s data sharing code issued under section 52B of the Data Protection Act 1988, and are to be issued in consultation with the Information Commissioner and the devolved administrations. On 19 October 2016 the UK Government published draft Codes of Practice, upon which the Welsh Government has commented;

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/567070/Public_Service_Delivery_Fraud_and_Debt_Code_of_Practice_2_1.pdf

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/567074/Research_Code_and_Accreditation_Criteria_1_2.pdf

These Codes give clarity and transparency over how the powers in Part 5 of the Bill will operate. They provide for strict processes to be complied with when sharing data under the relevant clauses. Public bodies enabled to share personal data in accordance with the relevant clauses must have regard to the Codes when making use of these powers.

It will be for the Welsh Ministers to prescribe in regulations, which will be subject to the approval of the National Assembly, which Welsh public bodies are to be enabled to avail themselves of the data sharing powers in relation to public service, delivery, debt and fraud. In accordance with section 81 of the Government of Wales Act 2006, any regulations approved by the National Assembly will need to be compliant with human rights legislation.

The Welsh Government considers that sufficient protection is afforded by the safeguards included within the provisions to persons whose article 8 rights may be affected by the

relevant clauses, and is therefore satisfied that the relevant clauses are compliant with convention rights.

Potential revision to the Memorandum

I thought I would take this opportunity to also advise you of my expectation of laying a revised Memorandum. I am currently discussing with the UK Government an amendment to clause 65 of the Bill This clause currently enables the disclosure of non-identifying information (i.e. not personal information) by Her Majesty's Revenue and Customs where it is considered the disclosure would be in the public interest. The amendment being discussed would enable the same disclosures to be made by the Welsh Revenue Authority thus giving parity across UK tax jurisdictions.

I hope that an amendment to the Bill can be agreed and tabled as soon as possible. I will then lay a Revised Legislative Consent Memorandum. I am writing as early as possible to ensure that the Committee is aware of this prior to finalising their report. The Government's view is that parity for the Welsh Revenue Authority is an important position to have secured and will tend to support any revised LCM on that basis.

A handwritten signature in dark ink, reading 'Mark Drakeford'. The signature is written in a cursive, slightly stylized font.

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