

EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY (INFORMATION-SHARING IN RELATION TO WELFARE SERVICES ETC) REGULATIONS 2012

2012 No. 1483

1. This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 These Regulations deal with the sharing of data between the Secretary of State for Work and Pensions, local authorities and authorities that administer Housing Benefit, including their service providers and persons exercising functions on their behalf, and between local authorities and social landlords.

2.2 This instrument prescribes purposes where information can be shared in accordance with powers in sections 130 (information-sharing in relation to provision of overnight care etc), and held and used under section 131 (information-sharing in relation to welfare services etc), of the Welfare Reform Act 2012 (the '2012 Act').

3. Matters of special interest to the Joint Committee on Statutory Instruments

None

4. Legislative Context

4.1 These are the first regulations being made using the powers in sections 130 and 131 of the 2012 Act. They are being made in order to enable certain data to be shared as prescribed, without needing to seek the consent of the data subject. Without this legislation, DWP, local authorities and others would have to ask the data subject for permission to use or share their data for the purposes described here.

5. Territorial Extent and Application

This instrument applies to Great Britain.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 Local authorities often become aware when a person they are already assisting is admitted to or discharged from hospital or residential care, or needs overnight care at home. Section 130 (information-sharing in relation to provision of overnight care etc) of

the 2012 Act enables local authorities to tell the Department for Work and Pensions, other parts of the local authority or relevant service providers, about any of these events. This will ensure that any social security benefit in payment can be re-assessed promptly, ensuring individuals receive the correct amount of benefit at the right time.

7.2 Section 130 also enables other prescribed information relating to the service and how it is funded to be shared. This instrument prescribes that certain information relating to the funding of a place in residential care can be shared, including whether the resident or the local authority is meeting any of the costs, and the date such funding started or ceased. This will assist the Department for Work and Pensions to correctly assess the person's entitlement to Disability Living Allowance.

7.3 Local authorities deliver a range of services and benefits, many of which are linked to receipt of a social security benefit. Where a person applies for one of these services or benefits the local authority may need to confirm details of their income including any social security payments. Section 131(1) enables the Department for Work and Pensions or service providers to supply social security information to local authorities and others for prescribed purposes. In addition, Section 131(3) enables local authorities and others who hold relevant information for a prescribed purpose relating to welfare services, council tax or housing benefit, to use or share that information in prescribed circumstances. This instrument prescribes the following purposes:

- **Blue Badge scheme:** special parking permits for disabled people. Those in receipt of the higher rate mobility component of Disability Living Allowance are automatically entitled to a Blue Badge upon application.
- **Disabled Facilities Grant (England and Wales) and Disability Adaptations Grant (Scotland):** provision of grants to adapt a disabled person's home, awarded to people on a low income.
- **Discretionary Housing Payments:** financial help for people on Housing or Council Tax Benefit when a local authority considers that help with housing costs is needed. An assessment of overall income is taken into account, along with other factors.
- **Non residential care:** this covers services such as day care, home helps and meals. Under 'Fairer Charging' rules people are expected to pay a charge for each service, which is subject to a means test.
- **Residential care:** a means test is used to determine how much a person must pay towards the fees for their place in a residential home.
- **Supporting People (England and Wales), and Housing Support (Scotland):** referred to in the regulations as 'non-statutory' services in respect of services in England. The types of services provided are very similar across England, Scotland and Wales, and often complementary to the provision of non-residential care support. This can be free to people who are in receipt of Housing Benefit and subject to a means test for everyone else.
- **Homelessness functions:** information sharing to help ensure local authorities provide advice and assistance to people at risk of becoming homeless.
- **Support for troubled families:** information sharing to help identify families with multiple disadvantages who may require support to help improve their lives, as part of the Troubled Families programme which the Department for Communities and Local Government lead on.
- **Support for people affected by new benefit rules:** information sharing to help identify people who are likely to be affected by changes in social security benefit rules, in particular those that affect support for housing costs (benefit cap, and social sector size criteria), and who may as a result need some help or support.

7.3 Being able to share person's data without needing to seek their consent every time will help to speed up decision making, make the process of applying for a local benefit or service much simpler for the individual, and ease the administrative arrangements by removing the need to collect and record consent.

Consolidation

7.4 As this is a new, free standing instrument, the issue of consolidation does not arise.

8. Consultation outcome

8.1 A consultation document was published on the DWP website in November 2011 and key stakeholders were alerted to this. The consultation sought views on the draft regulations. In total there were 73 responses, largely from local authorities. No one opposed the proposals. There was clear support across the range of responses for increased data sharing between DWP and local authorities. Many respondents stated that they would like data to be shared for more purposes than originally proposed. Partially in response to that the regulations have been expanded to include three additional purposes (support for troubled families, and for people affected by the social security benefit changes relating to the introduction of a benefit cap and rules relating to the number of bedrooms in a property, for people living in social sector accommodation). It was decided not to cover any further purposes at this stage, but to monitor the impact of these measures first. A response summarising the findings from this consultation is available on the DWP website at <http://www.dwp.gov.uk/consultations>

8.2 An informal consultation was conducted with the LGA and the Information Commissioner's Office in relation to the expansion of the regulations to enable data sharing between DWP and local authorities for the Troubled Families programme. The consultation sought views on the regulations, and the proposed data sharing itself. Both LGA and the Information Commissioner's Office were broadly supportive of the initiative. Neither organisation opposed the proposal.

9. Guidance

9.1 Guidance will be made available by 2 July 2012, alerting local authorities to the new legislation and explaining how this impacts on their business. A copy can be accessed at <http://www.dwp.gov.uk/local-authority-staff/housing-benefit>

10. Impact

10.1 There is no impact on business or civil society organisations.

10.2 There is a negligible impact on the public sector. Local authorities will no longer need to collect consent from individuals whose data they are requesting or using, where it is for one of the purposes being prescribed in this instrument. This should ease the administrative burden in sharing data.

10.3 A full impact assessment has not been published for this instrument.

10.4 A Privacy Impact Assessment has been produced and will be made available to Parliament along with this instrument. A copy is attached as an Annex to this memorandum. Further copies can be obtained from DWP on request by contacting Carol Foster-Middleton (details below)

11. Regulating small business

The legislation does not affect small business.

12. Monitoring & review

12.1 The objective is to simplify and ease the administrative burden on local authorities and others by removing the need to collect a person's consent before sharing their data. The impact of the policy change will be reviewed over the coming 12 months using a number of methods, including collecting information from stakeholder groups using existing engagement arrangements. These networks will be used to gather qualitative evidence on the impact on local authorities and others such as landlords.

13. Contact

Carol Foster-Middleton at the Department for Work and Pensions. Tel: 020 74495325 or email: carol.foster-middleton@dwp.gsi.gov.uk can answer any queries regarding the instrument.

Privacy Impact Assessment :

Information sharing in relation to welfare services and housing benefit

New and extended data sharing powers to allow DWP, local authorities, social landlords and others to share information for purposes relating to the provision of certain welfare services and housing benefit.

June 2012

DWP Department for
Work and Pensions

Privacy impact assessment: information sharing in relation to welfare services

1. Introduction

1.1 **Sections 130-133 of The Welfare Reform Act 2012** (referred to in this document as 'the 2012 Act') expands existing data sharing legislation, and introduces new provisions which allow certain information to be shared between the Department for Work and Pensions (DWP), local authorities (LAs) and others without needing the consent of the person whose data is being shared.

1.2 A Privacy Impact Assessment was produced in 2011, in relation to the primary provisions. This document updates that assessment in light of regulations that are now being brought forward using the new primary powers.

1.3 **The Social Security (Information-Sharing in Relation to Welfare Services) Regulations 2012** (referred to in this document as 'the 2012 regulations') come into force on 2 July 2012.

1.4 Arrangements relating to the precise methods of handling data are still at the early stages of planning. When the details are known further PIAs will be published in respect of each of the purposes for which data will be shared under these provisions.

2. Legal Changes

2.1 **Section 130 (Information-sharing in relation to provision of overnight care etc)** of the 2012 Act enables LAs to tell DWP, other parts of the LA or relevant service providers, when a person they know of is admitted to or discharged from hospital or residential care, or needs overnight care at home.

2.2 Such information may be required either by DWP, LAs or others to assess or reassess that person's entitlement to a relevant benefit; defined in Section 130 as Universal Credit, Housing Benefit, Council Tax Benefit, or any prescribed benefit. The 2012 regulations prescribe the following additional benefits: Attendance Allowance, Disability Living Allowance, income-based Jobseeker's Allowance, income-related Employment and Support Allowance, Income Support, and State Pension Credit.

2.3 Section 130 also enables other prescribed information relating to the service and how it is funded to be shared. The 2012 regulations prescribe that certain information relating to the funding of a place in residential care can be shared, including whether the resident or the local authority is meeting any of the costs, and the date such funding started or ceased.

2.4 **Section 131 (Information-sharing in relation to welfare services etc)** of the 2012 Act enables:

(a) DWP or its service providers to supply social security information to LAs and others, for prescribed purposes relating to welfare services or council tax;

(b) LAs and others who hold relevant information to supply that to DWP or its service providers, for prescribed purposes relating to a relevant social security benefit;

(c) LAs and others who hold relevant information for a prescribed purpose relating to welfare services, council tax or housing benefit, to use or share that information in accordance with the regulations. The 2012 regulations prescribe social landlords as additional people who can receive and supply data in certain circumstances.

2.5 The effect of these legal changes means that in relation to the purposes described, it will no longer be necessary to first obtain the consent of the person whose data is being shared.

3. Policy Background

3.1 LAs often become aware when a person they are already assisting is admitted to or discharged from hospital or residential care, or needs overnight care at home. New powers in section 130 of the 2012 Act enable the LA to alert DWP or the LA Housing Benefit team to such changes. This will ensure that any social security benefit in payment can be reassessed promptly ensuring individuals receive the correct amount of benefit at the right time. This measure includes the provision that LAs can inform DWP how much they might be contributing towards the cost of a place in residential care, which can affect the rate of Disability Living Allowance awarded, and the specific details of the information that can be shared are set out in the 2012 regulations.

3.2 LAs deliver a range of services and benefits, many of which are linked to receipt of a social security benefit. Where a person applies for one of these services or benefits they may need to supply details of their income including any social security payments. Social landlords also provide certain welfare services, such as advice to tenants about social security benefit changes. It can assist the landlord to perform this function if they have access to the person's social security benefit details.

3.3 The powers in section 131 of the 2012 Act and the 2012 regulations allow relevant data to be shared between DWP and LAs, and LAs and social landlords, in the circumstances prescribed in that legislation without needing the individual person's consent. This will help to speed up decision making, make the process of applying for a local benefit or service much simpler for the individual, ensure people affected by reforms to the benefit system are properly advised and supported, and ease the administrative arrangements by removing the need to collect and record consent.

3.4 The 2012 regulations set out the specific purposes for which information can be used or shared, and cover the following.

- **Blue Badge scheme:** special parking permits for disabled people. Those in receipt of the higher rate mobility component of Disability Living Allowance are automatically entitled to a Blue Badge upon application.
- **Disabled Facilities Grant (England and Wales) and Disability Adaptations Grant (Scotland):** provision of grants to adapt a disabled person's home, awarded to people on a low income.
- **Discretionary Housing Payments:** financial help for people on Housing or Council Tax Benefit when a local authority considers that help with housing

costs is needed. An assessment of overall income is taken into account, along with other factors.

- **Non Residential Care:** this covers services such as day care, home helps and meals. Under 'Fairer Charging' rules people are expected to pay a charge for each service, which is subject to a means test.
- **Residential care:** a means test is used to determine how much a person must pay towards the fees for their place in a residential home.
- **Supporting People (England and Wales), and Housing Support (Scotland):** referred to in the regulations as 'Non Statutory' services in respect of services in England. The types of services provided are very similar across England, Scotland and Wales, and often complementary to the provision of non residential care support. Can be free to people who are in receipt of Housing Benefit and subject to a means test for everyone else.
- **Homelessness Functions:** information sharing to help ensure local authorities provide advice and assistance to people at risk of becoming homeless.
- **Support for troubled families:** information sharing to help identify families with multiple disadvantages who may require support to help turn their lives around.
- **Support for people affected by new benefit rules:** information sharing to help identify people who are likely to be affected by changes in social security benefit rules, in particular those that affect support for housing costs, and who may as a result need some help or advice.

4. Privacy Impact Assessment

Technology

4.1 The measures described here do not in themselves apply new or additional information technologies. Existing methods of transferring and handling data will continue to be used. Currently it is envisaged that data being shared between DWP and LAs will be transferred via secure email. LAs will be expected to apply similar standards to any data they share between or within the LA or with social landlords. At a later date, depending on the outcome of a cost/benefit analysis, and in light of other policy developments in relation to the delivery of benefits and services, consideration may be given to developing a bespoke IT solution.

Identity

4.2 The measures described here do not involve new identifiers. Claimant information will be shared using existing means of determining identity, such as name, address and date of birth.

4.3 The measures described here will not enable identification of claimants who were previously anonymous, and do not involve new or substantially changed identity authentication requirements.

Multiple organisations

4.4 The measures described here will allow claimant data to be shared between multiple organisations. DWP will be able to share details about a person's social security benefit

award with a LA, and others such as a relevant service provider, in relation to the delivery of a welfare service. This will be subject to the offence provision set out in section 132 of the 2012 Act, and which applies to all staff who handle data received under these provisions, including any service providers.

4.5 LAs will be able to share information between themselves, other LAs, social landlords, and with DWP in relation to people who are known to them. It is expected that local protocols will be agreed, setting out the precise arrangements for how data that is shared by virtue of this measure will be handled safely and securely.

Data

4.6 The measures described here do not involve new or significantly changed handling of sensitive person data.

4.7 The measures described here do not involve new or significantly changed handling of personal data about a large number of individuals. Neither will they involve new or significantly changed consolidation, inter-linking, cross referencing or matching of personal data from multiple sources. All data supplied by DWP by virtue of the proposals set out here will be transferred by secure email or a process with similar levels of security. DWP will require LAs who supply data to this department to also use secure email or other similar secure methods. Any data shared between or within LAs and between LAs and social landlords will be subject to local arrangements put in place by each LA.

Data handling

4.8 The measures described here do not involve new or changed data collection policies or practices that may be unclear or intrusive.

4.9 The measures described here do not involve new or changed data security arrangements that may be unclear or unsatisfactory.

4.10 The measures described here do not involve new or changed data access or disclosure arrangements that may be unclear or permissive.

4.11 The measures described here do not involve new or changed data retention arrangements that may be unclear or extensive.

4.12 The measures described here do not involve changing the medium of disclosure for publicly available information in such a way that the data becomes more readily accessible than before.

Exemptions and exceptions

4.13 The measures described here do not relate to processing which is in any way exempt from the DPA or other legislative privacy protections.

4.14 The measures described here do not involve systematic disclosure of personal data to, or access by, third parties who are not subject to comparable privacy regulation.

Justification

4.15 The justification for the new measures is not unclear or unpublished. There has been full consultation with LAs and other stakeholders, and the measures have been properly considered and approved by parliament.

Privacy Law and DPA Compliance Checks

4.16 The 2012 Act and regulations summarised in this document provide the lawful authority for personal data to be shared between DWP, LAs and others for the prescribed purposes.

4.17 For the purposes set out in the 2012 regulations, we expect the total volume of data being shared to be significant. Detailed figures are not available, but we do know that:

- Around 1,650,000 people in England receive home-based services. A small study by one group of local authorities estimates that among the 152 LAs in England with social care responsibilities, approximately 500,000 new applications are dealt with each year, and a similar number of cases reassessed, to establish how much a person can afford to pay towards the cost of their service. This results in around 810,000 request to DWP for details of a person's social security award.
- There are around 240,000 people in residential care in England and some 70% receive help with some or all of the fees for the place in care.
- Around 360,000 people in England could be eligible for a Disabled Facility Grant, but the actual number of awards is estimated to be smaller due to a ceiling on the overall funds available, which totalled some £180m for local authorities in England in 2011-12.
- Around 2.5m disabled person's badges are issued in England by 152 local authorities. Approximately 36% (918,000) of applicants for a Blue Badge apply on the basis that they are receiving the higher rate mobility component in Disability Living Allowance.
- The numbers of people likely to be affected by the new benefit rules on under occupancy in the social sector, where data may be shared with landlords, is expected to be around 660,000.
- Data on around 240,000 people will be shared in connection with the Troubled Families Programme.

4.18 The proposals are necessary so that relevant personal data can be shared for all of these purposes without needing to seek the consent of individuals on every occasion. Where data is shared on a routine basis in respect of a large number of people it is sensible to legislate to provide a clear statutory framework.

4.19 The proposals will be implemented in a manner that ensures the proportionality requirement in the DPA is complied with. Data will only be shared where it is necessary in order to support the particular purpose prescribed.

4.20 Measures will be put in place to ensure all data is handled safely and securely. Section 132 of the 2012 Act concerns unlawful disclosure of information supplied under

section 131 and associated regulations, as described in this document. It makes it a criminal offence if information is disclosed without lawful authority. In addition the provisions of the Data Protection Act continue to apply to the sharing of any personal data, including social security information held by DWP, and personal details held by LAs, landlords or service providers.

4.21 DWP advise claimants about how their data will be used and this advice will be amended to ensure people are aware that social security information may be shared with local authorities for the purposes set out in the new legislation. LAs will be reminded in guidance that they should similarly advise their clients that information may be shared with DWP in certain circumstances.

4. Contact details

4.1 Any questions about this assessment should be addressed in the first instance to:

Carol Foster-Middleton,
Level 1 Caxton House,
Tothill Street
London. SW1H 9NA

email: carol.foster-middleton@dwp.gsi.gov.uk