

EQUALITY IMPACT ASSESSMENT RECORD

Title of policy/ practice/ strategy/ legislation etc.	The Digital Government (Scottish Bodies) Regulations 2018	
Minister	Derek Mackay, Cabinet Secretary for Finance and Constitution	
Lead official	Claire Wainwright	
Officials involved in the EQIA	Name	Team
	Jessica Roscoe	Data Sharing and Identity Assurance
Directorate: Division: Team	Directorate for Digital; Data, Statistics and Outcomes; Data Sharing and Identity Assurance	
Is this new policy or revision to an existing policy?	<p>These are new powers.</p> <p>The Digital Economy Act 2017 received Royal Assent on 27 April 2017. Part 5 of the Act introduces new information sharing provisions to support more efficient and effective digital public services.</p> <p>The Regulations will allow specified Scottish public bodies to share data for the purposes set out in the 'policy aim' below.</p>	

SCREENING

Policy Aim

1. The Digital Economy Act 2017 (the "Act") allows the UK Government, as well as the devolved governments, in certain cases, to specify objectives for which data can be shared, and to name individuals and organisations that can make use of the data sharing powers the Act provides. Part 5 of the Act regulates what data can be shared and for which purposes. It also includes safeguards to make sure that the privacy of citizens' personal information is protected.
2. The aim of the Digital Government (Scottish Bodies) Regulations 2018 ("the Scottish Regulations") is to enable Scottish public bodies (or persons providing services to Scottish public bodies) to be able to share personal data under the new Public Service Delivery powers, set out in section 35 of the Act, to improve public service delivery.
3. Section 35(1) provides that public bodies wishing to share personal data with each other for the purposes of public service delivery, must do so for the purposes of a 'specified objective' in relation to each of those bodies. These objectives need to be specified in regulations under section 35(7) of the Act.

4. The bodies are being listed in the Scottish Regulations to enable them to share data with other bodies, for the objectives being specified in separate regulations, the Digital Government (Disclosure of Information) Regulations 2018 (“the UK Regulations”). These UK Regulations are being laid in Westminster. Under the powers in section 35(7) to (12), the UK Regulations will set out the specified objectives for which the UK and also Scottish bodies listed in the Scottish Regulations will be able to share data.
5. The Scottish Government consulted on the draft regulations between 12 December 2017 and 5 February 2018. The consultation set out three specific objectives. To allow a public body to share data, for the purposes of public service delivery, it must demonstrate that at least one of these objectives applies. The objectives are:
 - multiple disadvantage
 - television retuning
 - fuel poverty
6. This means that a specified body may share data with another specified body only where they are both listed in regulations in relation to that specified objective. The power is permissive, which means that persons who are potentially able to share information under it can choose whether or not to do so, but are not under a legal duty to do so.

Who will it affect?

7. To be able to use the data sharing provisions in the Act, a Scottish public body needs to demonstrate an express need to share data with another body for the purpose of delivering a particular public service.
8. It is anticipated that by improving the sharing of information to better design and deliver public services, the Regulations should lead to positive changes for individuals interacting with those services.
9. Sec 35 (9) – (12) of the Act identify conditions which specified public service delivery objectives must fulfil. The intent of these conditions is to provide assurance that data sharing is for the benefit of individuals receiving these services.

*35 (9) “The first condition is that the objective has as its purpose—
 (a) the improvement or targeting of a public service provided to individuals or households, or,
 (b) the facilitation of the provision of a benefit (whether or not financial) to individuals or households.*

35 (10) “The second condition is that the objective has as its purpose the improvement of the well-being of individuals or households.

35 (11) “The reference in subsection (10) to the well-being of individuals or households includes—

- (a) their physical and mental health and emotional well-being,*
- (b) the contribution made by them to society, and*
- (c) their social and economic well-being.*

35 (12) *“The third condition is that the objective has as its purpose the supporting of—*

- (a) the delivery of a specified person’s functions, or*
- (b) the administration, monitoring or enforcement of a specified person’s functions.”*

10. The specified objectives cover circumstances which may map either directly or indirectly to the protected equalities characteristics. We assess this overlap and impact as it relates to the proposed specified bodies in the Digital Government (Scottish Bodies) Regulations 2018 and the specified objectives against which they will be listed to share data.

11. To share data on the basis that the need to do so meets the ‘multiple disadvantage’ objective, the presence of two or more factors which adversely affect individuals or households must be demonstrated. These include, but are not limited to:

- the individual, or an individual in the household, carrying out, or being subject to, antisocial behaviour;
- the individual being, or the household including, a care leaver;
- the individual being, or the household including, a child in need;
- disability, including learning disability;
- domestic violence;
- a failure to regularly attend school;
- financial exclusion;
- homelessness;
- ill-health, including mental ill-health;
- offending by the individual or by an individual in the household;
- substance misuse;
- unemployment;
- they are not in education or training.

12. To share data on the basis that the need to do so meets the ‘television retuning’ objective, the following conditions must apply:

- identifying an individual or a household who may be eligible for assistance under a relevant scheme.
- making contact with such individual or household with a view to providing such assistance to establish whether an individual or household is entitled to assistance.

13. The fuel poverty objective consists of assisting people living in fuel poverty by:

- reducing their energy costs;
- improving efficiency in their use of energy;

- improving their health or financial well-being.

STAGE 1: FRAMING

Extent/Level of EQIA required

14. This EQIA examines the potential equalities impacts arising from the addition of the four specified persons listed in the Scottish Regulations.

Stakeholder Engagement

Engagement with Public Bodies:

15. The Scottish Government engaged with a broad range of Scottish public bodies in relation to the objectives being laid in the UK Regulations in Westminster, gauging interest in use of the powers for the purposes of Scottish public service delivery. Scottish Government officials worked with the Cabinet Office to augment the multiple disadvantage objective so that it would work within a Scottish public service delivery context.
16. The following Scottish bodies were identified as having a specific need to share personal data for the purpose of improved public service delivery, these are:
 - the Scottish Government, local authorities in Scotland and Skills Development Scotland in relation to the multiple disadvantages objective
 - the Scottish Government and local authorities in Scotland in relation to the fuel poverty objective
 - local authorities in Scotland in relation to the television retuning objective
 - persons providing services to these Scottish public bodies, listed in Schedule 4, in connection with any objective for which that public body is listed.
17. Further consultation and legislation will be required should other public bodies wish to use these powers at a later date.

Public Consultation

18. In December 2017, Scottish Government published its [Consultation on Digital Economy Act 2017: part 5 \(data sharing codes and regulations\) in relation to the delivery of Scottish public services](#) in which the purpose and reach of the proposed new data sharing powers were described. The consultation received 4 responses. This included a response from the Information Commissioner which stated that:

“The Commissioner reaffirms her recognition of the potential benefits of justified and proportionate data sharing. Improving the delivery of public services may require more effective sharing of personal data between public authorities where appropriate but it is important that any provisions that increase data sharing inspire confidence in those individuals who will be affected.”

Inter-Governmental Engagement

19. Throughout the process, Scottish Government officials have liaised and represented Scottish interests – including equality issues and concerns – in dialogue with the UK Government. Both the UK and Welsh Governments have published consultations on the Digital Economy Act 2017: Part 5 (data sharing codes and regulations).

Benchmarking

20. The powers can only be used in well-defined policy delivery instances where improved information flow between bodies would allow for improved public service delivery to those people or households defined within the relevant objective and where there is not already a legal gateway for this to happen. Each proposed data share will need to be fully set out in advance and should make clear why the service cannot be delivered using other less sensitive or non-personal information.
21. Skills Development Scotland are included in the Regulations because their service delivery to young people will be improved by being able to share data with HMRC to better identify and target services to individuals who are not in employment, education or training (which qualifies under the criteria of meeting 'two or more' factors under the 'multiple disadvantage objective').
22. The security of an individual's data and the way it is processed will need to be consistent with the Information Sharing Code of Practice for Public Service Delivery, Fraud and Debt and must be consistent with relevant data protection legislation. The General Data Protection Regulation (GDPR) will, when it takes effect, require a data protection by design and default approach to new or different uses of personal data.
23. Section 35(6) of the Act provides:

*“in determining whether to make regulations under subsection (3) in relation to a person or description of person **the appropriate national authority must have regard, in particular, to...the systems and procedures for the secure handling of information by that person or persons of that description**”.*

A Privacy Impact Assessment has been undertaken separately to explore the impact of these Regulations in relation to General Data Protection Regulation, Data Protection law and privacy impacts.

Stage 2: Data and evidence gathering, involvement and consultation

Characteristic ¹	Evidence gathered and Strength/quality of evidence	Source	Data gaps identified and action taken
AGE	<p>This legislation is expected to deliver benefits to a range of age groups.</p> <p>Multiple Disadvantage Objective:</p> <p>Data sharing between public bodies on the basis of this objective has the potential to improve the way public services can be delivered to children and young people and several of the criteria relate directly to children and young people.</p> <p>Skills Development Scotland wish to use the powers to be able to share data with HMRC for the purpose of enhancing service delivery for individuals aged 16 to 24 who are not in employment, education or training. This is expected to improve communications and operational delivery to enable SDS to engage young people in a more timely and effective manner (at the point they fall out of work or study).</p> <p>Specified public bodies will be able to share data for the purposes of improving the lives of</p>	<p>Consultation on a Fuel Poverty Strategy for Scotland and associated Equalities Impact Assessment (Scottish Government, published 9 November 2017)</p> <p>Scottish House Condition Survey</p> <p>Annual Participation Measure Report 2017, SDS; https://www.skillsdevelopmentscotland.co.uk/media/43580/2017-annual-participation-measure-report-29th-august-2017.pdf</p>	

¹ Refer to Definitions of Protected Characteristics document for information on the characteristics

	<p>young people, where one of the following criteria are fulfilled in combination with another of the criteria:</p> <ul style="list-style-type: none"> -they are a care leaver (or the household includes a care leaver) -children or young people with an identified learning disability -they are considered to be a child in need (or the household contains a child in need) -they are an individual who fails to regularly attend school <p>There may be indirect impacts on other age groups where these experience particular combinations of the criteria.</p> <p>For example ill-health and financial exclusion² might be of greater relevance to older age groups so improved information sharing about their circumstances to better inform public services should be of benefit to them.</p> <p>The UK Regulations for information sharing for non-devolved public service delivery objectives exclude the sharing of information between health and care bodies in relation to those functions.</p> <p>Fuel poverty:</p> <p>Data sharing between public bodies on the basis of this objective will improve the way public services can be delivered to reduce energy costs, improve energy efficiency and</p>	
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² Oxford Institute for the Ageing: Is Age a Factor in Financial Exclusion? Oct 2016

	<p>improve health or financial well-being.</p> <p>Specifically this would allow the Department for Business, Energy & Industrial Strategy to share data with the Scottish Government for the purpose of:</p> <ol style="list-style-type: none"> 1) handling data on behalf of Local Authorities in relation to heat mapping. 2) meeting approvals for proposed Local Heat & Energy Efficiency Strategies <p>This would allow the Department for Business, Energy & Industrial Strategy to share data with Scottish Local Authorities for the purpose of introducing Local Heat and Energy Strategies, as proposed by the Scottish Government.</p> <p><i>This data sharing will focus on assisting those living in fuel poverty. Between November 2017 and February 2018, the Scottish Government consulted on a new draft Fuel Poverty Strategy which would include a proposed new definition of fuel poverty. The ambition of this is to see more households living in well-insulated homes, accessing affordable, low carbon energy, and having an increased understanding of how to use energy in their homes. More information on the impact of the proposed new definition can be found in the Equalities Impact Assessment which accompanied the consultation (http://www.gov.scot/Publications/2017/11/5497).</i></p>	
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DISABILITY	<p><i>Initial analysis suggests that the highest rates of fuel poverty under the new definition are likely to be found amongst:</i></p> <ul style="list-style-type: none"> • <i>Younger households (those where the highest income household is aged under 35).</i> • <i>Households where at least one member has a long-term illness or disability.</i> • <i>Households where the highest income household is female.</i> <p>TV retuning:</p> <p>Scottish Local Authorities are listed against the TV retuning objective in order that they may share data with Department for Work and Pensions (DWP) (and the Secretary of State for Defence) to identify individuals and households to offer support with television retuning.</p>	
	<p>This legislation is expected to deliver benefits to people with a disability.</p> <p>Under the Multiple Disadvantage Objective, the Scottish Government and Scottish Local Authorities will be able to share data with other specified bodies where there is a clear advantage to those with a disability, including learning disability, or who have ill-health, including mental ill-health.</p>	<p>Consultation on a Fuel Poverty Strategy for Scotland and associated Equalities Impact Assessment (Scottish Government, published 9 November 2017)</p> <p>Scottish House Condition Survey</p>

	<p>This data sharing will focus on assisting those living in fuel poverty. Between November 2017 and February 2018, the Scottish Government consulted on a new draft Fuel Poverty Strategy which would include a proposed new definition of fuel poverty. The ambition of this is to see more households living in well-insulated homes, accessing affordable, low carbon energy, and having an increased understanding of how to use energy in their homes. More information on the impact of the proposed new definition can be found in the Equalities Impact Assessment which accompanied the consultation (http://www.gov.scot/Publications/2017/11/5497).</p> <p>Initial analysis suggests that the highest rates of fuel poverty under the new definition are likely to be found amongst:</p> <ul style="list-style-type: none"> • Younger households (those where the highest income householder is aged under 35). • Households where at least one member has a long-term illness or disability. • Households where the highest income householder is female. 	
<p>SEX</p>	<p>This policy does not relate to this characteristic therefore we have not considered it for this EQIA.</p> <p>The Fuel Poverty Strategy aims to see more households living in well insulated homes, accessing affordable, low carbon energy; and having an increased understanding of how to use energy in their homes regardless of their gender. The policy will benefit all people in fuel</p>	

	poverty. This includes female-headed households who account for half of all households in fuel poverty under the new definition (a higher proportion than in the population overall).		
PREGNANCY AND MATERNITY	This policy does not relate to this characteristic therefore we have not considered it for this EQIA.		
GENDER REASSIGNMENT	This policy does not relate to this characteristic therefore we have not considered it for this EQIA. The Fuel Poverty Strategy aims to see more households living in well insulated homes, accessing affordable, low carbon energy; and having an increased understanding of how to use energy in their homes.		
SEXUAL ORIENTATION	There is limited information on fuel poverty for sexual orientation. This information was not collected in the census or the Scottish House Condition Survey (SHCS), and housing providers do not routinely gather such data.	Scottish House Condition Survey	None. Differences are likely to be reflecting age.
RACE	On census day 2011, there were approximately 200,000 Black, Asian and Minority Ethnic (BAME) people in Scotland, making up just over 4% of the population. The SHCS sample is not sufficiently large to allow a breakdown of the regulated groups by ethnicity and to analyse the equality impact of these Regulations in relation to race.	2011 Census	None. Differences are likely to be reflecting age.
RELIGION OR BELIEF	According to the 2011 Census, in Scotland, 59% of the population report having a religion: 56% report as being Christian, 1.4% as being	2011 Census	None. Differences are

	Muslim. Due to sample size constraints, it is not possible to analyse the impact of these Regulations in relation to religion or belief.	likely to be reflecting age.
MARRIAGE AND CIVIL PARTNERSHIP (the Scottish Government does not require assessment against this protected characteristic unless the policy or practice relates to work, for example HR policies and practices - refer to Definitions of Protected Characteristics document for details)	This policy does not relate to this characteristic therefore we have not considered it for this EQIA.	

Stage 3: Assessing the impacts and identifying opportunities to promote equality

Do you think that the policy impacts on people because of their age?

Age	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination, harassment and victimisation	xx			Enabling data sharing under the conditions outlined in the Regulations will allow for more efficient and better targeted public services for individuals of various age groups.

Advancing equality of opportunity	xx				The Scottish Government expects this legislation to play a role in supporting Scottish public bodies' ability to provide more effective and person centred delivery of services. The objectives facilitate the targeting of services to a range of age groups.
Promoting good relations among and between different age groups				x	

Do you think that the policy impacts disabled people?

	Positive	Negative	None	Reasons for your decision
Disability				
Eliminating unlawful discrimination, harassment and victimisation			x	
Advancing equality of opportunity	x			Enabling data sharing under the conditions outlined in the Regulations will allow for more efficient and better targeted public services for individuals with disability and for the households within which they reside.
Promoting good relations among and between disabled and non-disabled people			x	

Do you think that the policy impacts on men and women in different ways?

	Positive	Negative	None	Reasons for your decision
Sex (including pregnancy and maternity)				
Eliminating unlawful discrimination			x	
Advancing equality of opportunity			x	
Promoting good relations between men and women			x	

Do you think your policy impacts on transsexual people?

Gender reassignment	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	
Advancing equality of opportunity			X	
Promoting good relations			X	

Do you think that the policy impacts on people because of their sexual orientation?

Sexual orientation	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	
Advancing equality of opportunity			X	
Promoting good relations			X	

Do you think the policy impacts on people on the grounds of their race?

Race	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	
Advancing equality of opportunity			X	
Promoting good race relations			X	

Do you think the policy impacts on people because of their religion or belief?

Religion or belief	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	
Advancing equality of opportunity			X	

Promoting good relations				X	
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Do you think the policy impacts on people because of their marriage or civil partnership?

Marriage and Civil Partnership³	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	

³ In respect of this protected characteristic, a body subject to the Public Sector Equality Duty (which includes Scottish Government) only needs to comply with the first need of the duty (to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010) and only in relation to work. This is because the parts of the Act covering services and public functions, premises, education etc. do not apply to that protected characteristic. Equality impact assessment within the Scottish Government does not require assessment against the protected characteristic of Marriage and Civil Partnership unless the policy or practice relates to work, for example HR policies and practices.

Stage 4: Decision making and monitoring

24. The assessment process finds that this legislation is anticipated to lead to positive impacts for some of the relevant protected characteristics (as defined by the Equality Act 2010) to the extent that it promotes more efficient and effective targeting of public services to support the wellbeing of individuals, some of whom may map closely to the protected characteristics.
25. Throughout the process significant attention has been given to ensuring that the personal data of the individuals concerned will be protected and shared only where there is a clear need and advantage to the individual and a legal gateway to do so. The number of public bodies listed in Schedule 4 of the Act has been limited for this reason.
26. Should a public service delivery requirement for data sharing arise with an unlisted body in the future this will require proposals to be worked up with stakeholders, consulted on and laid through further Regulations.

Stage 5 - Authorisation of EQIA

Please confirm that:

- ◆ This Equality Impact Assessment has informed the development of this policy:
Yes No

- ◆ Opportunities to promote equality in respect of age, disability, sex (including pregnancy and maternity), gender reassignment, sexual orientation, race and religion or belief have been considered, i.e:
 - Eliminating unlawful discrimination, harassment, victimisation;
 - Removing or minimising any barriers and/or disadvantages;
 - Taking steps which assist with promoting equality and meeting people's different needs;
 - Encouraging participation (e.g. in public life)
 - Fostering good relations, tackling prejudice and promoting understanding.Yes No

Declaration

I am satisfied with the equality impact assessment that has been undertaken for the Digital Government (Scottish Bodies) Regulations 2018 and give my authorisation for the results of this assessment to be published on the Scottish Government's website.

Name: Claire Wainwright
Position: Team Leader, Data Statistics and Outcomes Division
Authorisation date: May 2018