EXPLANATORY MEMORANDUM TO

THE SOCIAL SECURITY (INFORMATION-SHARING IN RELATION TO WELFARE SERVICES ETC.) AMENDMENT AND PRESCRIBED BODIES REGULATIONS 2013

2013 No. 454

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 and certain bodies (including relevant service providers and people that exercise functions on their behalf) that have overall responsibility for the delivery of Housing Benefit, council tax, local welfare provision, or certain other local welfare services.

2.2 This instrument prescribes purposes where information can be shared in accordance with powers in section 131 (information-sharing in relation to welfare services etc), of the Welfare Reform Act 2012 (the '2012 Act'). A copy can be accessed at: http://www.legislation.gov.uk/ukpga/2012/5/contents/enacted

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

None.

4. Legislative Context

4.1 This is the third set of regulations being made using the powers in section 131 of the 2012 Act.

4.2 The Social Security (Information-sharing in relation to welfare services etc.) Regulations 2012 (SI 2012/1483) (the '2012 Regulations') prescribed a number of welfare services where data could be shared. The Social Security (Information-sharing in relation to welfare services etc.) (Amendment) Regulations 2013 (SI 2013/41) added local council tax reduction schemes as a purpose for which information could be shared.

4.3 This instrument amends the 2012 Regulations by adding local welfare provision and the Healthy Start scheme as new purposes; amending provisions relating to homelessness functions, the benefit cap and under occupancy rules to permit the supply of relevant data from the Department for Work and Pensions to local authorities; introducing new provisions enabling the supply of relevant information by local authorities to the Department for Work and

Pensions for Universal Credit purposes; and amending provisions relating to Troubled Families to prescribe additional persons who are permitted to share data with each other for purposes connected to the Programme; and additional purposes, enabling data to be used for monitoring and evaluation purposes.

4.4 In addition there is an amendment to Part 4 of the 2012 regulations enabling information that has been supplied for certain local council tax reduction scheme purposes to be shared or used for certain other welfare purposes, and to be used in the prevention or detection of fraud claims for local council tax reduction support.

4.5 The provisions described in this instrument will enable certain information to be shared as prescribed, without needing to seek the consent of the data subject. Without this legislation, the Department for Work and Pensions and those involved in the delivery of the additional services 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, except that in so far as it relates to local authorities in connection with the Troubled Families Programme, it is concerned only with local authorities in England.

6. European Convention on Human Rights

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

7. Policy background

- ***What is being done and why***

7.1 Details of the specific amendments are described below. The overall aim is to enable more efficient use of data in relation to the purposes described. Being able to share information without needing to seek the consent of each individual every time helps to speed up decision making, makes the process of applying for local help with welfare services and council tax much simpler for the individual, and will help to improve the service we offer to customers.

<u>Health Start Schemes</u>

7.2 The 2012 Regulations enable relevant information to be shared between the Department for Work and Pensions, local authorities, and others such as service providers, for certain welfare services purposes. This instrument amends those Regulations by adding the Healthy Start Scheme and local welfare provision as two new purposes.

7.3 The Healthy Start Scheme, administered by a service provider to the Department for Health, is a welfare food scheme providing vouchers to

pregnant women and children under four in families entitled to a qualifying benefit (income support, employment and support allowance, jobseekers allowance or child tax credit without working tax credit) and an annual family income of £16,190 or less. The vouchers can be spent at participating retailers on milk, fruit, vegetables, or infant formula milk. Families getting the vouchers can also claim free vitamin supplements from the NHS.

7.4 These regulations provide a clear statutory power to enable DWP to share data with the Secretary of State for Health and its service provider and extends the offence provisions in respect of any unlawful disclosure of the information that has been shared.

7.5 This instrument puts the scheme on a firmer legal footing and extends the offence provisions in respect of any unlawful disclosure of the information that has been shared.

Local welfare provision

7.6 Following the abolition of elements of the Discretionary Social Fund at the end of March 2013, funding has been provided for new local welfare provision schemes commencing on 1 April 2013. There is no new statutory duty to provide local welfare provision but local authorities will be able to offer new more flexible support for those facing greatest difficulty in managing their income; and provide a more flexible response to an urgent need that cannot be met by other means. It will be a matter for each local authority to decide who qualifies for help, and how to provide it, but schemes are likely to be directed at helping those who are most vulnerable and in genuine need. It will be necessary for the local authority to check details of each applicant's social security benefit entitlement, and this instrument enables that, without needing to seek consent every time.

7.7 It was not possible to cover data sharing in connection with local welfare provision in the 2012 regulations as it was not clear at that stage what the arrangements for localised assistance would be.

Benefit cap and under occupancy provisions

7.8 The 2012 Regulations enable local authorities to use or share (including with a social landlord) locally held benefit information for the purposes of identifying and supporting Housing Benefit claimants who may be affected by the benefit cap or under occupancy rules. Under separate legislation (section 122C of the Social Security Administration Act 1992), the Department for Work and Pensions can supply benefit information to local authorities administering Housing Benefit. When Universal Credit is launched and Housing Benefit is gradually replaced, there will be a gap in the data sharing provisions which would mean that the Department for Work and Pensions could not supply benefit information to local authorities about people getting Universal Credit who are also affected by the benefit cap or the under occupancy rules.

7.9 This instrument therefore amends the 2012 regulations by permitting the Department for Work and Pensions to supply benefit details to local

authorities for these two purposes. This will ensure that when Universal Credit is introduced, local authorities can receive relevant information about the support a person is getting with housing costs, and consider, along with the social landlord where relevant, whether additional help is required such as a Discretionary Housing Payment, employment or training support, or a move to alternative accommodation.

7.10 As this amendment relates to the supply of information about people who may be entitled to Universal Credit it was not appropriate to legislate for this in the 2012 regulations.

Preventing or reducing homelessness

7.11 The 2012 Regulations also permit local authorities to use locally held benefit information to fulfil functions under Part 7 of the Housing Act 1996, or, in Scotland, Part 2 of the Housing (Scotland) Act 1987. These functions relate to the prevention or reduction of homelessness. Local authorities can for example identify and support people affected by other benefit rules such as changes to Local Housing Allowance. This instrument amends those provisions by permitting the Department for Work and Pensions to supply benefit details to local authorities for this purpose. This will ensure that when Universal Credit is introduced, local authorities can receive relevant information about the support a person is getting with housing costs, and consider whether additional help is required such as a Discretionary Housing Payment, employment or training support, or a move to alternative accommodation.

7.12 As this amendment relates to the supply of information about people who may be entitled to Universal Credit it was not appropriate to legislate for this in the 2012 regulations.

Housing support

7.13 The 2012 Regulations enable local authorities to use and share locally held information to consider whether a person who lives in supported accommodation should have their housing benefit assessed under special rules; or is a person who has difficulty managing their affairs and might need their rent paid direct to the landlord. This instrument adds to those provisions to enable local authorities to supply this information to the Department for Work and Pensions to help in the administration of Universal Credit.

7.14 As this amendment relates to the supply of information about people who may be entitled to Universal Credit it was not appropriate to legislate for this in the 2012 regulations.

Troubled Families

7.15 The 2012 regulations permit the Department for Work and Pensions to supply relevant social security data to local authorities for the purpose of identifying and supporting households eligible for support under the Troubled Families programme. This instrument amends those provisions by extending the purpose to include monitoring and evaluating the Troubled Families programme. It will also allow local authorities, their service providers and

persons who carry out activities in connection with the Troubled Families Programme to share data with each other. It also permits the sharing of data between the Department for Work and pensions and local authorities, to ensure support for troubled families is coordinated, avoiding duplication of provisions; and to ensure interventions and outcomes can be properly tracked.

7.16 The need for this amendment became apparent over the course of operating the Troubled Families Programme in 2012.

Local council tax reduction schemes

7.17 The Social Security (Information-sharing in relation to welfare services etc.) (Amendment) Regulations 2013 amend the 2012 regulations, adding a new Part 4 which enables the sharing of relevant information for prescribed purposes relating to local council tax reduction schemes. It was necessary to bring these provisions into force in advance of April (and therefore separately from the other provisions described in this explanatory memorandum) in order to enable local authorities to start using their locally held council tax benefit data to design and set up new schemes, and to assess potential entitlement among existing Council Tax Benefit claimants, for help under the new scheme.

7.18 This instrument amends Part 4 so that information supplied for local council tax reduction scheme purposes can be used or shared for certain other welfare services purposes, such as deciding if a person is entitled to a Blue Badge, or assessing the contribution a person can make towards the cost of social care. This will make it easier for local authorities and for customers, where an application has been made for a local welfare service, and where the information required is already held by the local authority. This will mean that local authorities do not have to submit another request to the Department for Work and Pensions for information already held locally, helping to simplify and speed up the decision making process and improving the service we offer to customers.

7.19 It also ensures that data supplied by the Department for Work and pensions to local authorities, for local council tax reduction scheme purposes, can be used to help detect or prevent fraud in relation to claims for such schemes.

- ***Consolidation***

7.20 Informal consolidation of this instrument will be included in due course in the Department's "the law relating to Social Security" (the Blue Volumes) which are available at no cost to the public on the internet at: http://www.dwp.gov.uk/publications/specialist-guides/law-volumes/the-law-relating-to-social-security/

8. Consultation outcome

8.1 Parliament has already approved the use of the section 131 data sharing powers in the 2012 Act. Examples of welfare services were provided in briefing to Parliament, and this included local welfare provision.

8.2 A public consultation was held in relation to the new data sharing powers, between November 2011 and January 2012, and sought comments on the use of the section 131 power. 73 respondents replied. A copy of the consultation document which was published in November 2011, can be accessed at: http://www.dwp.gov.uk/consultations

8.3 All respondents were supportive of the proposals to share information for more purposes, including Local Welfare Provision, new local Council Tax schemes, and to support people affected by benefit changes. A response summarising the findings from this consultation was published on 1 June 2012 and is available at http://www.dwp.gov.uk/docs/information-sharing-draft-regulations-response.pdf

8.4 The Department for Communities and Local Government and officials in the devolved administrations of Scotland and Wales have been consulted on the drafting of these regulations. In addition, the Department for Work and Pensions have discussed plans for the supply of social security information to local authorities, as part of regular stakeholder meetings with representatives from the Local Authority Associations (LAAs), and they have also been given an opportunity to comment on a draft of the proposed regulations. Local authorities have indicated that they are very keen that these powers are introduced in order to facilitate the supply for data for new local welfare provision.

9. Guidance

9.1 Guidance will be provided to local authorities and others entitled to receive data under these measures, explaining what the new data sharing powers will permit in practice. This will be issued towards the end of March 2013, and a copy of the relevant circular will be available at: http://www.dwp.gov.uk/local-authority-staff/housing-benefit/user-communications/hbctb-circulars/2012-adjudication-and-operations/

9.2 The Department for Work and Pensions is working with the Department for Communities and Local Government and devolved administrations, and with local authorities, to ensure appropriate electronic links are set up to facilitate the safe and secure transfer of data between the Department for Work and Pensions and local authorities. Full guidance will be issued to local authorities explaining how this will work.

10. Impact

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

10.2 The impact on the public sector is negligible. Local authorities will not need to collect consent from individuals whose data they are requesting or using, where it is for one of the purposes prescribed in this instrument. This should ensure there is minimal administrative burden in obtaining relevant data.

10.3 An Impact Assessment has not been prepared for this instrument.

10.4 A Privacy Impact Assessment has been produced in respect of the previous two sets of regulations. An updated version is made available to Parliament along with this instrument (see copy 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 apply to small business.

12. Monitoring & review

The operation of the Regulations will be reviewed through the normal avenues of liaison with local authorities.

13. Contact

Carol Foster-Middleton at the Department for Work and Pensions (Tel: 0207 4495325 or e-mail carol.foster-middleton@dwp.gsi.gov.uk

Privacy Impact Assessment :

Information sharing in relation to welfare services and council tax

Data sharing powers to allow DWP, local authorities and others to share information for purposes relating to welfare services and council tax

April 2013

DWP Department for Work and Pensions

Privacy impact assessment: information sharing in relation to welfare services etc.

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, and updated in June 2012 following the publication of **The Social Security (Information-sharing in relation to Welfare Services etc.) Regulations 2012,** and again in February 2013 following publication of **The Social Security (Information-sharing in relation to Welfare Services etc.) (Amendment) Regulations 2013.**

1.4 This assessment is now further updated to reflect the publication of **The Social Security (Information-sharing in relation to Welfare Services etc.) Amendment (No. 2) and Prescribed Bodies Regulations 2013.** 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 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 (or Universal Credit, following the abolition of Council Tax Benefit from 1 April 2013) when a LA 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 LAs 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.

3.5 Following the introduction of **The Social Security (Information-sharing in relation to welfare services etc.) (Amendment) Regulations 2013** a further purpose has been added to this list. The amendment enables data to be supplied and used in order to help set up and design local council tax reduction schemes, and to determine a person's entitlement to help under the new reduction scheme.

3.6 The third set of provisions in **The Social Security (information-sharing in relation to Welfare Services etc.) Amendment (No.2) and Prescribed Bodies Regulations 2013** prescribe two new purposes:

- **Local welfare provision**: new local support delivered by LAs to help certain people who have immediate short term needs arising from an exceptional circumstance, or who need help to move into or maintain a home.
- **Healthy Start Schemes:** a scheme provided by the Department for Health and administered by a service provider. People on certain benefits or getting child tax credit are entitled to vouchers for free milk, vitamins, fruit, vegetables and baby milk. Information is already shared in order to determine which person's might be entitled to these vouchers. The new legislation puts these arrangements on a firmer legal footing.

They also amend some of the provisions in the 2012 regulations.

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 for most of the purposes prescribed, it is envisaged that data being shared between DWP and LAs will be transferred via secure email until such time as an appropriate IT solution can be identified.

4.2 Separately, data being supplied for local council tax purposes will be supplied using existing methods of data transfer as applies in the administration of Council Tax Benefit (CTB). CTB is being abolished from 1 April 2013. LAs will instead develop new local support, but will rely on the same level of data that they currently get for CTB. The same technology will apply.

4.3 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

4.4 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.

4.5 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

4.6 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.

4.7 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

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

4.9 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 welfare service purposes set out here will be transferred by secure email or a process with similar levels of security. Data supplied for the purpose of administering new local council tax schemes will use existing methods that apply to CTB.

4.10 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

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

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

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

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

4.15 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

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

4.17 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

4.18 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

4.19 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.

4.20 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.

4.21 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.

4.22 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.

4.23 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.

5. Contact details

5.1 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