

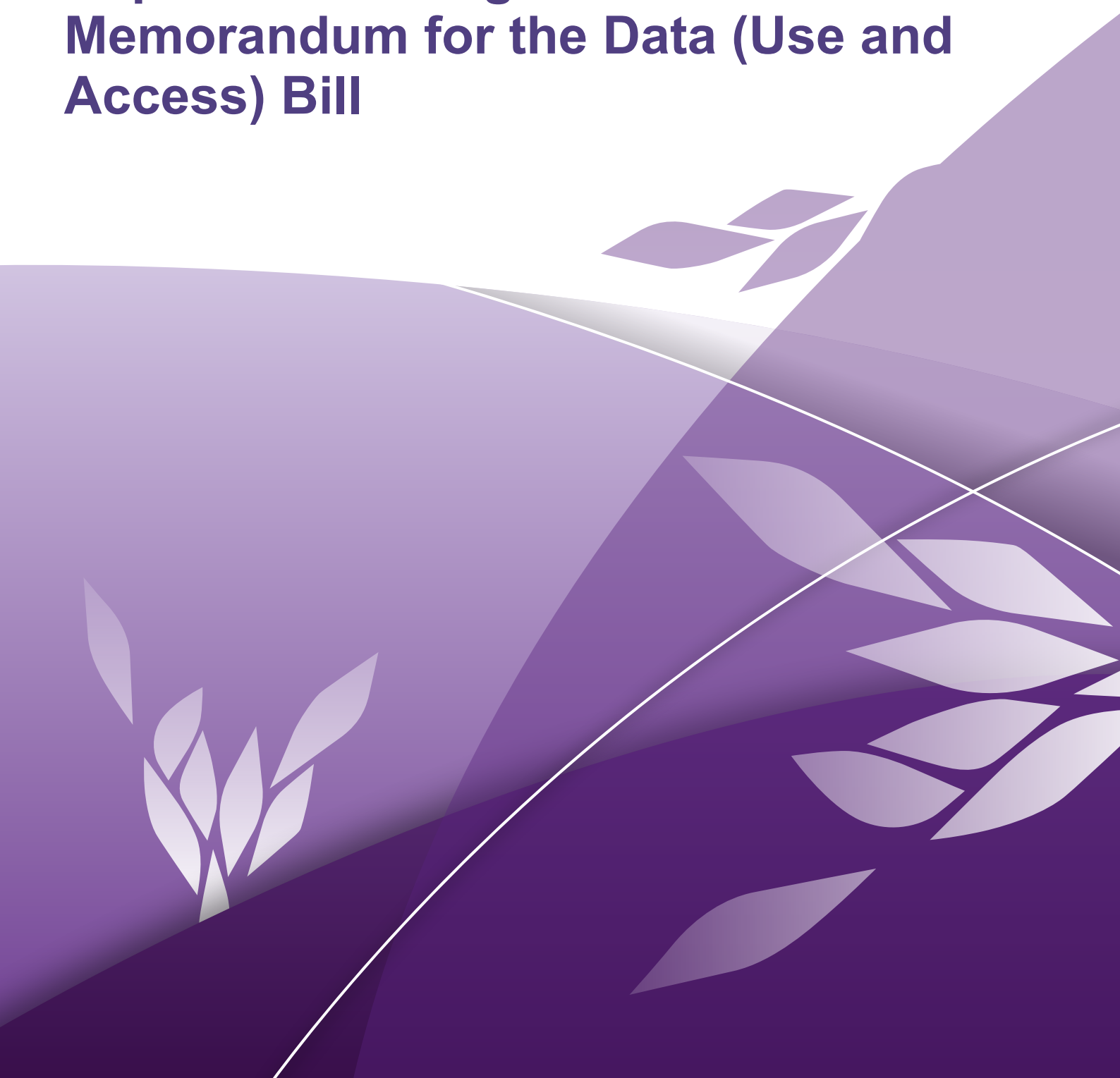


The Scottish Parliament  
Pàrlamaid na h-Alba

Published 29 January 2025  
SP Paper 731  
2nd Report, 2025 (Session 6)

## **Economy and Fair Work Committee**

# **Report on the Legislative Consent Memorandum for the Data (Use and Access) Bill**



**Published in Scotland by the Scottish Parliamentary Corporate Body.**

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# Economy and Fair Work Committee

To consider and report on matters within the responsibility of the Deputy First Minister and Cabinet Secretary for Economy and Gaelic, with the exception of Gaelic; and on matters relating to just transition.



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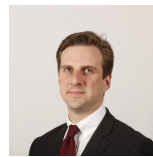
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and Unionist Party



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# Introduction

1. The [Data \(Use and Access\) Bill](#) is a UK Government Bill introduced in the House of Lords on 23 October 2024.
2. A [Legislative Consent Memorandum](#) (LCM) was lodged on 22 November by Kate Forbes, Deputy First Minister and Cabinet Secretary for Economy and Gaelic.
3. The Economy and Fair Work Committee was [designated as lead committee on 3 December 2024 by the Parliamentary Bureau](#).

# The Provisions of the Data (Use and Access) Bill

4. The [Explanatory Notes](#), which accompany the Bill, state its purpose is “to harness the power of data for economic growth, support a modern digital government, and improve people's lives”.<sup>1</sup>
5. The Bill would make changes to the legal regime for processing personal and, in some cases business, data. It touches on a wide range of policy areas including—
  - provision for “smart data” schemes – which would enable customers to request that third parties share their data to provide services like account switching;
  - establishment of a framework for the regulated provision of “digital verification services” (for identity verification);
  - creation of a register for underground infrastructure such as pipes and cables in England and Wales (a Scottish register already exists);
  - enabling births and deaths to be registered electronically in England and Wales;
  - changes to the UK legal framework for data protection to make it clearer and more flexible;
  - changes to the structure of the Information Commissioner's Office; and
  - miscellaneous provisions covering the way data is used.

# Legislative Consent Memorandum

6. The Sewel Convention is the convention that the UK Parliament will not normally legislate on matters devolved to the Scottish Parliament without its consent. [Chapter 9B of the Parliament's Standing Orders](#) sets out the rules and procedures for seeking legislative consent under the convention.
7. The Data (Use and Access) Bill falls under Rule 9B.1.1 of the Standing Orders, as it makes provisions applying to Scotland for purposes within the legislative competence of the Parliament.
8. The LCM was [lodged on 22 November by Kate Forbes, Deputy First Minister and Cabinet Secretary for Economy and Gaelic](#).

## Previous legislation in this area

9. The LCM states that the provisions of the Bill where consent is sought were previously contained in the [UK Data Protection and Digital Information \(No. 2\) Bill](#).
10. The Committee considered two LCMs in relation to the earlier Bill in 2023 and, [following its report](#), the Parliament consented to the relevant provisions.
11. The UK Data Protection and Digital Information (No. 2) Bill, however, fell at the General Election.

## Scottish Government views on provisions within the Bill

12. In relation to the current Bill, the Scottish Government states that, “whilst the Bills are not identical, the provisions for which consent is sought are either replicated or remain broadly the same.”<sup>2</sup>
13. The UK Government states the following clauses engage the legislative consent process—
  - **Clauses 1 - 11, 13, and 18-26**
    - These relate to regulation-making powers to provide for the secure sharing of data, at the customer's request, with authorised third-party providers of services. This would enable services such as account switching. The provisions are considered to engage the legislative consent process because they involve regulating the sharing of business data as well as customer data.
  - **Clause 48**
    - This part of the Bill deals with the regulation of digital verification services (for identity verification). Clause 48 would create a criminal offence if information provided by Revenue Scotland was shared beyond the



regulated services provider. The legislative consent process is engaged because powers and duties relating to Revenue Scotland are within devolved competence.

- **Clause 121**

- This amends section 35 of the UK Digital Economy Act 2017 to extend data sharing powers for the purpose of improving public service delivery to "undertakings" (businesses and charities). Where the public services and related bodies fall within the competence of the Scottish Parliament, this engages the legislative consent process.

14. The Scottish Government agrees with the UK Government's assessment on the above clauses. It also, however, considers that **clause 45(3)** requires legislative consent.
15. This clause relates to the disclosure of information about individuals to regulated digital verification service providers. The power to share information would overrule most existing statutory restrictions. Because this would include restrictions in devolved legislation, the Scottish Government argues that legislative consent is required.
16. **The Scottish Government recommends that consent be given to all clauses identified in the LCM, including clause 45(3).**
17. **The draft Motion, which will be lodged by the Deputy First Minister and Cabinet Secretary for Economy and Gaelic, is—**

**“That the Parliament, in relation to the Data (Use and Access) Bill, consents to Clauses 1-11, 13, 18-26, 45(3), 48 and 121, so far as these matters fall within the legislative competence of the Scottish Parliament and alter the executive competence of Scottish Ministers, being considered by the UK Parliament.”**

# Committee Consideration

## Economy and Fair Work Committee

18. The Economy and Fair work Committee considered its approach to scrutiny of the LCM in private at its meeting on [Wednesday 8 January](#).
19. As the provisions of the Bill broadly replicate those considered, reported on and consented to previously, the Committee agreed not to seek further evidence on Scottish Government's position as set out in the LCM.

## Delegated Powers and Law Reform Committee

20. The Delegated Powers and Law Reform Committee (DPLRC) considered the delegated powers in the Bill exercisable within devolved competence at its meeting on 14 January and reported on the LCM in its [6th Report, 2025](#).
21. It raised no issues in relation to the powers outlined in the Scottish Government's LCM.
22. Although not subject to the LCM, the DPLRC also considered the following three clauses, given their links to areas of devolved competence—
  - Clause 49 (Code of Practice about the disclosure of information by public authorities);
  - Clause 133 (Power to make consequential amendments); and
  - Clause 137 (power to make transitional, transitory and saving provision) given their links to areas of devolved competence.
23. The DPLRC raised no issues in relation to these powers.

# Conclusion

24. **The Committee notes the provisions of the Bill broadly replicate those previously consented to by the Parliament.**
25. **The Committee therefore recommends the Parliament gives its consent to the clauses identified in the Scottish Government's Legislative Consent Memorandum.**

- [1] UK Parliament. (2024, October 23). Data (Use and Access) Bill - Explanatory Notes. Retrieved from <https://publications.parliament.uk/pa/bills/lbill/59-01/040/en/5901040en01.htm>
- [2] Scottish Government. (2024, November 22). Data (Use and Access) Bill - Legislative Consent memorandum. Retrieved from <https://www.parliament.scot/bills-and-laws/legislative-consent-memorandums/data-use-and-access-bill>



