

Child Rights and Wellbeing Impact Assessment (CRWIA)

The Digital Government (Scottish Bodies) Regulations 2018

Policy/measure A general description of the policy/measure	The Digital Government (Scottish Bodies) Regulations 2018 The Digital Economy Act 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. The Digital Government (Scottish Bodies) Regulations 2018 (the Scottish Regulations) allow specified Scottish public bodies to share personal data to improve public service delivery.
Initiating department The responsible team or division. If this is a cross-cutting policy, name the team that has overall responsibility	Directorate for Digital; Data, Statistics and Outcomes; Data Sharing and Identity Assurance
Policy aims What the policy or measure is trying to achieve; what are the expected outcomes	<p>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’ data is protected.</p> <p>The aim of 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 powers set out in section 35 of the Act 2017 to improve Public Service Delivery. Section 35 is intended to remedy the lack of clear legal gateways for sharing information across public services.</p>

	<p>It is anticipated that the Regulations will promote more effective and efficient delivery of public services through proportionate and justified information sharing that better targets services toward those who need them. This in turn should lead to benefits for the individuals and households that interact with those public services.</p> <p>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) of the Act, 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.</p> <p>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:</p> <ul style="list-style-type: none"> • multiple disadvantage • television retuning • fuel poverty <p>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.</p>
<p>Timetable</p> <p>What is the time frame for a policy announcement/consultation/implementation?</p>	<p>Scottish Regulations will be laid in the Scottish Parliament on 17 May 2018 and are expected to come into force on 13 September 2018.</p>
<p>Date</p>	<p>17 May 2018</p>
<p>Signature</p>	<p>Claire Wainwright</p>

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Policy/measure

The aim of these Regulations is to enable Scottish public bodies, or persons providing services to Scottish public bodies to be able to disclose personal data under the new Public Service Delivery powers, set out in section 35 of the Act. The addition of Scottish public bodies into Schedule 4 of the Act will create a new legal gateway to enable the sharing of information to/from reserved bodies.

Only those public bodies or persons providing services to public bodies listed at Schedule 4 to the Act are able to make use of the Public Service Delivery power. Schedule 4 to the Act does not yet list devolved “Scottish public bodies” and it is for the Scottish Parliament to approve Regulations adding such public bodies. This is the purpose of the current regulations.

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 an objective which is a specified objective in relation to each of those bodies. These objectives need to be specified in regulations.

Sections 35(9) – (12) of the Act identify three conditions which specified objectives must fulfil and which pertain to any information sharing under a specified objective;

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.

The second condition is that the objective has as its purpose the improvement of the well-being of individuals or households. The reference in subsection 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.

The third condition is that the objective has as its purpose the supporting of—
(a) the delivery of a specified person’s functions, or

	<p>(b) the administration, monitoring or enforcement of a specified person’s functions.</p> <p>These conditions mean that the power must demonstrate how it leads to improvement in the delivery of a specific public service for individuals or households, or provision of a benefit to individuals or households – and that these are aimed at supporting the wellbeing of individuals or households. The third condition was added in Parliament, suggesting that Ministers should be required to specify closely delineated objectives which supported the delivery of a specified public authority’s functions.</p> <p>The Digital Government (Disclosure of Information) Regulations 2018 will specify four objectives for which personal information can be disclosed to improve Public Service Delivery. These are;</p> <ul style="list-style-type: none"> i. Multiple Disadvantage ii. Television Retuning iii Fuel Poverty iv. Water Poverty (not relevant to Scotland) <p>Each of the bodies listed in the Digital Government (Scottish Bodies) Regulations 2018 will be identified with one or more of these objectives. The scope of any proposal to share personal data is limited to the specified objective identified with the specified body.</p> <p>Third parties providing services to specified public bodies and sharing personal information using the public service delivery powers will need to be appropriately contracted, including through Data Processing Agreements, that specify the conditions for any processing and the obligations and instructions under which they are processing personal information. The role of third parties (providing services to bodies listed at Schedule 4) in relation to a data share under these powers will be documented through appropriate Data Processing Agreements which specify the data to be processed, the nature of any processing and conditions on this, obligations of the Processor and processes and reporting in the event of a breach.</p>
Background	<p>The Scottish Government engaged with a broad reach of Scottish public bodies in relation to the objectives being laid in Regulations in Westminster, to gauge interest in use of the powers for the purposes of Scottish public service delivery.</p> <p>Scottish Government officials worked with the Cabinet Office</p>

to augment the multiple disadvantage objective so that it would work within a Scottish public service delivery context.

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 disadvantage 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 to which that public body is listed.

Further consultation and legislation will be required should other public bodies wish to use these powers at a later date.

Public Consultation

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 four 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.”

The responses did not highlight any concerns with our intention to list the four specified persons in the Regulations and, as such, support our approach to limit the inclusion of specified persons to just those where data sharing in relation to the specified objectives being laid in Westminster would provide a clear and valid improvement in services to individuals or households.

Inter-Governmental Engagement

Throughout the process, Scottish Government officials have liaised and represented Scottish interests – including the rights and wellbeing of children and young people – 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).

Proposed use of Powers in Relation to Sharing of Children and Young People's Data

Getting it right for every child is the national approach in Scotland for working with and for children and their families to improve outcomes for children and young people. Getting it right for every child puts the rights and wellbeing of children and young people at the heart of the services that support them. It helps children and young people get consistent and effective support for their wellbeing wherever they live or learn.

The powers afforded by these Regulations can only be used in well-defined policy delivery instances where improved information flow between reserved and devolved bodies would allow for improved public service delivery to those children and young people, or their families, 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.

Data sharing between public bodies on the basis of the multiple disadvantage 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 the experiences and circumstances of children and young people.

Specified public bodies will be able to share data for the purposes of improving the lives of children and young people, where one of the following criteria are fulfilled in combination with another of the listed criteria under the multiple disadvantage objective:

- 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

	<p>contains a child in need)</p> <p>- they are an individual who fails to regularly attend school</p> <p>Skills Development Scotland are included in the Regulations because their service delivery to young people aged 16-24 years will be improved by being able to share data with HMRC to better identify and target services to young people who are not in employment, education or training (which qualifies under the criteria of meeting ‘two or more’ factors under the ‘multiple disadvantage objective’).</p> <p>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). It will avoid SDS having to re-contact a much wider group of individuals in determining the status of young people who are NEET (not in employment, education or training).</p> <p>Specifically the powers allow Skills Development Scotland to request data on the employment status of individual young persons living in Scotland from HMRC. HMRC will then return the individual’s personal identifying information (as below) in order that SDS can make contact, or remove from list of those eligible.</p> <ul style="list-style-type: none"> • Employer Name • Employment Start Date • Employment End Date • Employment Pay Frequency • Hours Worked in Period • Taxable Pay in Period • Self-Assessment indicator (y/n) • Employer PAYE Reference <p>The fuel poverty objective promotes better information sharing with the aim of improving targeted support to those defined as experiencing fuel poverty. The definition of fuel poverty means that families with young children are more likely to be considered fuel poor than other groups. It is expected that improved data sharing under this objective will lead to benefits for these children, young people and the households within which they live.</p>
Scope of CRWIA	<p>The CRWIA should be read in conjunction with the other impact assessments conducted in relation to the Digital Government (Scottish Bodies) Regulations 2018. The Data</p>

	<p>Protection Impact Assessment (DPIA) considers the impact of the new powers on an individual's right to privacy. The Equalities Impact Assessment (EQIA) considers the potential impact of the new powers on each of the protected characteristicsⁱ, including consideration of the impacts on children and young people, as well as wider characteristics which are also applicable to children and young people (e.g. race, religion, disability, sex and sexual orientation or beliefs).</p> <p>The specified objectives identify circumstances experienced by children and young people. The impact of this is assessed as it relates to the proposed specified bodies in the Scottish Regulations and the specified objectives against which they are to be listed to share personal data.</p>
Key Findings	<p>It is anticipated that the Regulations will promote more effective and efficient delivery of public services through proportionate and justified information sharing that better targets services toward those who need them. This in turn should lead to benefits for the individuals and households that interact with those public services. This includes information sharing to improve the delivery and targeting of services for the benefit of children and young people.</p> <p>All instances of information sharing using the Public Service Delivery information sharing powers must demonstrate full compliance with relevant data protection legislation, as well as with common law and the Human Rights Act 1998.</p> <p>The risks associated with sharing personal data relating to children and young people will be managed through detailed Data Protection Impact Assessments which will identify risks and develops plans for mitigating these for each data share. A draft Information Sharing Code of Practice covering Public Service Delivery will accompany the draft Regulations as these are laid in Westminster. The Code of Practice, which is subject to approval by the UK Parliament under the Act will set out the processes and safeguards to be adopted in sharing information using the Public Service Delivery powers. The purpose of the Code is to provide a set of principles and guidance for the use and disclosure of information under the powers. Section 43(3) of the Act provides that a person to whom the Code applies must have regard to the information Sharing Code of Practice – in disclosing information under any of sections 35 to 39, and in using information disclosed under any of those sections.</p> <p>Scottish Ministers will expect public authorities and other participants in an information sharing arrangement to agree to adhere to the Code before any information is shared. Failure</p>

	<p>to have regard to the Code may result in public authorities losing the ability to disclose, receive and use information under the powers. In addition, there are criminal sanctions for disclosing personal information in ways that are not permitted by the Act (see sections 41 and 42 of the Act in particular).</p> <p>Details of information sharing agreements concerning non-devolved bodies for disclosures under the Public Service Delivery powers must be submitted to the Public Service Delivery Secretariat in the Department of Digital, Culture, Media and Sport who will maintain a searchable electronic register available to the general public. Under data protection legislation, data controllers are required to keep records of their data processing activities.</p> <p>A Review Board will be established by the UK Government to ensure a consistent strategic approach to the use of the powers. The Board will meet quarterly to review proposals for new objectives and will consist of senior officials from relevant information governance or social policy areas and be attended by representatives from the ICO and invited members from appropriate public representative bodies.</p> <p>These measures will protect children’s rights to privacy, e.g. as recognised in Article 8 of the European Convention on Human Rights and Article 16 of the UN Convention on the Rights of the Child.</p>
Conclusions and Recommendations	<p>It is therefore reasonable to conclude that the new data sharing powers to be enacted will have a positive impact on the lives of children and young people and that appropriate safeguards have been identified to manage risks relating to inappropriate disclosures of personal information relating to children and young people.</p>

ⁱ The Equality Act 2010 sets out the personal characteristics that are protected by law. These ‘protected characteristics’ are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion, sex and sexual orientation.