POLICY NOTE

THE DIGITAL GOVERNMENT (SCOTTISH BODIES) REGULATIONS 2018

SSI 2018/xxx

The above instrument is made in exercise of the powers conferred on the Scottish Ministers by section 35(3) of the Digital Economy Act 2017 and all other powers enabling them to do so. The instrument is subject to the affirmative procedure.

Policy Objectives

1. The aim of the Digital Government (Scottish Bodies) Regulations 2018 (the Scottish Regulations) is to enable certain Scottish public bodies to be able to disclose personal data under new powers in Part 5 of the Digital Economy Act 2017 ("the Act"), to improve Public Service Delivery subject to restrictions set out in and preserved by the Act. The Act is an Act of the UK Parliament, Part 5 of which, insofar as it concerns devolved functions and bodies, was subject to a Legislative Consent Motion approved by the Scottish Parliament on 22 February 2017.

2. Only those public bodies or persons providing services to public bodies listed at schedule 4 of the Act are able to make use of this public service delivery power. The power is permissive so persons who are potentially able to share information under it can choose whether or not to do so, but not under a duty to do so.

3. Section 35(3) of the Act provides for the "appropriate national authority" to amend the list of approved public bodies (listed in schedule 4 of the Act) who can share data. The Scottish Government is the appropriate national authority for regulations which add, modify, or remove an entry to schedule 4 which relates to;

i. a Scottish public authority with devolved functions
ii. a person providing services to a Scottish public authority,
iii. or a Scottish public authority with mixed reserved/devolved functions (a category defined in the Part 3 of schedule 5 of the Scotland Act 1998).

4. The purpose of the Scottish Regulations is to add specified bodies to schedule 4.

5. Section 35(1) provides that public bodies wishing to share personal data with each other for the purposes of public service delivery, must do so for the purposes of a 'specified objective' in relation to each of those bodies. These objectives need to be specified in regulations under section 35(7) of the Act.

6. The bodies are being listed in the Scottish Regulations to enable those bodies to share data where justified under the Act. Initially, they are intended to be shared for specified objectives being created in separate regulations, the Digital Government (Disclosure of Information) Regulations 2018 (the UK Regulations) being laid in the Westminster Parliament. Those Regulations as laid are annexed to this Note. Under sections 35(7) to (12) of the Act, the UK Regulations will set out specified objectives for which the UK and also Scottish bodies listed in the Scottish Regulations will be able to share data. The authority for

specifying objectives across the UK and in particular which relate to any reserved matter is the Minister for the Department for Digital Culture Media and Sport. The Scottish Government can also by further devolved affirmative procedure regulations specify further devolved objectives where appropriate.

7. Similar regulations specifying Welsh bodies have been laid in the Welsh Assembly (the Digital Government (Welsh Bodies) (Wales) Regulations 2018) – available at- http://www.senedd.assembly.wales/mgIssueHistoryHome.aspx?IId=21410.

Specified objectives

8. The UK Regulations will specify objectives for which personal information can be disclosed to improve public service delivery. Each of the bodies listed in the Scottish Regulations will be specified in the UK Regulations in respect of one or more of these objectives. The UK Regulations will specify the following three objectives relevant to Scotland:-

i. Multiple Disadvantages
ii. Fuel Poverty
iii. Television Retuning

Specified Scottish bodies and linked objectives

9. The Scottish and UK Regulations will therefore, taken together, list:

- the Scottish Government, local authorities in Scotland and Skills Development Scotland in relation to the multiple disadvantage objective
- the Scottish Government and local authorities in Scotland in relation to the fuel poverty objective
- local authorities in Scotland in relation to the television retuning objective
- persons providing services to these Scottish public bodies to be listed in schedule 4, in connection with any objective to which that public body is listed.

Multiple disadvantage objective

10. The Scottish Government and local government are listed against the multiple disadvantage objective to facilitate specific instances of sharing personal data to and from reserved public bodies for the purposes of public service delivery. The power can only be used in relation to data sharing where two or more of the criteria listed in the UK Regulations are present. Each proposal will be assessed on its merit by the body disclosing the data and will require completion of a Privacy Impact Assessment and data sharing agreement before any disclosure of personal data takes place.

11. A number of safeguards are in place around the powers to ensure the sharing of personal data preserves privacy, is done proportionately and securely, with due regard to legal and ethical frameworks. A draft Code of Practice for Public Service Delivery will accompany the draft Regulations as these are laid in Westminster. The Code of Practice will set out the processes and safeguards to be adopted in sharing data using the Public Service Delivery powers. The purpose of the Code is to provide a set of principles and guidance for the use and disclosure of information under the powers. Anyone sharing information under the Public Service Delivery powers is required to have regard to the Code.

12. Section 35(6) of the Act provides that Scottish Ministers, in making regulations to add Scottish public bodies to schedule 4 must have regard to the systems and procedures for the secure handling of information by that body.

13. The Act does not alter the fact that the Data Protection Act 1998 has to be complied with in every case (reference to that Act is due to be replaced by the Data Protection Bill currently before the UK Parliament).

14. The addition of Scottish public bodies into schedule 4 of the Act will create a new legal gateway and will enable the sharing of information from reserved bodies. The aim of this is to apply these powers to cases where improved information flow between reserved and devolved bodies is needed to allow Scottish bodies to improve delivery of public services to those people or households defined within the multiple disadvantages objective (which includes factors such as unemployment, disability or financial exclusion).

15. Skills Development Scotland (SDS) is listed against the multiple disadvantage objective in order that it can receive data from Her Majesty's Revenue and Customs on the employment status of individual young people to improve the way it designs and delivers services to the 16-24 age group who are not in employment, education or training. Employment information will complement other data held by SDS to enable identification of those young people who are NEET (not in employment, education or training). This will assist SDS in targeting their resource on those who need the most support. The information which would be made available on a regular basis would further facilitate SDS's ability to identify individuals at the point they stop working, to enable SDS to offer support and re-engage young people quickly.

16. SDS also report on the learning, training and work activity of all 16-19 year olds in their Annual Participation Measure Publication[a]. This measure forms one of the indicators in the Scottish Government's National Performance Framework. A joint work stream between the Scottish Government and SDS oversaw development work to define the annual participation measure and agree its content. One of the key issues identified by the group is that the data collection system does not yet have a complete set of shared data from all desired partners. The most important missing individual level data feed relates to the employment status of young people.

17. The current information sharing will improve data coverage for the Opportunities for All Participation Measure – reducing the number of unconfirmed statuses recorded.

Fuel Poverty objective

18. The Scottish Government and Scottish local authorities are listed against the fuel poverty objective in order to share data with specified persons – for the purposes of modelling and mapping of households at risk of fuel poverty, and to support the development and monitoring of local strategies and plans for addressing fuel poverty, energy efficiency and heat decarbonisation. This requires individual household level data on fuel consumption,

[a] https://www.skillsdevelopmentscotland.co.uk/media/43580/2017_annual-participation-measure-report-29th-august-2017.pdf

type and cost, (including electricity, gas and all other fuels), whether the household is in receipt of benefits, is situated within SIMD areas, has household income below a specified level, in order to establish whether a household is in fuel poverty and therefore eligible for support.

TV retuning objective

19. Scottish Local Authorities are listed against the TV retuning objective in order that they may share data with Department for Work and Pensions (DWP) and the Secretary of State for Defence to identify individuals and households to offer support with television retuning.

20. The Regulations will come into force on the 13th September 2018.

Consultation

21. The following bodies have been consulted, in accordance to the requirements of Section 44(4) of the Digital Economy Act 2017:

> (a) the Information Commissioner,
> (b) the Commissioners for Her Majesty's Revenue and Customs,
> (c) each other person who is the appropriate national authority in relation to Regulations under this Chapter,
> (d) where the appropriate national authority is not the relevant Minister, the Minister for the Cabinet Office, and
> (e) such other persons as the appropriate national authority thinks appropriate.

22. A public consultation on these powers, the "Consultation on Digital Economy Act 2017: part 5 (data sharing codes and regulations) in relation to the delivery of Scottish public services", ran from 12 December 2017 to 5 February 2018. The consultation included an extract from proposed UK Regulations defining the cross-UK objectives for data sharing (previously included in a separate UK Government consultation). The consultation included a draft of the Scottish Regulations.

23. Four consultation responses were received; two from individuals; one from the Information Commissioner Office for the Regions and a response from the Welsh Government. The feedback commented on the benefits of using the powers and also the need to explain the nature of data sharing that would be permitted and to be specific when describing particular instances of data sharing to support public service delivery, to assess whether the sharing of personal data by the specified bodies would be justified and proportionate. In particular, a privacy impact assessment has now been carried out, and specific sharing will be subject to further privacy impact assessments.

24. One change was made to the Regulations so persons providing services to the specified bodies cover each of the three objectives are clearly specified not just for the multiple disadvantages objective to ensure the powers work consistently and effectively.

Impact Assessments

25. The following Impact Assessments have been completed and will be published on the Scottish Government website:-

- Data Protection/Privacy Impact Assessment
- Equalities Impact Assessment
- Child Rights and Wellbeing Impact Assessment

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

Financial Effects

27. A Business and Regulatory Impact Assessment has not been conducted. It is unnecessary as the instrument has minimal effects on the Scottish Government, local government or on relevant businesses and the third sector.

28. It is hoped that improved data sharing under these powers will deliver efficiency savings where it promotes better flow of information about people. For example, SDS currently expend resources contacting (with a view to re-engaging) all individuals whose circumstances with respect to learning, training or work are unknown. It is therefore anticipated that the new powers will work to reduce staff time currently devoted to this activity. SDS estimate that they spend in the region of £125,000 to £130,000 annually on this work.

29. The evidence suggests that any additional burdens on relevant businesses and third sector organisations as a result of the permissive powers in these Regulations are expected be minimal. This is because organisations wishing to share personal data with each other need to follow data protection legislation whether or not they use the powers in this Act.

Scottish Government
Digital Directorate

17 May 2018

Annex – draft Digital Government (Disclosure of Information) Regulations 2018

Draft Regulations laid before Parliament under section 44(7) of the Digital Economy Act 2017, for approval by resolution of each House of Parliament.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2018 No.

DISCLOSURE OF INFORMATION

The Digital Government (Disclosure of Information) Regulations 2018

Made - - - - ***

Coming into force in accordance with regulation 1(1)

The Minister for the Cabinet Office, with the consent of the Treasury, makes the following Regulations in exercise of the powers conferred by sections 35(7), 36(5)(c) and 44(2)(b) of the Digital Economy Act 2017([b]).

The Minister is satisfied that the purposes of the objectives specified comply with the conditions in section 35(9), (10) and (12) of the Digital Economy Act 2017.

The Minister for the Cabinet Office has consulted the Information Commissioner, the Commissioners for Her Majesty's Revenue and Customs, the Scottish Ministers, the Welsh Ministers, the Department of Finance in Northern Ireland and such other persons as the Minister for the Cabinet Office considers appropriate, as required by section 44(4) of the Digital Economy Act 2017.

In accordance with section 44(7) of the Digital Economy Act 2017, a draft of these Regulations was laid before, and approved by a resolution of, each House of Parliament.

Citation, commencement, interpretation and extent

1.—(1) These Regulations may be cited as the Digital Government (Disclosure of Information) Regulations 2018 and come into force on the day after the day on which they are made.

(2) In these Regulations, "the Act" means the Digital Economy Act 2017.

(3) These Regulations do not extend to Northern Ireland.

([b]) 2017 c. 30. Consent of the Treasury is required by section 44(6).

Specified objectives for the disclosure of information in relation to public service delivery

2. The Schedule specifies objectives, and specified persons in relation to those objectives, for the purposes of section 35(7) of the Act.

Amendment to section 36 of the Act (disclosure of information to gas and electricity suppliers etc)

3.—(1) Section 36 of the Act (disclosure of information to gas and electricity suppliers etc) is amended as follows.

(2) In subsection (3)—

(a) omit the "or" at the end of paragraph (c), and

(b) after paragraph (d) insert—

"(e) in the case of a disclosure to a licensed gas supplier, a restriction on charges levied on domestic customers by the supplier which is imposed by the Gas and Electricity Markets Authority—

(i) in the exercise of its powers under section 23(1)(b) of the Gas Act 1986([c]) (modification of conditions of licences), and

(ii) for purposes that include assisting people living in fuel poverty by reducing their energy costs, or

(f) in the case of a disclosure to a licensed electricity supplier, a restriction on charges levied on domestic customers by the supplier which is imposed by the Gas and Electricity Markets Authority—

(i) in the exercise of its powers under section 11A(1)(b) of the Electricity Act 1989([d]) (modification of conditions of licences), and

(ii) for purposes that include assisting people living in fuel poverty by reducing their energy costs.".

(3) In subsection (11) at the appropriate place insert—

""domestic customer" means a customer supplied with gas or electricity wholly or mainly for domestic purposes;".

Name
Minister for the Cabinet Office
Cabinet Office

Date

We consent to these Regulations

Names
Two of the Lords Commissioners of Her Majesty's Treasury

SCHEDULE

Regulation 2

Specified objectives in relation to a specified person

1.—(1) The specified objectives are—

(a) the multiple disadvantages objective;

([c]) 1986 c. 44. Section 23 was substituted by Schedule 3 paragraph 21 to the Gas Act 1995 (c. 45) and was amended by section 3 of the Utilities Act 2000 (c. 27) and S.I. 2011/2704. Other amendments have been made which are not relevant to this instrument.

([d]) 1989 c. 29. Section 11A was inserted by section 35 of the Utilities Act 2000, and was amended by S.I. 2011/2704. Other amendments have been made which are not relevant to this instrument.

(b) the television retuning objective;

(c) the fuel poverty objective; and

(d) the water poverty objective.

(2) In relation to each specified objective, the following are the specified persons—

(a) for the multiple disadvantages objective—

(i) the persons specified at paragraphs 1 to 5, 7 to 8, 10 to 16, 18 to 25, 29 to 34, 40 to 47 and 49 to 51 of Schedule 4 to the Act([e]), and

(ii) a person providing services in connection with that objective to a person within sub-paragraph (i);

(b) for the television retuning objective—

(i) the persons specified at paragraphs 2, 7, 11 to 17, 29 to 34, 47 and 50 of Schedule 4 to the Act, and

(ii) a person providing services in connection with that objective to a person within sub-paragraph (i);

(c) for the fuel poverty objective—

(i) the persons specified at paragraphs 6 to 8, 10 to 21, 26 to 27, 29 to 34, 40, 42 to 47 and 49 to 50 of Schedule 4 to the Act, and

(ii) a person providing services in connection with that objective to a person within sub-paragraph (i);

(d) for the water poverty objective—

(i) the persons specified at paragraphs 7 to 8, 10 to 17, 27, 29 to 34 and 42 to 47 of Schedule 4 to the Act, and

(ii) a person providing services in connection with that objective to a person within sub-paragraph (i).

Multiple disadvantages objective

2.—(1) In paragraph 1(1)(a) the multiple disadvantages objective is to provide assistance to individuals or households who are affected by multiple disadvantages by—

(a) assisting in the identification of individuals or households with multiple disadvantages;

(b) the improvement or targeting of a public service or facilitation of the provision of a benefit provided to individuals or households; and

(c) the improvement of the physical, mental, emotional, social or economic well-being of individuals or households.

(2) "Multiple disadvantages" means the presence of two or more of the factors listed in sub-paragraph (3) which adversely affect—

(a) an individual; or

(b) one or more individuals in a household.

(3) The factors are—

(a) anti-social behaviour;

(b) being a care leaver;

(c) being a child in need;

(d) criminal offending;

(e) domestic violence;

([e]) Paragraphs 28 to 48 of Schedule 4 were inserted by the Digital Government (Welsh Bodies) (Wales) Regulations 2018 (S.I. 2018/xxxx) and paragraphs 49 to 52 were inserted by the Digital Government (Scottish Bodies) Regulations 2018 (S.S.I. 2018/xxxx).

(f) financial exclusion;

(g) having a disability;

(h) homelessness;

(i) ill-health;

(j) irregular attendance at school;

(k) not being in education or training;

(l) substance misuse;

(m) unemployment.

(4) In sub-paragraph (3)—

"anti-social behaviour" means behaviour by a person which causes, or is likely to cause, harassment, alarm or distress to one or more persons not of the same household as that person;

"care leaver" means—

(a) in England, an eligible child within the meaning of paragraph 19B of Schedule 2 to the Children Act 1989(**f**) or a relevant child for the purposes of section 23A of that Act(**g**),

(b) in Scotland, a person entitled to advice, guidance or assistance under section 29 of the Children (Scotland) Act 1995([h]) or described in section 30 of that Act,

(c) in Wales, a category 1 or a category 2 young person as defined in section 104(2) of the Social Services and Well-being (Wales) Act 2014([i]);

"child in need" means—

(d) in England, a child in respect of whom the local authority in whose area they reside must provide a range of services appropriate to their needs under section 17(10) of the Children Act 1989([j]),

(e) in Scotland, a child who falls within the definition of a child being in need of care and attention as set out in section 93(4)(a) of the Children (Scotland) Act 1995([k]),

(f) in Wales, a child who has been assessed for support under Part 3 of the Social Services and Well-being (Wales) Act 2014;

"criminal offending" means having been convicted of a criminal offence of any nature, and includes being cautioned (or, in Scotland, includes having received a recorded police warning) in respect of criminal activity;

"disability" has the meaning set out in section 6 of the Equality Act 2010([l])

"domestic violence" means any incident, or pattern of incidents, of controlling, coercive or threatening behaviour, violence or abuse (whether psychological, physical, sexual, financial or emotional) between two or more individuals who reside or have resided in the same household;

"financial exclusion" means an inability to access, or difficulty in accessing, one or more of the financial services in section 2(1)(a) and (b)(i) to (v) of the Small Business, Enterprise and Employment Act 2015([m]);

"homelessness" has the same meaning as in—

(g) in England, section 175 of the Housing Act 1996([n]),

([f]) 1989 c. 41. Paragraph 19B of Schedule 2 was inserted by section 1 of the Children (Leaving Care) Act 2000 (c. 35), and was amended by S.I. 2016/413.

([g]) Section 23A was inserted by section 2 of the Children (Leaving Care) Act 2000, and was amended by S.I. 2016/413.

([h]) 1995 c. 36. Sections 29 and 30 were amended by section 66 of the Children and Young People (Scotland) Act 2014 (asp 8) and section 29 was amended by section 73 of the Regulation of Care (Scotland) Act 2001 (asp 8).

([i]) 2014 anaw/dccc 4.

([j]) Section 17 has been amended, but those amendments are not relevant to this instrument.

([k]) Section 93 has been amended, but those amendments are not relevant to this instrument.

([l]) 2010 c. 15.

([m]) 2015 c. 26.

(h) in Scotland, section 24 of the Housing (Scotland) Act 1987([o])or,

(i) in Wales, section 55 of the Housing (Wales) Act 2014([p]);

"substance misuse" means the harmful and illicit use of psychoactive substances, including alcohol and drugs; and

"unemployment" in relation to an individual includes—

(j) an individual who—

(i) has actively sought work in the last four weeks; and

(ii) is available to start work in the next two weeks; or

(k) an individual who—

(i) has found work; and

(ii) is waiting to start that work in the next two weeks.

(5) Sub-paragraph (3)(a) applies where a person carries out anti-social behaviour as well as where a person is the victim of such behaviour.

(6) Sub-paragraph (3)(k) applies only to persons who are aged at least 16 years but less than 25 years old.

Television retuning objective

3.—(1) In paragraph 1(1)(b) the television retuning objective is to provide assistance to an individual or a household under a relevant scheme by—

(a) identifying an individual who, or a household which, may be eligible for assistance under such a scheme;

(b) making contact with such individual or household with a view to providing such assistance; or

(c) establishing whether any such individual or household is entitled to such assistance.

(2) In this paragraph—

(a) "relevant scheme" means a scheme set up to assist in the retuning of television receivers pursuant to a change in the use of any part of the electromagnetic spectrum between 470 and 790 MHz;

(b) "television receiver" has the meaning given in regulation 9 of the Communications (Television Licensing) Regulations 2004([q]).

Fuel poverty objective

4. In paragraph 1(1)(c) the fuel poverty objective is to provide assistance to people living in fuel poverty by—

(a) reducing their energy costs;

(b) improving efficiency in their use of energy; or

(c) improving their health or financial well-being.

([n]) 1996 c. 52. Section 175 has been prospectively amended by section 1 of the Homelessness Reduction Act 2017 (c. 13).

([o]) 1987 asp 26. Subsections (2A), (2B) and (3)(bb) were inserted by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40). Section 24 was also amended by section 3 of the Housing (Scotland) Act 2001 (asp 10), section 10 of the Homelessness etc (Scotland) Act 2003 (asp 10) and paragraph 4 of Schedule 4 to the Private Housing (Tenancies) (Scotland) Act 2016 (asp 19).

([p]) 2014 anaw/dccc 7.

([q]) S.I. 2004/692. Regulation 9 was amended by regulation 7(b) and (c) of S.I. 2007/718 and regulation 6 of S.I. 2016/704.

Water poverty objective

5. In paragraph 1(1)(d) the water poverty objective is to provide assistance to people living in water poverty by—

(a) reducing their water or sewerage costs;

(b) improving efficiency in their use of water; or

(c) improving their health or financial well-being.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations relate to the disclosure of information in relation to public service delivery, pursuant to Chapter 1 of the Digital Economy Act 2017 (c. 30) ("the Act").

Regulation 2 specifies the objectives set out in the Schedule for the purposes of improving public service delivery. This permits the specified persons identified from the list of specified persons set out in Schedule 4 to the Act to share information for the purposes of each objective.

The Schedule sets out four objectives. The multiple disadvantages objective enables the disclosure of information to enable the identification of individuals or households who face multiple disadvantages. The television retuning objective enables the disclosure of information in order to identify individuals and households and offer support under a television retuning scheme to individuals affected by changes to radio frequencies currently used by terrestrial television broadcasts at 470-790 MHz. The fuel poverty and water poverty objectives enable the disclosure of information for the purposes of assisting people living in fuel poverty and water poverty as defined in sections 36(10) and 38(10) of the Act.

Regulation 3 amends the list of fuel poverty measures in section 36(3) of the Act to include measures imposed by the Gas and Electricity Markets Authority that restrict the charges levied on domestic customers by licensed gas and electricity suppliers. Information cannot be disclosed to licensed gas and electricity suppliers under section 36 of the Act unless it is for use by them in connection with one of the fuel poverty measures listed.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sectors is foreseen.