

POLICY NOTE

THE DIGITAL GOVERNMENT (SCOTTISH BODIES) REGULATIONS 2022

SSI 2022/91

The above instrument is made in exercise of the powers conferred by sections 48(5) and 56(6) of the [Digital Economy Act 2017](#)¹ (“the Act”) and all other powers enabling them to do so. The instrument is subject to the affirmative procedure.

Purpose of the Instrument:

The Regulations add the Scottish public authorities listed in the Annex to schedule 7 (debt) and schedule 8 (fraud) of the Act. This provides a legal means for them to share information with other listed public authorities for the purposes of reducing debt owed to, and combatting fraud against, the public sector.

Policy Objectives

1. The Act is an Act of the UK Parliament. Part 5 introduces new information sharing powers to reduce debt owed to, or fraud against, the public sector. These data-sharing provisions affect a number of devolved matters and were subject to a Legislative Consent Motion, approved by the Scottish Parliament, on 22 February 2017.
2. To be able to use the debt and/or fraud information sharing powers, public authorities (and bodies which provide services to public authorities) must be listed in schedule 7 (debt) and/or schedule 8 (fraud). Bodies which provide services to public authorities can be added to or described in the schedules. This is in recognition of the fact that public services are also delivered by third parties who may hold key information which public authorities need, or who, in turn, may need to access key information held by public authorities. Such bodies can only use the data sharing powers in connection with the functions they exercise when providing services to a public authority.
3. A listed public authority can only share data under these powers with other persons who are also listed in the relevant schedule. The powers are permissive, so persons who are potentially able to share information can choose whether or not to do so. Data sharing under the Act is additional to any existing data sharing that can take place under existing legislation applying to public authorities.
4. Sections 48(5) and 56(6) of the Act provide for the “appropriate national authority” to amend the list of specified public bodies in schedules 7 and 8 who can share data. The Scottish Government is the appropriate national authority for regulations which add, modify, or remove an entry to schedules 7 and 8 which relate to a “Scottish body”, which is:
 - i. a person who is part of the Scottish Administration, or
 - ii. a Scottish public authority with mixed functions or no reserved functions, or
 - iii. a person providing services to (i) or (ii).

¹ <https://www.legislation.gov.uk/ukpga/2017/30/contents>

5. The Regulations add certain Scottish Bodies to the schedules. The UK and Welsh Governments have already added UK, English and Welsh bodies to the schedules.

6. Data is at the heart of the refreshed digital strategy for Scotland [A changing nation: how Scotland will thrive in a digital world](#)² and being an ethical digital nation is part of the backbone of the strategy. Building public trust in the responsible use of data has the potential to improve services, increase efficiency and support delivery of the [National Performance Framework](#)³ which describes the kind of Scotland in which people would like to live.

7. People must be confident that their rights to privacy are protected, that there are adequate legal protections against exploitation of their personal information and that it is held securely and used effectively for public benefit. To this end, the debt and fraud data sharing powers must be exercised in compliance with a number of overriding safeguards.

Safeguards

8. The Act regulates when the debt and fraud data sharing powers can be used, only authorising data sharing where the public authority can justify this in line with the purposes set out in Part 5 of the Act. In broad terms, this means a body will only be listed in schedules 7 or 8 where that body requires information from another listed body, or is in a position to share information with another listed body, to improve debt and/or fraud management. The Act also provides that, in determining whether to make regulations adding Scottish bodies to the relevant schedules, the appropriate national authority must have regard to the public authority's systems and procedures for the secure handling of information.

9. The Data Protection Act 2018 and UK General Data Protection Regulation apply to the processing of all personal data using the debt and fraud powers. The Digital Economy Act creates criminal offences for unauthorised disclosure of personal information received under the debt and fraud powers. Public authorities must always ensure that data sharing is compliant with the Human Rights Act 1998 and they must not act in a way that would be incompatible with rights under the European Convention on Human Rights.

10. Public authorities sharing data under the debt and fraud powers must have regard to the [Code of Practice](#)⁴ for public authorities disclosing information under Chapters 1, 3 and 4 (Public Service Delivery, Debt and Fraud) of Part 5 of the Digital Economy Act 2017 (the Code). The Code provides details on how the debt and fraud information sharing powers should operate. Failure to have regard to the Code may result in a public authority or organisation losing the ability to disclose, receive and use data under the powers in the Act.

11. The Code provides that, initially, all information sharing under the debt and fraud powers is run as a pilot. The Code sets out the guidance on the process which bodies will need to follow to establish a pilot. The purpose of such pilots is to allow for the benefit of the data share to be explored, and to identify any potential impacts and ethical issues. Pilots will determine whether and how there is value in sharing personal information for the purposes of taking action in connection with debt owed to, or fraud against the public sector.

² <https://www.gov.scot/publications/a-changing-nation-how-scotland-will-thrive-in-a-digital-world/>

³ <https://nationalperformance.gov.scot/>

⁴ <https://www.gov.uk/government/publications/digital-economy-act-2017-part-5-codes-of-practice/code-of-practice-for-public-authorities-disclosing-information-under-chapters-1-3-and-4-public-service-delivery-debt-and-fraud-of-part-5-of-the-di>

12. Public bodies wishing to establish a pilot submit a business case, information sharing agreement, data protection impact assessment and security plan to the secretariat of a review board. The UK Government has established a [review board](#)⁵ to oversee reserved and England only data sharing under the fraud and debt powers. The board assesses and makes recommendations to UK Ministers on each pilot proposal. The Scottish Government will similarly establish its own structures for the oversight of data-sharing arrangements for Scotland.

13. The Code sets out that information about information sharing agreements should be published in a searchable public register. This provides transparency and helps public authorities demonstrate compliance with data protection law by providing:

- the data being shared
- the specific purposes for which it is being shared
- which bodies are disclosing and receiving that data
- the potential benefits to be derived from the data sharing
- where appropriate, how long that data will be held for

14. The UK Government has established a [register](#)⁶ for reserved and England-only information sharing agreements. A similar register will be established for devolved information sharing agreements.

15. The Code includes Fairness Principles which provide a set of best practice guidelines to help ensure a common approach to fairness is considered when sharing information under the debt power. The UK Government worked in partnership with non-fee paying debt advice providers to develop these Principles. Where a vulnerable customer is identified, the Fairness Principles provide that they should be given appropriate support and advice, which may include signposting to non-fee paying debt advice agencies.

Consultation

16. In accordance with the requirements of sections 48(11) and 56(12) of the Act, the following bodies have been consulted:

- Information Commissioner
- Commissioners for Her Majesty's Revenue and Customs
- Welsh Ministers
- Department of Finance in Northern Ireland
- Minister for the Cabinet Office
- Other public bodies / persons the Scottish Ministers considered appropriate which in this case included Scottish public bodies and poverty groups.

⁵ <https://www.gov.uk/government/publications/the-digital-economy-act-2017-debt-and-fraud-information-sharing-review-board>

⁶ <https://www.gov.uk/government/publications/register-of-information-sharing-agreements-under-chapters-1-2-3-and-4-of-part-5-of-the-digital-economy-act-2017>

17. There was broad support for the proposals. The consultations, answers from respondents who gave permission for them to be published and analysis of responses are available at:

- Scottish public authorities sharing data: consultation
<https://consult.gov.scot/digital-directorate/public-authorities-sharing-data/>
- Scottish public authorities sharing data: further consultation
<https://consult.gov.scot/digital-directorate/public-authorities-sharing-data-2/>

Impact Assessments

18. The following Impact Assessments have been completed and will be published on the Scottish Government website <https://www.gov.scot/>:-

- Data Protection Impact Assessment for legislation
- Equalities Impact Assessment

19. A Child Rights and Wellbeing Impact Assessment screening was conducted and will also be published. It concluded that a full assessment was not required as there are no adverse impacts on children and young people.

20. A Strategic Environmental Assessment has not been conducted as there are no significant impacts from these data sharing powers.

21. A Fairer Scotland Duty assessment was also completed and will be published.

Financial Effects

22. The Minister for Public Finance, Planning and Community Wealth confirms that no Business and Regulatory Impact Assessment is necessary, as the instrument has no direct financial effects on the Scottish Government, local government or on relevant businesses and the third sector.

23. It is hoped that improved data sharing under these powers will deliver efficiency savings through better data sharing which in turn will lead to better debt and fraud management. Any additional burdens as a result of the Scottish Bodies using the permissive powers in these Regulations are expected to be minimal. This is because organisations wishing to share personal data with each other must follow the requirements in the data protection legislation whether or not they use the powers in the Act.

Scottish Government
Digital Directorate

February 2022

Annex

Scottish Bodies listed in the Regulations

Scottish Public Body	Schedule 7 (debt)	Schedule 8 (fraud)
Accountant in Bankruptcy	✓	✓
Audit Scotland		✓
The Common Services Agency for the Scottish Health Service	✓	✓
A council constituted under section 2 of the Local Government etc. (Scotland) Act 1994(a)	✓	✓
Creative Scotland		✓
Food Standards Scotland		✓
Highlands and Islands Enterprise	✓	✓
Independent Living Fund	✓	✓
Revenue Scotland	✓	✓
Scottish Courts and Tribunals Service	✓	
Scottish Enterprise	✓	✓
Scottish Environment Protection Agency	✓	✓
Scottish Legal Aid Board	✓	✓
Scottish Legal Complaints Commission	✓	✓
Scottish Qualifications Authority	✓	✓
Skills Development Scotland		✓
South of Scotland Enterprise	✓	✓
The Scottish Ministers	✓	✓
A person providing services to a specified person listed in Schedule 7 and is a public authority, in respect of the taking of action in connection with debt owed to a public authority	✓	
A person providing services to a specified person listed in Schedule 8 and is a public authority, in respect of the taking of action in connection with fraud against a public authority or to the Crown		✓

Executive Agencies

“The Scottish Ministers” includes [Executive Agencies](#)⁷. Accordingly, Executive Agencies will be specified persons in relation to the debt and fraud powers, even though they are not listed by name in the schedules. At the time of the consultations, the Scottish Public Pensions Agency, the Student Awards Agency for Scotland and the Scottish Social Security Agency wished to make use of these powers.

A person providing services to a specified person

In recognition of the fact that public services are also delivered by third parties who may hold key information which public authorities need, or who may need to access key information held by public authorities, bodies that provide services to a public authority that is specified in the schedules are covered by the addition of a general description to the schedules. Such bodies will not need to be listed individually by name. They can only use the data sharing powers in connection with the functions they exercise when providing services to a specified public authority.

⁷ <https://www.gov.scot/publications/national-public-bodies-directory/pages/executive-agencies/>