

# Data Protection Impact Assessment

## Introductory information

Summary of proposal:	To lay required regulations under s85 of the Social Security (Scotland) Act for the exchange of information to enable Social Security Scotland to effectively administer devolved social security in Scotland in keeping with the Scottish social security principles, as well as to share information to support Local Authority functions.
Your department:	Social Security Directorate
Contact email:	<a href="mailto:Letitia.Stevenson@gov.scot">Letitia.Stevenson@gov.scot</a> <a href="mailto:Keigh-Lee.Paroz@gov.scot">Keigh-Lee.Paroz@gov.scot</a>
Data protection support email Data protection officer	<a href="mailto:dpa@gov.scot">dpa@gov.scot</a> <a href="mailto:dataprotectionofficer@gov.scot">dataprotectionofficer@gov.scot</a>
Is your proposal primary legislation, secondary legislation or other form of statutory measure?	Secondary legislation – SSI
What stage is the legislative process at? Please indicate any relevant timescales and deadlines.	Expected laying date of 05 February 2021
Have you consulted with the ICO using the Article 36(4) form (please provide a link to it)?	Yes; we have engaged twice with ICO twice via the Art. 36(4) process: Details can be found on eRDM at: <a href="#">A30898522</a> <a href="#">A30979910</a>
If the ICO has provided feedback, please include this.	Initially, the ICO was content with the consultation at the presentation about the s85 provisions.  They requested further engagement following an updated Art. 36(4) form; a meeting took place on 17.12.20. The ICO were content with the proposed regulations, drawing attention to the importance of transparency and making clients aware of how their data may be shared.
Do you need to hold a public consultation and if so has this taken place	A number of elements of the s85 regulations come from feedback in consultation about the Social Security (Scotland) Act 2018 and subsequent user groups and client experience panels. There has also been some consultation with organisations involved in or affected by the proposed specification under section 85.

<p>Were there any comments/feedback from the public consultation about privacy, information or data protection?</p>	<p>Experience panel feedback suggests that a more efficient, easier service for clients is desired and is in keeping with the ministerial commitment around information gathering.</p> <p>Local Authorities are already listed in section 85(2) of the Social Security (Scotland) Act which means they may be required to supply information to the Scottish Ministers. As a result of the regulations, the following will also be included, for the purposes of section 85(2), as persons who may be required to supply information to the Scottish Ministers: the Public Guardian (Scotland), GP practices and providers of vehicles (for the Accessible Vehicles and Equipment [AVE] scheme).</p> <p>Local authority functions will be specified in connection with the discharge of which local authorities may receive information from the Scottish Ministers. The function of suppliers of AVE vehicles will also be specified.</p> <p>This will ensure that information can be passed to those organisations, for specified functions such as determining entitlement to council tax reduction. In relation to providers of vehicles, the purpose will be to pass on information relevant to entitlement. This may be tied to confirming entitlement to a vehicle (in other words, that a person is in receipt of a particular form of disability assistance) will be tied to changes in entitlement to disability assistance. For example, if a person ceases to be entitled to an AVE vehicle as a result of changes to their award of the mobility component of disability assistance, it will reduce the burden on them if Social Security Scotland passes on information to the vehicle provider rather than the onus being on the client.</p> <p>The ancillary powers in section 95 of the Social Security (Scotland) Act 2018 will also be used to limit the information being shared to the minimum necessary. This includes the situation where information is to be given so that a person specified for section 85(2) purposes can be required to supply information. Section 95 will also be used to provide an express power for information to be shared with Health Boards, GP practices and local authorities in order to receive</p>
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	<p>information in return. This reflects the substantive nature of the information that may be shared, potentially relating to the effects of a person's condition, etc.</p> <p>Feedback from consultations includes concerns from respondents that it might not be easy for clients to obtain or supply the information that might be required as supporting evidence. There were concerns about specialist or complex/rare conditions or where disabilities are invisible, including hidden disabilities, mental health or learning difficulties and raised that Social Security Scotland should take into account the interconnectedness of all of the information available. The commitment to reduce face to face assessments was seen as positive, with a preference for NHS information to be used to avoid the need for face to face assessments and the use of supporting evidence being less intrusive to clients, reducing anxiety, stress and confusion for them. A variety of information and sources were listed as sources of information to support claims.</p>
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	Question	Comments
	<i>Article 35(7)(a) – “purposes of the processing, including, where applicable, the legitimate interest pursued by the controller”</i>	
1	<p>What issue/public need is the proposal seeking to address?            What policy objective is the legislation trying to meet?</p>	<p>Social Security Scotland is an Executive Agency of the Scottish Government. It will eventually be making payments to 1.4 million citizens in Scotland, with a value in excess of £3 billion per year.</p> <p>The Scottish Government, including its agencies, must comply with the Public Sector Equality Duty (PSED) and Equality Act 2010. The Scottish Government also has a commitment to ‘joined-up public services’ and has been working with the wider public sector to achieve public services that are high quality, continually improving, efficient and responsive to local needs (<a href="#">National Outcome 16</a>).</p> <p>Consultation feedback about Social Security has highlighted a desire from clients for a more efficient, easier system of accessing benefits. The Scottish Government is committed to delivering a system of social security founded on core principles of fairness, dignity and respect. As part of that approach and in keeping with the Social Security Principles (s.1 Social Security Act 2018) and the <a href="#">Social Security Charter</a>, Social Security Scotland will rely upon the ability to share information with other persons in order to make determinations, to ensure clients are able to access all of the benefits to which they may be entitled, and to make the application process easier, especially for vulnerable clients.</p> <p>A <a href="#">ministerial commitment</a> has been made to make accessing social security easier and more efficient, in keeping with s.1 of the Social Security (Scotland) Act 2018, which confirms social security as a human right.</p> <p>Newly devolved benefits will intersect with other benefits, discounts, grants and other assistance available to people, such as “blue badges” or early learning or short-</p>

		<p>term/one-off payments, for example. Such concessions, benefits, discounts etc. may be administered by different persons.</p> <p>Newly devolved disability benefits, for example, will rely upon information supplied by health and social care professionals in order to create a more complete picture about an individual's needs for support.</p> <p>It may also be necessary for Social Security Scotland to provide certain information to other persons to allow those persons to fulfil their legal duties, including supplying information required of them under section 85(1), and to process information about individuals in order to determine their eligibility for services, concessions or other assistance administered by those persons.</p> <p>Social Security Scotland will need to minimise the risk of error in accordance with the Scottish Public Finance Manual, which may require certain persons to provide information about individuals entitled to, or receiving, benefits. This is particularly important when an individual may spend periods of time in hospital, a care home or other facility, which may affect eligibility for devolved disability or other benefits.</p>
<p><i>Article 35(7)(c) "assessment of the risks to the rights and freedoms of data subjects" and Article 35(7)(b) "...necessity and proportionality of the processing operations"</i></p>		
<p>2</p>	<p>Does your proposal relate to the processing of personal data? If so, please provide a brief explanation of the intended processing and what kind of personal data it might involve. Who might be affected by the proposed processing?</p> <p>Is the processing considered necessary to meet a policy aim? Is there a less invasive way to meet the objective (for example,</p>	<p>Yes, special category personal data will be processed. Processing already occurs as part of Social Security Scotland administering devolved benefits but this will increase the volume of special category information being processed as it relates to the newly devolved disability benefits.</p> <p>The processing will take place where information sharing is necessary for establishing individuals' entitlements to benefits, in keeping with Social Security</p>

	<p>anonymising data, processing less data).</p> <p>Please also specify if this personal data will be sensitive or special category data or relate to criminal convictions or offences</p> <p>(Note: ‘special categories’ means personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data about a person’s sex life or sexual orientation and sensitive personal data means criminal information or history)</p>	<p>Scotland’s legal duties and obligations (including protecting public funds), or in some cases at the request of the individual. Individuals will have to give their authorisation where information is to be shared with a local authority, health board or GP practice in order to obtain information for use in connection with determining entitlement to social security.</p> <p>Only the information that is required for the purpose for which it is being collected will be sought. Forms, for example, have been designed to be customisable, to seek only information relevant to determining entitlement and that isn’t already held by Social Security Scotland. Equally, only the minimum possible information will be given out, in order to obtain the information needed in return.</p>
<p><i>Part of your consideration in relation to Article 35(7)(a) and (b) should be in respect of ECHR. “</i></p>		
<p><b>3</b></p>	<p>Will your proposal engage any rights under ECHR, in particular Article 8 ECHR? How will the proposal ensure a balance with Article 8 rights? If the proposal interferes with Article 8 rights, what is your justification for doing so – why is it necessary?</p> <p><b>Article 8 ECHR: Right to respect for private and family life</b></p> <p>1. Everyone has the right to respect for his private and family life, his home and his correspondence.</p> <p>2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.</p> <p>You may also wish to consider</p>	<p>The proposals will engage Article 8.</p> <p>Based on forecasts by the Scottish Fiscal Commission, by 2023/24 an estimated 80% of Social Security Scotland’s expenditure will be on disability benefits, recipients of which have reported incapacity. It is therefore important that these are taken into account in any interactions with the agency.</p> <p>Operationally, Social Security Scotland have taken a number of steps to ensure inclusive design of services.</p> <p>Part of that will involve information sharing to make it easier for those with disabilities or other challenges to access all of the support to which they are entitled. The overarching aim is to facilitate access to social security assistance provided by the Scottish Ministers, and to other forms of welfare provision by local authorities and others. This operates in the interests of the</p>

	<p>Article 6 right to a fair trial (and rights of the accused)  Article 10 right to freedom of expression  Article 14 rights prohibiting discrimination  Or any other convention or treaty rights?</p>	<p>promotion of health and morals, which is one of the justifications under Article 8(2).</p> <p>The provisions will include a requirement that only information necessary for the administration of benefits will be shared. In other words, where information is to be supplied by the Scottish Ministers, no more information may be supplied than is necessary to enable the recipient to use it for the purpose it is to be used. This will be the case whether Ministers are giving out information to receive information in return, or are providing information which is to be used to fulfil a function of the recipient.</p>
<p><i>Article 35(7)(b) "...necessity and proportionality of the processing operations"</i>  <i>Article 35(7)(c) "assessment of the risks to the rights and freedoms of data subjects"</i>  <i>Article 35(7)(d) "measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of personal data and to demonstrate compliance with [GDPR] taking into account the rights and legitimate interests of data subjects and other persons concerned"</i>  <i>Note Article 32 GDPR for s.4 also</i></p>		
<p><b>4</b></p>	<p>Will the proposal require regulation of :</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> technology relating to processing</li> <li><input type="checkbox"/> behaviour of individuals using technology</li> <li><input type="checkbox"/> technology suppliers</li> <li><input type="checkbox"/> technology infrastructure</li> <li><input type="checkbox"/> information security</li> </ul> <p>(Non-exhaustive examples might include whether your proposal requires online surveillance, regulation of online behaviour, the creation of centralised databases accessible by multiple organisations, the supply or creation of particular technology solutions or platforms, or any of the areas covered in questions 4a or 4b.)</p>	<p><i>Please provide details</i></p> <p>Practical implementation will involve standard uses of technology (PCs/Laptops/tablets) but there will be no legislative measures relating to technology.</p>
<p><b>4a</b></p>	<p>Please explain if the proposal will have an impact on the use of technology and what that impact will be.</p>	<p>The provisions do not include provisions regarding technology. As stated above, technology will be used in implementation to help clients apply for social security but there are no unusual</p>

	<p>Please consider/address any issues involving:</p> <ul style="list-style-type: none"> <li>○ Identification of individuals online (directly or indirectly, including the combining of information that allows for identification of individuals, such as email addresses or postcodes );</li> <li>○ Surveillance (necessary or unintended);</li> <li>○ Tracking of individuals online, including tracking behaviour online;</li> <li>○ Profiling;</li> <li>○ Collection of ‘online’ or other technology-based evidence</li> <li>○ Artificial intelligence (AI);</li> <li>○ Democratic impacts e.g. public services that can only be accessed online, voting, digital services that might exclude individuals or groups of individuals</li> </ul> <p>(Non-exhaustive examples might include online hate speech, use of systems, platforms for delivering public services, stalking or other regulated behaviour that might engage collection of evidence from online use, registers of people’s information, or other technology proposals that impact on online safety, online behaviour, or engagement with public services or democratic processes.)</p>	<p>or new uses of technology introduced by these provisions.</p>
<b>4b</b>	<p>Will the proposal require establishing or change to operation of an established public register (e.g. Accountancy in Bankruptcy, Land Register etc.) or other online service/s?</p>	<p>N/a</p>
<p><i>Article 35(7)(b) “...necessity and proportionality of the processing operations”</i>  <i>Article 35(7)(c) “assessment of the risks to the rights and freedoms of data subjects”</i>  <i>*Note exemptions from GDPR principles where applicable</i></p>		
<b>5</b>	<p>Please provide details of whether the proposal will involve the</p>	<p>The proposal does not introduce any new requirements regarding investigatory</p>

	collection or storage of data to be used as evidence or use of investigatory powers (e.g.in relation to fraud, identify theft, misuse of public funds, any possible criminal activity, witness information, victim information or other monitoring of online behaviour)	powers; these are already included in the Social Security (Scotland) Act 2018 and regulations made under it.
<p><i>Article 35(7)(b) "...necessity and proportionality of the processing operations"</i></p> <p><i>Article 35(7)(c) "assessment of the risks to the rights and freedoms of data subjects"</i></p> <p><i>Article 35(7)(d) "measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of personal data and to demonstrate compliance with [GDPR] taking into account the rights and legitimate interests of data subjects and other persons concerned"</i></p>		
6	<p>Would the proposal have an impact on a specific group of persons e.g. children, vulnerable individuals, disabled persons, persons with health issues, persons with financial difficulties, elderly people? (Please specify) In what way?</p>	<p>The regulations will impact on all who access social security in Scotland, including impacts on specific groups, such as people with disabilities, vulnerable people, people with health issues. Those impacts, however, will be positive as it will be easier and more efficient for them to access all of the benefits to which they are entitled. For example, the Scottish Government's Pregnancy and Parenthood in Young People Strategy highlights that young mothers are considerably more reliant on state benefits and tax credits than older mothers, which remains the case as the child ages.</p> <p>The objective of the information sharing is to make accessing that support easier and more efficient for such groups and for all Scottish citizens who are eligible for financial assistance, concessions and benefits from public sector persons. Only the information pertaining to accessing/eligibility for those benefits will be shared.</p>
7	<p>Will the proposal necessitate the sharing of personal data to meet the policy objectives? For example</p>	<p>Yes. The objective of the provisions will be to establish legal gateways to share information with those organisations involved in administering social security, benefits, discounts and concessions to people accessing social security from the Scottish Ministers. .</p>

	<ul style="list-style-type: none"> <li>○ From one public sector organisation to another public sector organisation;</li> <li>○ From a public sector organisation to a private sector organisation, charity, etc.;</li> <li>○ Between public sector organisations;</li> <li>○ Between individuals (e.g. practitioners/ service users/sole traders etc.);</li> <li>○ Upon request from a nominated (or specified) organisation?</li> </ul> <p>If so, does the Bill make appropriate provision to establish a legal gateway to allow for sharing personal data Please briefly explain what the gateway will be and how this then helps meet one of the legal bases under Article 6 of the GDPR.</p> <p>(Please provide details of data sharing, e.g. if there is a newly established organisation, if it is new sharing with an already established third party organisation, if it is with a specified individual or class of individuals, or any other information about the sharing provision/s. State what is the purpose of the sharing and why it is considered to be necessary to achieve the policy aims. )</p>	<p>This will mean that, where organisations have an obligation to provide assistance to people receiving social security, that they are able to do so in an efficient, joined-up manner that reduces the burden on those eligible for such benefits.</p> <p>The information sharing will support processing already undertaken under Article 6(1)(c) and (e) and Article 9(2)(b) of GDPR for social security functions under Member State law and to fulfil obligations with regards to administering social security.</p>
8	<p>Is there anything potentially controversial or of significant public interest in the policy proposal as it relates to processing of data? For example, is the public likely to views the measures as intrusive or onerous?</p> <p>Are there any potential unintended consequences with regards to the provisions e.g. would the provisions result in</p>	<p>The information sharing powers are to assist access to all benefits, concessions, discounts and assistance available to clients, especially vulnerable clients. They are not intended to create “big government” or to extend beyond what is necessary for the delivery of social security in Scotland, however, misunderstanding of the scope of the powers may lead to controversy. The provisions are intended to reduce barriers to accessing benefits to which clients are entitled. Information sharing will be limited to what is necessary for</p>

	<p>unintended surveillance or profiling.</p> <p>Have you considered whether the intended processing will have appropriate safeguards in place? If so briefly explain the nature of those safeguards and how any safeguards ensure the balance of any competing interests in relation to the processing.</p>	<p>clients to access all of the benefits, concessions, discounts etc. they are entitled to from the public persons who administer those various schemes.</p>
<p><b>9</b></p>	<p>Are there consequential changes in other legislation that need to be considered as a result of the proposal or the need to make further subordinate legislation to achieve the aim?</p> <p>(This might include, for example, regulation or order making powers; or provisions repealing older legislation; or reference to existing powers (e.g. police or court powers etc.).</p>	<p>No; these provisions are part of modifications to the Social Security (Scotland) Act 2018.</p>
<p><b>10</b></p>	<p>Will this proposal necessitate an associated code of conduct? If so, what will be the status of the code of conduct (statutory, voluntary etc.)?</p>	<p>No. Internal guidance will be issued with regards to the implementation of these regulations where appropriate, to ensure that staff understand the privacy implications and requirements of information management but this will not have status as statutory guidance or codes of practice.</p>

## Summary – Data Protection Impact Assessment

11	Do you need to specify a Data Controller/s?	No; information sharing provisions are not intended to alter data controllership, merely to establish legal gateways between existing data controllers who process personal (including sensitive and special category) data for their own purposes and functions, legal obligations and duties.
12	<p>Have you considered whether the intended processing will have appropriate safeguards in place, for example in relation to data security, limitation of storage time, anonymisation? If so briefly explain the nature of those safeguards</p> <p>Please indicate how any safeguards ensure the balance of any competing interests in relation to the processing.</p>	<p>Information sharing under section 85 is for specified purposes and functions, with specified organisations.</p> <p>The objective of the provisions is to ensure efficient, easy access to all of the benefits to which an individual is entitled and therefore necessarily identifies those individuals with entitlement to claim those benefits, concessions and assistance.</p> <p>The provisions will include a requirement that only information necessary for the administration of benefits will be shared.</p>
13	Will the processing of personal data as a result of the proposal have an impact on decisions made about individuals, groups or categories of persons? If so, please explain the potential or actual impact. This may include, for example, a denial of an individual's rights or use of social profiling to inform policy making.	<p>The objective of the processing is intended to make it easier to make decisions that ensure clients of social security are able to access all of the assistance to which they are entitled. This is intended to have a positive impact on the rights and freedoms of those receiving and applying for social security, especially vulnerable groups.</p> <p>Care must be taken in interactions with third parties that personal information is not disclosed either intentionally or unintentionally that is not relevant to social security functions, and this will be achieved through both the restrictions within the provisions as to extent of information sharing and by embedded privacy by design, security by design, and inclusive design in social security delivery development. Processes being put in place, while operational in nature, will</p>

		<p>follow these provisions. These provisions are intended to both put in place the necessary information sharing but also to limit that information sharing to the organisations listed and the purpose for which information is being shared.</p>
<p><b>14</b></p>	<p>If the proposal involves processing, do you or stakeholders have any relevant comments about mitigating any risks identified in the DPIA including any costs or options, such as alternative measures.</p>	<p>Overall, feedback from stakeholders is positive; some of this work is driven by client feedback about making it easier to access benefits. Organisational stakeholders have also been positive in engaging on the provision of better, more joined-up public services and ability to verify eligibility that reduces the burden on clients, especially vulnerable clients.</p> <p>Alternative measures are not suitable, as changes need to be made for the delivery of devolved benefits. Limitations have been included in the section 85 regulations to ensure that they are no wider in scope and application than is justifiable. But some information sharing will be needed, in particular to ensure that clients moving from DWP to Social Security Scotland are not discriminated against (that they are in the same or better position than they were in with DWP in relation to access to other benefits) and that there is no interruption to payments.</p>

## Authorisation

The DPIA report should be signed by your Information Asset Owner (IAO). The IAO will be the Deputy Director or Head of Division or the relevant person in the business area sponsoring the Bill/proposals.

Before signing the DPIA report, an IAO should ensure that she/he is satisfied that the impact assessment is robust and has addressed all the relevant issues.

By signing the DPIA report, the IAO is confirming that the impact of the policy has been sufficiently assessed against individuals' right to privacy.

The results of the impact assessment must be published in the eRDM with the phrase “Legislative DPIA” and the name of the project or initiative in the title.

Details of any relevant information asset must be added to the Information Asset Register, with a note that a DPIA has been conducted.

**I confirm that the impact of these provisions has been sufficiently assessed in compliance with the requirements of the GDPR**

Name and job title of a IAO or equivalent  Alison Byrne (Deputy Director)	<b>Date each version authorised:</b>  <b>28/01/21</b>
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## Explanatory note re risks

The data protection impact assessment for legislation is an iterative process. There are many ways that risks to privacy and/or data protection can arise in legislative proposals and also many options for addressing those risks through legislation. As with most responses to risks, these will vary in their implications and potential impacts (e.g. cost implications, creation of other risks, consequence scanning etc.).

Some of the risks you will need to consider as work develops on Bill proposals, ancillary documents, analysis of consultations, ICO feedback and other Bill development may include (but will not be limited to):

- There is insufficient justification for interference with Article 8 ECHR rights;
- Appropriate safeguards have not been included/incorporated into provisions;
- Appropriate safeguards have not been included/incorporated into provisions regarding impact to/on children;
- The legal basis for processing is not specified or not specific enough;
- The legal basis for processing is insufficiently expressed for the purposes of Article 9 GDPR or Schedule 1 Data Protection Act 2018 (processing of special category personal data);
- Data controllers are not specified (they are not required to be but, where appropriate, they should be specified);
- Legal gateways for data sharing are not included;
- Legal gateways for data sharing are not specific enough or are too specific (for example, a named organisation is specified which consequently changes its name/structure and there is no generalised provision to allow for continued data sharing, or the provisions are drawn so specifically that an area of data sharing is excluded even though, once implemented, that information is needed etc.);
- Provisions interfere with other ECHR rights (there will be an overlap between data protection (Article 8) and some of the other ECHR rights);
- Unintended consequences of the proposals lead to undesirable outcomes (including non-compliance) e.g. surveillance, impinging other rights, collection of more personal data than originally intended, invasive monitoring of citizens without appropriate safeguards, creation of 'big data' sets that allow for identification of individuals and discovery of unintended personal data;
- Data protection principles aren't incorporated into the legislation itself and/or
- The implementation of the legislation (i.e. once the Bill is enacted) is problematic because insufficient provision was included in the legislation (e.g. through express or implied powers, legal gateways, flexibility with regards to manner of implementation/powers to implement etc.);
- Controversial measures;
- Other legislation is not repealed or amended which contains provisions that make new proposed provisions unclear or uncertain;
- Statistics or other exemptions aren't incorporated/become unclear through the new legislation;
- Failing to identify all of the personal data that will be created, that will need to be shared, the organisations it will need to be shared with, or failing to include sufficiently wide provisions to allow for necessary use, sharing or access to the personal data (or other future proofing issues).