

*These notes refer to the Digital Switchover (Disclosure of Information) Act 2007 (c.8)
which received Royal Assent on 18th June 2007*

DIGITAL SWITCHOVER (DISCLOSURE OF INFORMATION) ACT 2007

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Digital Switchover (Disclosure of Information) Act 2007 which received Royal Assent on 18th June 2007. They have been prepared by the Department for Culture, Media and Sport in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
2. These notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or a part of a section does not seem to require any explanation or comment, none is given.

BACKGROUND

3. “Digital switchover” is the process by which analogue television broadcasting signals will be phased out in favour of digital signals. A key part of the Government’s digital switchover policy is to ensure that adequate advice and assistance is available to those who need it to convert. In September 2005, the Government confirmed that the BBC would help establish a Digital Switchover Help Scheme to be funded by the television licence fee. Under the Scheme, a household will be entitled to be provided with suitable equipment to convert one TV set, help with setting it up and any work necessary to improve their TV aerial, if that household includes—
 - a person aged 75 or over, or
 - a person with a severe disability, i.e., if that person has an award of disability living allowance or attendance allowance, or an equivalent under the war pensions or industrial injuries disablement benefit legislation, or
 - a person who is registered blind or registered partially sighted.
4. Assistance provided by the Help Scheme will be available free of charge for those who are eligible and in receipt of pension credit, income support or income-based jobseeker’s allowance; others will pay a contribution, currently set at £40, towards the cost of assistance.
5. The detailed eligibility rules and governance arrangements for the Help Scheme are set out in: *The Digital Switchover Help Scheme: A Scheme Agreement Between Her Majesty’s Secretary of State for Culture, Media and Sport and the British Broadcasting Corporation (CM 7118)* made under the new (2006) BBC Charter and Agreement.
6. The Act will support the operation and effectiveness of the Help Scheme by allowing data held for social security purposes by the Department for Work and Pensions

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(“DWP”) and the Department for Social Development in Northern Ireland (“DSDNI”), for war pensions purposes by the Service Personnel and Veterans Agency within the Ministry of Defence, and in relation to people who are blind or partially sighted by local authorities or (in Northern Ireland) Health and Social Services Boards, to be disclosed to the administrator of the Scheme in order to enable the administrator to identify people in the eligible categories and write to them, inviting them to apply for help. This should help maximise take-up and (hence) help to vulnerable people, and minimise form-filling for recipients.

7. The disclosure of such data is constrained by a number of legal controls, such as the law of confidentiality (public authorities owe a duty of confidentiality to people who supply them with personal information) and statutory provisions. A public authority cannot disclose the information in question about a person without having legal authority to do so. There is extensive primary legislation setting out the purposes for which, and persons to whom, social security information about individuals may be disclosed. Section 123 of the Social Security Administration Act 1992, for example, makes it an offence for a social security employee (amongst others) to disclose social security information without “lawful authority” (as defined in section 123(9)).
8. The Act gives the necessary legal authority for the disclosure of social security and war pensions information, and information about people who are blind or partially sighted: *section 1(1), (2) and (3)*. Information falling into these categories and of a prescribed kind may be disclosed to a “relevant person” for use in connection with “switchover help functions”, such as identifying persons who may be eligible for help, contacting them and establishing their entitlement: *section 1(5)*. A “relevant person” includes the BBC, certain companies controlled by the BBC or the Crown, and any person engaged by the BBC, the Secretary of State or such a company to provide services or carry out functions in connection with switchover help functions: *section 1(4)*. It is an offence for a person who has received information by virtue of this power to disclose it without lawful authority: *section 3*.

TERRITORIAL EXTENT

9. The Act extends to the whole of the UK. There is power in *section 6(3)* for Her Majesty to extend its provisions to the Isle of Man, with or without modifications. Jersey and Guernsey intend to establish their own help schemes, separate from the Scheme covering the UK and Isle of Man.

COMMENTARY

Section 1: Disclosure of information

10. *Subsection (1)* provides legal authority for the Secretary of State and DSDNI to supply social security information to relevant persons for use in connection with switchover help functions. It gives a power to supply such information on request, but not a duty to do so: in other words, the final decision on whether information is supplied in a particular instance will lie with the Secretary of State (or DSDNI, as the case may be). *Subsection (2)* makes similar provision to allow the Secretary of State to supply war pensions information.

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11. In practice, the Secretary of State concerned in *subsection (1)* is the Secretary of State for Work and Pensions, and in *subsection (2)* it is the Secretary of State for Defence. All war pensions are administered by the Service Personnel and Veterans Agency (which is part of the Ministry of Defence) for the whole of the UK. “Social security information” and “war pensions information” are defined in *section 2*.
12. *Subsection (3)* makes comparable provision in relation to information (“visual impairment information”) held on registers of people who are blind or partially sighted. Such registers are maintained by local authorities with social services functions in England, Wales and Scotland (see *section 5(1)* for a definition of “local authority”) and by Health and Social Services Boards in Northern Ireland. “Visual impairment information” is defined in *section 2*.
13. The information may be supplied to “relevant persons” as defined in *subsection (4)*. Any “switchover help scheme” (as defined in *section 5*) will be under the overall management of the BBC or a company controlled by the BBC or the Crown (or the BBC and the Crown together): the final structure has not yet been determined but the BBC has indicated that it will operate the scheme through a wholly-owned subsidiary company established for the purpose. In practice, much of the administration of the Scheme (e.g. contacting potential applicants, determining entitlements, and delivering equipment and help with installations) will be contracted out to private sector organisations.
14. In principle, “relevant persons” can exchange information between themselves: this is envisaged by *subsections (1), (2) and (3)* (as indicated by the phrase “for use (by the person to whom it is supplied or by another relevant person)”). For example, a contractor might be made responsible for mailing information to potential applicants. They will need social security, war pensions and visual impairment information in order to identify and contact the people concerned. The Act permits information to be supplied directly to the contractor, or indirectly, via a company that is also a “relevant person”, such as a subsidiary of the BBC or a company owned by the Crown and the BBC.
15. All exchanges of information permitted by the Act are, however, controlled by—
 - the terms of *section 3*, which creates offences of disclosure without lawful authority (see below);
 - the Data Protection Act 1998;
 - other aspects of the general law, such as any obligation of confidentiality owed to the subject of the information or the body that supplied it; and
 - the terms of any contract between the companies concerned.
16. “Switchover help functions” are defined in *subsection (5)* as follows—
 - the identification of people who may be eligible for switchover help;
 - making contact with such people with a view to providing help (e.g. writing a letter to them explaining the help available and inviting them to contact the Scheme and ask for help);
 - establishing whether or not an applicant is eligible for help.

Section 2: Kinds of information referred to in section 1

17. This section defines key expressions used in *section 1*: “social security information” “war pensions information” and “visual impairment information”. It provides power for the Secretary of State to specify, by order, the precise kinds of social security, war pensions and visual impairment information that can be supplied under *section 1*. Such orders will be made by the Secretary of State for Culture, Media and Sport.
18. Those expressions are defined as follows—
 - “*Social security information*” is information of a description specified by order which is held by (or on behalf of) the Secretary of State or DSDNI and obtained as a result of, or for the purposes of, the exercise of functions in relation to social security.
 - “*War pensions information*” is information of a description specified by order which is held by (or on behalf of) the Secretary of State and obtained as a result of, or for the purposes of, the exercise of functions in relation to war pensions (see below).
 - “*Visual impairment information*” is information of a description specified by order about persons who are blind or partially sighted contained in a register maintained—
 - in England or Wales or Scotland, by or on behalf of a local authority (as defined in *section 5(1)*), or
 - in Northern Ireland, by or on behalf of a Health and Social Services Board.
19. “*Social security*” would, as in other statutes, encompass a range of benefits including state retirement pensions, income support, pension credit, income-based jobseeker’s allowance, disability living allowance and attendance allowance. Child support is not included.
20. “*War pension*” refers to a pension or other benefit for or in respect of a person who has died or been disabled in consequence of service as a member of the armed forces, and certain other pensions and benefits. See the definition given in section 25 of the Social Security Act 1989, which applies in the Act by virtue of *section 2(3)*.
21. Thus, this Act does not permit the supply of all social security, war pensions or visual impairment information, but only of those descriptions of such information as have been prescribed by order under subsection (2), (3) or (4). It is envisaged that this may include—
 - their name, and any alias by which they may be known, address and date of birth;
 - their National Insurance number;
 - whether they live in a residential care or nursing home (so helping to ensure that the right kinds of help are available in residential care and nursing home settings);

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- details of any person appointed to act on their behalf (to allow such people to be contacted to alert them to the availability of help);
 - whether they are entitled to help free of charge;
 - in the case of visual impairment information, preferred means of communication - for example by large print, braille, or tape;
 - the fact that they have died, where that is the case.
22. Orders are to be made by statutory instrument and will be subject to the negative resolution procedure, that is to say, they can be annulled by a resolution passed in either House of Parliament: see *subsections (5) and (6)*.

Section 3: Offences

23. In order to protect information supplied under the Act against further disclosure, *section 3* makes it an offence for certain persons to disclose such information without “lawful authority” as defined in *subsection (6)*. The penalties available on conviction (see *subsection (7)*) are the same as those for comparable offences under section 123 of the Social Security Administration Act 1992. The offence may be committed either—
- under *subsection (1)*, by a relevant person (as defined in *section 1(4)*) who has received information under section 1 directly from the Secretary of State, DSDNI, a local authority or a Health and Social Services Board, or indirectly from another relevant person (see paragraph 15 above for an illustration); or
 - under *subsection (2)*, by a person who is or has been employed by a relevant person, or engaged (e.g. as a consultant, rather than an “employee” in the strict legal sense) to carry out a switchover help function, or to provide services or carry out a function connected with carrying out a switchover help function.
24. It is not an offence to disclose information in summary form, such as a statistical analysis, such that no information relating to a particular person can be ascertained from it (*subsection (4)(a)*), or to disclose it (*subsection (4)(b)*) in circumstances where the information in question has already been made public with lawful authority.
25. Also, the person charged has a defence if he can prove that, even though *in fact* the disclosure was made without lawful authority or was a disclosure of information that had not previously been made public with such authority, he *believed* that one or other of those conditions was met, and had no reason to believe that they were not met: *subsection (5)*. In principle, this reverses the burden of proof in this respect. In criminal matters it is usually up to the prosecution to prove the case beyond all reasonable doubt, but here the defendant must prove the matters that go to make up the defence. The standard of proof is the balance of probabilities.
26. The meaning of “lawful authority” is given in *subsection (6)*. A disclosure is made “with lawful authority” if (but only if) it is made—

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- for the purpose of carrying out a switchover help function (as defined in *section 1(5)*) or for doing anything connected with the carrying out of such a function;
 - in accordance with any enactment or a court order;
 - for the purposes of court proceedings;
 - with the consent of the person to whom the information relates or a person authorised to act on his or her behalf.
27. *Subsection (7)* provides that any person found guilty of an offence under this provision is liable–
- a) on conviction in the Crown Court, to imprisonment for a term not exceeding two years or an unlimited fine or both;
 - b) on conviction in a magistrates’ court, to imprisonment for a term not exceeding twelve months or a fine not exceeding the “statutory maximum” (currently £5000) or both.
28. *Subsection (8)* is a transitional provision in England and Wales and Scotland, but has indefinite effect in Northern Ireland. Where an offence is committed before the coming into force (in England and Wales) of section 154 of the Criminal Justice Act 2003 or is committed in Northern Ireland, or a prosecution takes place (in Scotland) before the commencement of section 35(1) of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007, *subsection (7)(b)* has effect as if it provided for a maximum term of imprisonment not exceeding six months.

Section 4

29. The offences of unlawful disclosure created by *section 3* can in principle be committed by a “body corporate” (e.g. a company, or the BBC, which is a corporation by virtue of its Royal Charter). For example, company literature might reveal such information. By virtue of *section 4(1)*, where such a body commits an offence under *section 3*, an officer of that body can personally be convicted of a criminal offence alongside the company, if it is shown that the body committed the offence with the consent or connivance of the officer, or that the commission of the offence was attributable to any neglect on his part. Thus, if an officer, for example, neglects to make sure that staff are aware of the need to maintain the confidentiality of social security information, or neglects to take steps to control movements of information, with the result that there is a release of such information, he may face prosecution. An individual convicted under this provision is liable to the same punishments as are set out in *section 3(7)*.
30. The aim of *subsections (2) and (3)* is to ensure that this provision is apt to apply to many forms of corporate organisation. In particular, *subsection (3)* gives a broad definition of an “officer”, which means a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body. It also encompasses a person *purporting* to act in any such capacity, so a person who

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(for example) *in fact* gives orders in a company and is part of its management team might not escape liability by simply saying that technically (e.g. because of the terms of his job description) he does not fall into one of the categories of person mentioned.

TRANSPOSITION NOTES

31. None of the measures in this Act has any effect on or is affected by any European Directive.

COMMENCEMENT

32. The Act came into force on the day it received Royal Assent.

HANSARD REFERENCES

Stage	Date	Hansard Reference
House of Commons		
First Reading	16 November 2006	Vol. 453 Col. 143
Second Reading	18 December 2006	Vol. 454 Col. 1173
Committee Stage Public Bill Committee (Morning) 1 st Sitting (Afternoon) 2nd Sitting	16 January 2007	Col. 3 Col. 43
Report Stage	29 January 2007	Vol. 456 Col. 23
Third Reading	29 January 2007	Vol. 456 Col. 58
House of Lords		
First Reading	30 January 2007	Vol. 689 Col. 131
Second Reading	28 February 2007	Vol. 689 Col. 1609
Grand Committee	22 March 2007	Vol 690 Col. GC 245
Report Stage	15 May 2007	Vol. 692 Col. 157
Third Reading	22 May 2007	Vol. 692 Col. 573
House of Commons		
Commons Consideration of Lords Amendments	14 June 2007	Vol. 461 Col. 886
Royal Assent 18 June 2007	House of Commons House of Lords	Vol. 461 Col. 1087 Vol. 693 Col.1

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