EXPLANATORY MEMORANDUM TO

THE DIGITAL GOVERNMENT (DISCLOSURE OF INFORMATION) (AMENDMENT) REGULATIONS 2022

2022 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Cabinet Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument amends the Digital Government (Disclosure of Information) Regulations 2018 (S.I. 2018/912) to insert a new objective for the purposes of which information may be disclosed under the Digital Economy Act 2017. The objective is to identify and contact households in Scotland with two-year olds eligible for the mandatory amount of funded early learning and childcare, in order that it can be made available to them.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is Great Britain.

4.2 The territorial application of this instrument is England and Scotland.

5. European Convention on Human Rights

5.1 The Minister for the Cabinet Office has made the following statement regarding Human Rights:

"In my view the provisions of the Digital Government (Disclosure of Information) (Amendment) Regulations 2022 are compatible with the Convention rights."

6. Legislative Context

6.1 This instrument has been made in exercise of the power in section 35(7) of the Digital Economy Act 2017 ('the Act'). It amends the Digital Government (Disclosure of Information) Regulations 2018/912 ('the 2018 Regulations') to insert a new objective ('the ELC objective'), for the purposes of which specified persons (from Schedule 4 to the Act) can disclose information under section 35(1) of the Act.

7. Policy background

What is being done and why?

7.1 Section 35 of the Act is intended to assist public authorities to use information-sharing to target public services more effectively towards those who need them. As with other provisions in Part 5 of the Act, section 35 provides for clear legal gateways for

sharing information between public authorities. To ensure that any information-sharing under section 35 is justified and proportionate, it permits public authorities to share information only for purposes consistent with tightly constrained "objectives", which are set out in further regulations.

7.2 This instrument specifies one such objective for sharing information under section 35: to increase uptake of early learning and childcare in Scotland. The objective relates to the Scottish Government's policy of almost doubling the funded entitlement to early learning and childcare from 600 to 1,140 hours for all three and four-year olds and eligible two-year olds. The latter includes children with experience of care or with a parent with experience of care; or children whose family are in receipt of low- or no-income benefits (out of work benefits or income-related benefits with income below a certain threshold). The Scottish Government, working with Scottish councils, intends to use benefits data from Her Majesty's Revenue and Customs (HMRC) and the Department for Work and Pensions to help councils identify and contact eligible families to inform them of their eligibility, with the aim of increasing uptake of funded early learning and childcare among eligible two-year olds in Scotland.

7.3 The Act also requires that specified public authorities are allocated to the specified objective(s) they intend to use, and that this is specified in regulations. This instrument specifically permits information-sharing for the purposes of this objective between: HMRC, the Department for Work and Pensions, the Scottish Government and Scottish councils.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 The Cabinet Office does not intend to consolidate the relevant legislation.

10. Consultation outcome

10.1 The Government ran a public consultation on this proposed objective and draft instrument between 10 January 2022 and 7 March 2022. Together with inviting opinions from the public, opinions were also sought from statutory consultees named in the Act, including HMRC, the Information Commissioner and Ministers in devolved administrations.

10.2 The consultation received 69 responses. Comments and responses were received from a variety of respondents, including local authorities, regulatory and provider representatives, and other representative groups. There were no significant concerns with the proposed objective. The majority of comments welcomed the drafting of an objective for the stated purpose. Based on the responses to the relevant questions, we have assumed that respondents considered the objective to be well-described on the face of the instrument, and that the list of bodies specified to use the objective was appropriately limited.

10.3 The Government's joint response with the Scottish Government largely addresses comments made with regard to the policy intent of the new objective. It also addresses the limited concerns raised about the process of data sharing.

10.4 Further details on the views of respondents to the consultation, together with the Government's response to that consultation can be found at the following link: Government response to the consultation on data sharing to support early learning and childcare in Scotland.

10.5 Neither the Welsh Government nor the Northern Ireland Executive raised any concerns.

11. Guidance

11.1 Public bodies disclosing information under section 35(1) of the Act must have regard to the *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 Digital Economy Act 2017*[1], issued by the Minister for the Cabinet Office under section 43.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector. The instrument provides for the Department for Work and Pensions and HMRC to disclose information to the Scottish Government and Scottish local authorities, in order to assist them in discharging their existing functions in respect of early learning and childcare.

12.3 A full Data Protection Impact Assessment has not been prepared for this instrument because one will be prepared at such time as information is to be disclosed for the purposes of the ELC objective under the amended 2018 Regulations, by the parties to any such disclosure.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 An assessment of the effectiveness of the instrument will be submitted to the relevant Minister annually following commencement.

14.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, no statement is required.

15. Contact

15.1 Heather Neate in the Central Digital and Data Office on telephone: 07584 342684 or email: heather.neate@digital.cabinet-office.gov.uk can be contacted with any queries regarding the instrument.

15.2 Sue Bateman, Interim Chief Data Officer in the Central Digital and Data Office at the Cabinet Office can confirm that this Explanatory Memorandum meets the required standard.

[1] A copy of the *Code of Practice* can be accessed here: 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.

15.3 Heather Wheeler MP, Parliamentary Secretary at the Cabinet Office can confirm that this Explanatory Memorandum meets the required standard.