



Ein cyf/Our ref: IM/FM -/00016/24

Julia Lopez MP
Minister for Data and Digital Infrastructure
Department for Science, Innovation and Technology
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23 January 2024

Dear Julia Lopez,

I am writing in response to your letter dated 9 January, regarding the Data Protection and Digital Information (DPDI) Bill and the inclusion of a provision for the National Underground Asset Register.

I note that your devolution analysis indicated that legislative consent is required for the NUAR provisions and can confirm these were included in the Supplementary Legislative Consent Memorandum laid in the Senedd on 13 December.

Welsh Government officials have been actively engaged in the development of the new NUAR digital service. However, while we are supportive of the overall policy intent of the NUAR, we have significant concerns about the UK Government's proposed legislative approach to operationalise the service.

Under clause 141, Transfer of certain functions to Secretary of State, it is proposed that certain powers to make regulations under section 79 of the New Roads and Street Works Act (NRSWA) 1991 be transferred from the Welsh Ministers to the Secretary of State. These powers relate to information to be recorded about apparatus in streets.

In your letter you state the UK Government has proposed the transfer of powers to enable the Secretary of State to make the regulations that will set out the detail around how the NUAR will operate in practice. You believe this is needed to enable a consistent legislative framework across England and Wales to underpin the operation of the NUAR, ensuring the information entered into and shared through the NUAR will be "consistent in content and format in respect of all apparatus, irrespective of the country it is located within".

It is incredibly disappointing that, despite being involved in the development of the new NUAR digital service, we were not made aware of the proposed changes to Welsh Ministers' powers until the day before the amendments were tabled in Parliament. Exchanging views on provisions which engage the legislative consent process as early as possible, with the view to resolving consent issues before introduction, is one of the key principles of engagement as agreed by the Inter-ministerial Standing Committee.

The regulation powers under the NRSWA 1991 sit with Welsh Ministers as part of devolution, with the powers originally transferred to the then National Assembly for Wales in 1999. The proposed removal of a devolved executive function from the Welsh Ministers represents a completely inappropriate reversal of devolution. Not only has this transfer been proposed without prior consultation with Welsh Ministers, it also shows little regard for the devolved competences of the Welsh Government and our legislature, going against the jointly agreed principles, as outlined within the [Review of Intergovernmental Relations](#), of mutual respect and trust.

While your letter states that consistency is crucial to ensure the NUAR operates effectively, I do not consider this to be a valid reason for the transfer of powers from Welsh Ministers. Welsh Ministers have exercised their powers under section 79 of the NRSWA 1991 and the form of records prescribed, and the exceptions prescribed for the recording of location, are consistent with those set out in the regulations applicable to England. There is no valid reason why this approach would differ in the future.

As such, I would argue that the removal of Welsh Ministers' powers would be a disproportionate approach to ensuring information consistency. There are other more pragmatic, proven means of inter-governmental working in place that allow us to discharge our functions in a coherent manner, whilst achieving shared policy objectives.

A 'consult' mechanism has been included within the NUAR provisions, which would require the Secretary of State to consult Welsh Ministers prior to exercising these powers in future. However, a consultation requirement places no binding commitment on the current or any future UK Government to take our views into account following consultation and does not suitably reflect devolution. Therefore, this is not constitutionally acceptable and cannot compensate for the removal of powers which Welsh Ministers already hold.

Furthermore, the amendments to section 79 of the NRSWA 1991 within the DPDI Bill do not set out that the "record of information" is to be used or recorded solely for the purposes of the NUAR. Nor is there anything to indicate that these records cannot be used for other purposes beyond the remit of the NUAR. This means that whilst the record of information is crucial for the NUAR, any regulations made by Welsh Ministers under their existing powers could have a purpose beyond that of the NUAR. This, again, suggests that the removal of Welsh Ministers' powers would be a disproportionate approach.

Finally, I am concerned our ability to control our own data in Wales will be negatively impacted by these provisions, where they provide for the Secretary of State to hold the data contained within the register of information. Bodies in Wales currently have access to such data and it is important the right to access the data and make changes to it, as and when required, is retained. The provisions, as drafted, could result in Welsh Government and Welsh public bodies being unable to freely access and use data generated in Wales.

The Welsh Government is supportive of NUAR from a policy perspective as it supports our Strategic Infrastructure Steering group (SIS) project in Wales, which improves efficiency in planned works between utility companies and local authorities, as well as improved planning for utility companies on future housing and industrial developments. We must be able to determine and collect the data that is required for our own priorities, which may mean that we require additional information to be recorded, compared to what is required in England for NUAR.

On a more positive note, I understand that our respective officials met on 11 January to discuss the concerns raised in this letter with the view to seeking a mutually agreeable way

forward on NUAR. I hope these discussions will achieve a positive outcome for Wales and I look forward to receiving further communication from you about this matter.

On a wider DPDI Bill perspective, Wales has other outstanding concerns and I wrote to the Secretary of State for Science, Innovation and Technology on these matters on 14 November. I still await a reply.

I am copying this to SoS Michael Gove, given his responsibilities for the Union.

A handwritten signature in black ink that reads "Mark Drakeford". The signature is written in a cursive, slightly slanted style.

MARK DRAKEFORD