

DATA (USE AND ACCESS) BILL

Supplementary Delegated Powers Memorandum from the Department for Science, Innovation and Technology to the Delegated Powers and Regulatory Reform Committee

A. Introduction

1. This supplementary memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the Data (Use and Access) Bill (the Bill). It supplements the Delegated Powers Memorandum that was submitted and published on 23 October 2024 when the Bill was introduced into the House of Lords. The Bill completed its passage through the House of Lords on 5 February 2025 and was introduced into the House of Commons on 6 February 2025. The Bill completed its Commons stages on 7 May 2025.
2. This Memorandum accompanies amendments to the following clauses:
 - Part 1: Access to customer data and business data:
 - i. Clause 4 (*Power to make provision in connection with business data*)
 - ii. Clause 11 (*Fees*)
 - iii. Clause 14 (*The FCA and financial services interfaces*)
 - iv. Clause 15 (*FCA and financial services interfaces: supplementary*)
 - Part 3: National Underground Asset Register:
 - i. Clause 56 (*National Underground Asset Register: England and Wales*)
 - ii. Clause 57 (*Information in relation to apparatus: England and Wales*)
 - iii. Clause 58 (*National Underground Asset Register: Northern Ireland*)
 - iv. Clause 59 (*Information in relation to apparatus: Northern Ireland*)

B. Amendments to Part 1: Access to customer data and business data

Clause 4: Power to make provision in connection with business data (changes to 4(4)(a), (b) and (c) and new subsection 4(4)(aa)). Please refer to Commons Amendment 1-6

Power conferred on: Secretary of State and the Treasury

Power exercised by: Regulations

Parliamentary Procedure: Affirmative procedure

Context and Purpose

3. As explained in paragraph 44 of the Delegated Powers Memorandum, clause 4(4) is intended to allow regulations to require traders or other holders to provide business data to a public authority, or a person appointed by that authority, and impose obligations on the recipient to then publish or disclose that data. Business data is general information about goods, services or digital content supplied or provided by a data holder and does not relate to individual customers.
4. The Department for Energy Security and Net Zero intends to use this clause for its proposed Fuel Finder open data scheme which will help drivers to make more informed decisions about where to buy petrol and diesel.

Justification for taking the power

5. The amendments enable regulations to provide, in line with the intention of the clause, that business data provided to a person (“third party recipient”), who is appointed by a public authority to do something with that business data, must be published or disclosed by the third party recipient. This enables data to flow directly to and from the third-party recipient, rather than directly involving the public authority itself.

Justification for the procedure

6. The amendment does not alter the procedure for clause 4 or its justification in paragraph 48 of the Delegated Powers Memorandum. The affirmative resolution procedure is required in the case of the first regulation-making under that clause about a particular description of business data (clause 22(1)(b)) and for subsequent regulations of the kind in clause 22(1)(c)-(e).

Clause 11: Fees (Expenses) (changes to 11(1)(a), 11(3) and 11(4)(b)). Please refer to Commons Amendments 15-17.

Power conferred on: Secretary of State and the Treasury

Power exercised by: Regulations

Parliamentary Procedure: Affirmative procedure

Context and Purpose

7. Under clause 11(1)(a) the Secretary of State or the Treasury may by regulations require or enable persons listed in clause 11(2) (or persons acting on their behalf) to charge fees for the purpose of meeting expenses incurred by the person in performing duties, or

exercising powers, imposed or conferred by or under regulations under Part 1. The persons listed in 11(2) are as follows:

- a) data holders;
 - b) decision-makers;
 - c) interface bodies;
 - d) enforcers;
 - e) other persons on whom duties are imposed, or powers are conferred, by or under regulations made under this Part.
8. The amendments to clause 11(1)(a) and 11(3) and (4)(b) remove the requirement that the purpose of fee charging is for the meeting of expenses. The clauses as amended provide that regulations may enable persons listed in 11(2) to charge fees *in connection with* activities consisting of the performance of duties or exercise of powers conferred on that person by or under regulations made under Part 1 of the Bill.
9. Importantly, other constraints in clause 11(5) and (7) and 21(3) and (4) continue to apply so that regulations under clause 11(1)(a) must continue to provide clarity in relation to fee amounts or how they are calculated.

Justification for taking the power

10. These amendments follow from Treasury dialogue with stakeholders in relation to the future open banking scheme which have demonstrated that it may be necessary to enable fee charging beyond the purpose of meeting expenses. For instance, there may be cases in which it is appropriate and necessary for data to be provided on reasonable commercial terms. As “customer” is broadly defined in Part 1, smart data schemes may cover commercial as well as consumer contexts. Regulations can fix a limit to fees that is appropriate to the circumstances of the scheme and fee in question.

Justification for the procedure

11. The procedure for regulations under clause 11 remains the affirmative resolution procedure, for the reasons provided in paragraph 66 of the Delegated Powers Memorandum.

Clause 11: Fees (charging powers outside the regulations) (new subsections 11(9), 11(1) and 11(11)). Please refer to Commons Amendment 18.

Power conferred on: Secretary of State and the Treasury

Power exercised by: Regulations

Parliamentary Procedure: Affirmative procedure

Context and Purpose

12. Clause 11(9) provides a **new regulation making power** to enable the Secretary of State or the Treasury to make provision about whether a person listed in clause 11(2), or a person acting on their behalf, could require payment otherwise than in reliance on a power conferred by regulations under clause 11 for activities to which clause 11(3) applies. They may do so, for example, in reliance on other legislation or under a contract (see subsection (11)).
13. The regulation-making power in clause 11(9) is introduced in connection with new subsection (10). Subsection (10) is intended to clarify, in line with the policy intention set out in paragraph 246 of the Explanatory Notes of 7 February 2025, that clause 11 does not prevent or limit what third-party recipients, other than those to which clause 4(4)(a) or (b) applies, can charge customers for instance under a contract. This is important as for the functioning of smart data schemes it is critical that there is a commercial incentive for persons to operate as third-party recipients.
14. The purpose of the new regulation-making power in subsection (9) is to enable the Secretary of State or the Treasury to make express provision as to whether persons to which clause 11 applies may charge, or continue to charge, on another basis for the activities to which clause 11 applies. Its use will clarify the relationship between fee charging under regulations made under clause 11 and other abilities that person may have to charge in relation to the relevant activities and could be used to make similar provision as in subsection (10) to “preserve” those other avenues for charging or to clarify that they do not apply.

Justification for taking the power

15. Unlike subsection (10) which creates an immutable statutory provision for the third-party recipients to which it applies, a regulation-making power is considered appropriate for other categories of person in clause 11(2) as it allows for provision attuned to the circumstances of the smart data scheme in question, which may vary.
16. Given the potential application of open banking and other smart data schemes in a commercial context, DBT and the Treasury consider that there may be circumstances in which data holders or other persons listed in clause 11(2) should also be allowed to charge under other powers in a similar way to that envisaged for third party recipients.
17. Equally, there may be circumstances in which it is important to prevent other forms of charging in order that the uptake of smart data schemes is not undermined.

Justification for the procedure

18. All regulations under clause 11 are subject to the affirmative resolution procedure and appropriate consultation (clause 22(1)(d) and (3)) for the reasons set out in paragraph 66 of the Delegated Powers Memorandum.

Clause 14: The FCA and financial services interfaces (New subsection 14(1)(ba) and changes to 14(10)). Please refer to Commons Amendments 19-21.

Power conferred on: Treasury

Power exercised by: Regulations

Parliamentary Procedure: Affirmative procedure

Context and Purpose

19. Clause 2(4) of the Bill gives the Secretary of State or the Treasury the ability to make provision requiring a data holder (e.g. a bank providing a current account to a customer) to deal with an authorised person (defined in clause 2(1)(b)) as if that person were its customer in respect of a service it provides to that customer. This would only be with the customer's permission. The service provided by the authorised person is referred to as "action initiation". So, for example, a "fintech" company might make a payment on behalf of a customer and a Bank would be required to deal with the payment request as if the customer had made it.
20. In order for action initiation to be provided safely, efficiently and economically, the Bill also provides that the Secretary of State or Treasury may make provision requiring a data holder or authorised person to use specified facilities or services; comply with specified standards; or participate in specified arrangements relating to their use (see clause 3(4)).
21. Clause 14 allows the Treasury by regulations to make provision enabling the Financial Conduct Authority (FCA) to make rules requiring adherence to prescribed interfaces, interface standards; or participation in prescribed interface arrangements necessary for data sharing.
22. New paragraph (ba) of clause 14(1) ensures that Treasury regulations can enable or require the FCA to do the same with respect to those interfaces, standards and arrangements required for action initiation relying on financial services data. The actors required to adhere to these standards etc would be those involved in the action initiation.

Justification for taking the power

23. The relevant limitations set out in paragraph 75, and the justifications set out in paragraphs 76 and 77 of the Delegated Powers Memorandum apply also to this amendment.

24. For action initiation in Open Banking to function (and, in future, in Open Finance, where data holders might include non-bank financial service providers, such as mortgage providers), a high degree of standardisation is required in the interfaces, standards and arrangements between action initiators and data holders. Clause 14 already provides that the Treasury may enable or require the FCA to make rules to ensure this standardisation in the field of financial services data sharing, and this amendment ensures the same can be done in the field of action initiation relying on financial services data. This allows for coherent and appropriate regulation.
25. The FCA may currently specify the technical standards required for payment action initiation under s106A Payment Services Regulations 2017 (S.I. 2017/752) so the reflection of these powers under the new legislative framework for Open Banking is consistent with this and will be no surprise to stakeholders.
26. The approach is also consistent with the existing clauses (in respect of data-sharing more generally) and serves to enable the existing policy intention to be delivered in full.

Justification for the procedure

27. All regulations under clause 14 are subject to the affirmative resolution procedure and consultation (clause 22(1)(d) and (3)) so Parliament will have the opportunity to debate provisions granting FCA rule making powers in exercise of clause 14(1)(c). Any such provisions are also, under clause 19(1), required to be subject to periodic review and reported to Parliament.

Clause 15: FCA and financial services interfaces: supplementary (changes to 15(6), (8), (9)(a) and new subsections 9(da),(9A) and (9B)). Please refer to Commons Amendments 22-28

Power conferred on: Treasury

Power exercised by: Regulations

Parliamentary Procedure: Affirmative procedure

Context and Purpose

28. In respect of amendments made to clause 15, this Memorandum should be read with paras 71 to 74 of the Delegated Powers Memorandum, however it refers particularly to paragraph 74 which deals with clause 15(6).
29. Clause 14 allows the Treasury to enable or require the FCA to make “FCA interface rules” imposing requirements relating to interfaces and interface bodies in the financial services sector, including rules imposing requirements on data holders and third-party

recipients of smart data schemes. This is to allow the FCA to regulate financial services smart data schemes in a manner that is consistent with its regulation of the wider financial services sector.

30. Clause 15 contains supplementary provisions in relation to this Treasury power. Clause 15(6) allows the Treasury by regulations, to require or enable the FCA interface rules to require persons of a kind listed in clause 15(7) to pay fees to an interface body or another person listed in clause 15(7).
31. Clause 15(6) mirrors clause 11 and limits fees that may be charged under the FCA interface rules to expenses incurred, or to be incurred, by the relevant person, or a person acting on their behalf, in performing duties or exercising powers imposed or conferred by regulations under Part 1 or rules made by virtue of regulations under clause 14.
32. Amendments to clause 15(6), (8) and (9) allow the FCA to be empowered or required to provide for the payment of fees beyond the purpose of meeting expenses. These mirror changes made to clause 11 discussed above.
33. The proposed new clause 15(9A) enables the FCA interface rules to specify whether certain persons listed in clause 15(7) may require payment on another basis for activities in connection with the performance of duties or exercise of powers listed in 15(8). Subsection (9B) provides examples of the avenues by which those persons might require payment other than in reliance on FCA interface rules (e.g. by relying on powers conferred by other legislation or powers arising under contracts).
34. The amendment adding new subsection (da) to clauses 15(9) confers express power to enable the FCA to make provision about the treatment of amounts paid as fees to interface bodies and other persons listed in clause 15(7) for consistency with the similar power in clause 11(1)(b).
35. The existing limitations and safeguards on the clause 14 powers (including those listed in paragraph 75 of the Delegated Powers Memorandum) continue to apply.

Justification for taking the power

36. The general justification for the delegation of rule making powers under clause 14 to the FCA is set out in more detail in the Delegated Powers Memorandum (beginning paragraph 76).
37. The amendments to clause 15 which widen the scope of matters in respect of which fees can be required to be paid, are proposed for the reasons explained in paragraph 10 above.
38. The overall justification for new clause 15(9A) is reflected in paragraphs 15 to 17 above. In addition, this clause allows for the FCA interface rules to clarify the relationship between fee charging under the rules and other abilities a person may have to charge in relation to the relevant activities, for example, contractual payments.

Justification for the procedure

39. The Treasury can make regulations with regard to FCA rule making powers in clause 14 (supplemented by clause 15) subject to the affirmative resolution procedure and consultation under clause 22 (1)(d) and (3) for the reasons set out in paragraph 78 of the Delegated Powers Memorandum. Rules made by the FCA under these powers will themselves be subject to controls, inter alia, those listed in paragraph 75 of the Delegated Powers Memorandum.

C. Amendments to Part 3: National Underground Asset Register

Introduction

This part of the supplementary memorandum identifies amendments to existing delegated powers under clauses 56, 57, 58 and 59 of the Bill relating to the National Underground Asset Register (“NUAR”). Clauses 56 and 57 relate to England and Wales and clauses 58 and 59 relate to Northern Ireland. The proposed amendments require the Secretary of State to obtain the consent of Welsh Ministers and the Department for Infrastructure in Northern Ireland, as the case may be, before making regulations under provisions inserted by clauses 56, 57, 58 and 59 of the Bill.

Amendment to Clause 56: New section 106I as inserted into the 1991 Act:

Regulations made under this Part

Amendment to Clause 58: New Article 59(A1) as inserted into the 1995 Order: Regulations.

Power conferred on: Secretary of State

Power exercisable by: Regulations

Parliamentary Procedure: N/A

Context and purpose of the amendments

40. New sections 106A-106H under new Part 3A of the New Roads and Street Works Act 1991 (“the 1991 Act”) as inserted by clause 56 of the Bill and new Articles 45A-45H under the Street Works (Northern Ireland) Order 1995 (“the 1995 Order”) as inserted by clause 58 of the Bill, enable the Secretary of State to, by regulations, make provision in relation to the setting up of and the operation of NUAR in England and Wales and Northern Ireland as set out in paragraphs 156 – 267 of the Delegated Powers Memorandum. Specifically, new section 106I(4) and new Article 59(A1) require the Secretary of State, before making regulations in the exercise of this power, to consult Welsh Ministers and the Department for Infrastructure in Northern Ireland.
41. The Government has amended new section 106I(4) as inserted into the 1991 Act. As the duty is on the Secretary of State to keep a register relating to apparatus in streets also in

Northern Ireland, equivalent changes have been made to new Article 59(A1) as inserted into the 1995 Order relating to Northern Ireland mirroring the amendments made to the 1991 Act.

42. Where previously, the Secretary of State was required to consult Welsh Ministers and the Department for Infrastructure before making regulations in exercise of powers under new Part 3A, the amendment under section 106I(4) now requires the Secretary of State to obtain consent of Welsh Ministers before making regulations under Part 3A of 1991 Act (inserted by clause 56) in relation to any provision that would be within the legislative competence of Senedd Cymru if contained in an Act of the Senedd. *Please refer to Commons Amendment 35 relating to clause 56.* As Clause 56 specifically relates to making provision for the setting up of and making NUAR operational in England and Wales, the requirement to obtain consent under new section 106I(4) is only from Welsh Ministers and not the Department for Infrastructure in Northern Ireland.
43. The new Article 59(A1) has been amended to require the Secretary of State to obtain the consent of the Department for Infrastructure in Northern Ireland before making regulations under the 1995 Order. In equivalent terms to those in paragraph 41 above, as clause 58 specifically relates to Northern Ireland, the requirement to obtain consent under new Article 59(A1) is only from the Department for Infrastructure. *Please refer to Commons Amendment 40 relating to clause 58, new Article 59(A1) as inserted into the 1995 Order.*
44. To clarify, the requirement for the Secretary of State to consult such representatives of persons likely to be affected by the regulations as the Secretary of State considers appropriate, together with any such other persons as the Secretary of State considers appropriate, as outlined under clauses 56 and 58 (new section 106D and new Article 45D), remains in place.

Justification for taking the power

45. New Part 3A of the 1991 Act and new Articles 45A-45H of the 1995 Order confer a number of powers on the Secretary of State to make regulations, including where a provision refers to the Secretary of State “prescribing” certain things.
46. The justification for taking the powers under new Part 3A of the 1991 Act and new Articles 45A-45H of the 1995 Order remains the same. Please refer to paragraphs 156 – 267 of the Delegated Powers Memorandum.

Justification for the procedure

47. Section 106I as inserted into the 1991 Act by the Bill makes provision about how these regulation-making powers can be exercised in practice. The appropriate parliamentary procedures are already provided for in new sections 106A-H. No additional parliamentary procedure has been included for new section 106I as a result of the amendment.
48. Similarly, new Article 59(A1) sets out procedural requirements that will apply in relation to regulations made under the 1995 Order. No additional parliamentary procedure has been included for new Article 59(A1) as a result of the amendment.

49. The justification for the procedures under new Part 3A of the 1991 Act and Articles 45A-45H of the 1995 Order remains the same. Please refer to paragraphs 156 – 267 of the Delegated Powers Memorandum.

Amendment to Clause 57: Amendments to sections 79(8) and 80(5)(a) as inserted into the 1991 Act

Power conferred on: Secretary of State

Power exercisable by: Regulations

Parliamentary Procedure: N/A

Context and purpose of the amendment

50. Clause 57 amends section 79 of the 1991 Act and replaces the existing (but not yet commenced) section 80 of that Act. Section 79, as amended by the Bill, among other things, requires undertakers to record certain information related to the apparatus and to enter information into NUAR. The new section 80 of the 1991 Act imposes duties on persons executing works of any description in a street to take other certain steps where they identify missing or incorrect information in existing records, or where they find apparatus and cannot ascertain its owner. Please refer to paragraphs 268-326 of the Delegated Powers Memorandum that explain the delegated powers under clause 57 relating to sections 79 and 80 of the 1991 Act.
51. The existing provisions in section 79, and those inserted by this clause, confer powers to “prescribe” certain matters by regulations. Subsection (3)(h) of this clause inserts a new subsection (7) into section 79 of the 1991 Act, providing for this to generally mean, in this section, “prescribed by the Secretary of State”. However, in section 79(1) and (2), where (in relation to Wales) existing functions to prescribe matters are already conferred on Welsh Ministers, provision is made by new subsection (7)(a) so that such matters can be prescribed by the Secretary of State in relation to apparatus in streets in England, and can be prescribed by the Secretary of State or Welsh Ministers in relation to apparatus in streets in Wales. Subsection (8) requires the Secretary of State to consult Welsh Ministers in relation to any provision that relates to apparatus in streets in Wales. The provisions in the new section 80 confer powers on the Secretary of State to prescribe certain matters through the making of regulations. Subsection (5) requires the Secretary of State to consult Welsh Ministers before making regulations under the section.
52. As set out above, amendments are being made to section 79(8) and section 80(5).
53. Where previously, the Secretary of State was required under section 79(8) to consult Welsh Ministers in relation to any provision that relates to apparatus in the street in Wales, they will be required to obtain the consent of Welsh Ministers before making regulations under section 79 of the 1991 Act in relation to any provision that relates to apparatus in streets in Wales. *Please refer to Commons Amendment 36 relating to clause 57, section 79(8) as inserted into the 1991 Act.*
54. Similarly, where previously, the Secretary of State was required under section 80(5)(a) to consult Welsh Ministers in relation to any provision that relates to apparatus in the street in Wales, the amendment to section 80 deletes the previous subsection (5)(a)

and introduces a new subsection (4A), which requires the Secretary of State to obtain consent of Welsh Ministers before making regulations under section 80 of the 1991 Act in relation to any provision that relates to apparatus in streets in Wales. *Please refer to Commons Amendment 37 regarding section 80(4A) as inserted into the 1991 Act, as well as Commons Amendment 38 concerning the deletion of section 80(5)(a) from the 1991 Act.*

55. To clarify, the requirement for the Secretary of State to consult such representatives of persons likely to be affected by the regulations as the Secretary of State considers appropriate, together with any such other persons as the Secretary of State considers appropriate, as outlined in clause 57, new section 80(5), remains in place.

Justification for taking the power

56. Please see paragraphs 268-326 of the Delegated Powers Memorandum. The justification for taking powers under new Part 3 remains the same.

Justification for the procedure

57. Clause 57, sections 79(8) and section 80(4A) make provision about how these regulation-making powers under sections 79 and 80 can be exercised in practice. This includes, at new sections 79(8) and 80(4A) a requirement to obtain the consent of Welsh Ministers in relation to any provision that relates to apparatus in streets in Wales. The justification for the procedure under sections 79 and 80 remains the same. Please see paragraphs 156 – 267 of the Delegated Powers Memorandum.

Amendment to Clause 59: Amendments to Article 39 and Article 40 of the 1995 Order

Power conferred on: Secretary of State

Power exercisable by: Regulations

Parliamentary Procedure: N/A

Context and purpose of the amendment

58. Clause 59 amends Article 39 of the 1995 Order to make equivalent changes to those made to section 79 of the 1991 Act by clause 57. Please refer to paragraphs 268-326 of the Delegated Powers Memorandum.
59. As currently drafted, clause 59(3) inserts Article 39(7) into the 1995 Order which requires the Secretary of State, before making regulations under that article, to consult the Department for Infrastructure in Northern Ireland. However, due to the amendment made under Article 59(A1), as set out above, new Article 39(7) has been deleted. *Please refer to Commons Amendment 41.*
60. Article 40 of the 1995 Order (which is not yet in force) makes an equivalent provision to the existing section 80 of the 1991 Act (which is also not yet in force). Clause 59(4) substitutes a new Article 40 into the 1995 Order. The new Article 40, like the new section 80 substituted into the 1991 Act, addresses the scenario where a relevant person is

executing works of any description in a street and finds an item of apparatus that does not belong to them.

61. The provisions in the new Article 40 confer powers on the Secretary of State to prescribe certain matters through the making of regulations. As currently drafted, a consultation requirement applies before regulations can be made under this new Article, under which as set out in paragraph (5)(a) the Secretary of State must consult the Department for Infrastructure. However, following the amendment made under Article 59(A1), as set out above, new Article 40(5)(a) has also been deleted. *Please refer to Commons Amendment 42.*

62. To clarify, the requirement for the Secretary of State to consult such representatives of persons likely to be affected by the regulations as the Secretary of State considers appropriate, together with any such other persons as the Secretary of State considers appropriate, as outlined under clause 59, new Article 40(5), remains in place.

Department for Science, Innovation and Technology
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