

DATA PROTECTION AND DIGITAL INFORMATION BILL

Supplementary Memorandum by the Department for Science, Innovation and Technology

Introduction

1. This memorandum, supplementary to the Delegated Powers Memorandum published on 7 December 2023, has been prepared for the Delegated Powers and Regulatory Reform Committee by the Department for Science, Innovation and Technology (“DSIT”).
2. It identifies amendments to existing delegated powers in the Data Protection and Digital Information Bill (“the Bill”), and some new delegated powers, and it explains why the powers or amendments to powers have been proposed, as well as the nature of, and reason for, the procedure selected.
3. DSIT has considered the amendments to the Bill as set out below and is satisfied that they are necessary and justified.

Amendment to Clause 138(1): New section 106B - Access to information kept in NUAR

Power conferred on: Secretary of State

Power exercisable by: Regulations

Parliamentary Procedure: Affirmative procedure

Context and purpose of the amendment

4. New Section 106B enables the Secretary of State to, by regulations, make provision in connection with making information kept in the National Underground Asset Register (“NUAR”) available to others, as set out in paragraphs 345 – 350 of the Delegated Powers Memo dated 6 December 2023 (“the DPM”). Subsection (1) has been amended to remove provision for the Secretary of State to make such information available under, or without, a (contractual) licence. This is no longer required as a consequence of the amendment below to subsection (2).
5. Subsection (2) sets out a non-exhaustive list of types of provision that can be included in such regulations (see paragraph 346 of the DPM). Subsection (2) has been amended to include provision for, or in connection with, the granting of licences by the Secretary of State in relation to any non-Crown intellectual property rights.
6. Subsection (3), provided that such regulations may make provision about licences under which information kept in NUAR is made available (see paragraph 348 of the DPM). The provisions at subsections (3)(a) and 3(b) are no longer required as a consequence of the amendment at subsection (2). The provisions at (3)(c), (3)(d) and 3(e) have been moved to Subsection (2) and are now included at subsection (2)(i), 2(j) and (2)(k) respectively.

Justification for taking the power

7. Please see paragraphs 351-352 of the DPM. The justification for taking the power remains the same.

Justification for procedure selected

8. Please see paragraph 353 of the DPM. The procedure has not changed.

Amendment to Clause 138 (1): New section 106AA – Movement of provisions relating to initial upload of information into National Underground Asset Register (“NUAR”)

Powers conferred on: Secretary of State

Powers exercised by: Regulations

Parliamentary Procedure: Negative procedure

Context and purpose

9. This amendment inserts new section 106AA into Part 3A of the New Roads and Street Works Act 1991 (“the 1991 Act”) as amended by clause 138. The content of new section 106AA was previously contained in clause 139 of the Bill and inserted into section 79 of the 1991 Act via subsections (3B), (3E), (3F) and (7). Please see paragraphs 441 to 448 of the DPM.
10. The context and purpose of new section 106AA remains the same. However, where previously, clause 139 contained provisions for the initial upload of information and the ongoing obligations on undertakers to enter information into NUAR, this has now been split and 106AA contains provisions relating to the initial upload of information only. The remaining provisions relating to the ongoing obligations on undertakers remain in section 79 (as inserted by clause 139).
11. In summary, within the new drafting, there remain five powers granted to the Secretary of State regarding the initial population of information into NUAR which can now be found in subsections (1)(b) (previously subsection (3B)(b) of section 79), (2) (previously subsection (3E) of section 79), (3) (previously subsection (3F) of section 79), (4)(a) (previously subsection (7)(a) of section 79) and (4)(b) (previously subsection (7)(b) of section 79) of new section 106AA.

Justification for taking the power

12. Please see paragraphs 449 to 453 of the DPM. The justification for taking the power remains the same.

Justification for the procedure

13. Please see paragraphs 454 to 460 of the DPM. The procedure remains unchanged.

Amendment to Clause 138: Amendment to 106C Fees Payable by undertakers in relation to NUAR

Powers conferred on: Secretary of State

Powers exercised by: Regulations (and the publication of a statement in certain circumstances)

Parliamentary Procedure: Affirmative procedure (regulations), laying before Parliament (statement)

Context and purpose

14. New section 106C(1) empowers the Secretary of State to make provision, through regulations, requiring undertakers having apparatus in a street to pay fees to the Secretary of State, as set out in paragraphs 359-363 of the DPM.
15. New section 106C(3) reflects the policy intention that the fees raised through the exercise of this new regulation-making power are intended to match the expenses incurred by the Secretary of State in providing and running NUAR, whilst recognising that there will likely be times where the amounts received, and running costs, vary each year. 106C(3) has been amended to clarify that in making regulations the Secretary of State must seek to secure that, so far as possible and taking one year with another, combined NUAR income matches combined NUAR expenses. A new 106C(10) has been inserted and defines both the terms “combined NUAR expenses” and “combined NUAR income”.

Justification for taking the power

16. Please see paragraphs 364-368 of the DPM. The justification for taking the power remains the same.

Justification for the procedure

17. Please see paragraphs 369 to 372 of the DPM. The procedure remains unchanged.

Amendment to Clause 139: Replacement of Clause 139(3)(f)

Powers conferred on: Secretary of State

Powers exercised by: Regulations

Parliamentary Procedure: Negative procedure

Context and purpose

18. As mentioned above, provisions relating to ongoing obligations on undertakers to enter information into NUAR remain in section 79 of the 1991 Act. This amendment replaces subsections (3B) to (3F) (as inserted into the 1991 Act by clause 139) with new subsections (3B) and (3C). These new subsections replicate previous subsections (3C) and (3F). These two subsections include the granting of three powers to the Secretary of State.
19. The first power is set out in subsection (3B) itself; information that has been recorded or updated by undertakers must then be entered into NUAR “within a prescribed period”. The Secretary of State can therefore set the duration of this period through regulations.

20. The second power is also set out in subsection (3B) and enables the Secretary of State to prescribe, by regulations, cases in which the duty under subsection (3B) does not apply. This power provides a means through which the Secretary of State can, upon identifying circumstances or instances where the imposition of the new requirements in subsection (3B) would be inappropriate or unduly burdensome, make provision to address this. The third power is set out in new subsection (3C) which enables the Secretary of State to prescribe, through regulations, the form and manner in which information must be entered into NUAR under subsection (3B).

Justification for taking the power

21. Please see paragraphs 467 to 469 of the DPM. The justification for taking the power remains the same.

Justification for the procedure

22. Please see paragraphs 470 to 473 of the DPM. The procedure remains unchanged.

Amendment to Clause 150

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary Procedure: Affirmative procedure where regulations amend primary legislation; otherwise negative procedure

Context and Purpose

23. This amendment to Clause 150, which provides the power for the Secretary of State to make provision that is consequential on this Bill, inserts a new subsection (3A). Information on clause 150 is contained in paragraphs 516 to 522 of the DPM.

24. New subsection (3A) allows regulations made in consequence of new section 183A (inserted in the Data Protection Act 2018 by clause 49 of the Bill) to amend, repeal or revoke provision which refers to the data protection legislation (as defined in section 3 of the 2018 Act) as they could if the provision referred instead to the main data protection legislation (as defined in section 183A of the 2018 Act).

25. New section 183A DPA 2018 will provide a new presumption about the relationship between the data protection legislation and certain other “relevant enactments”. These are enactments passed or made on or after the day on which section 49(2) (new section 183A) of the Bill comes into force. There will be provisions in Bills which pass after new s.183A is enacted which will contain provision achieving the same effect as the new presumption, but which refer to the “data protection legislation” rather than the “main data protection legislation”, a slightly narrower definition, as set out in new s.183A. These Bills when passed will become “relevant enactments” and so there will be duplication.

Justification for taking the power

26. The power would be needed to remove specific provisions in other enactments which duplicate the effect of new s.183A, but potentially create confusion by referring to the “data protection legislation” rather than the “main data protection legislation”.

Justification for the procedure

27. The justification for the procedure is set out in paragraph 522 of the DPM.

Department for Science, Innovation and Technology
13th March 2024