

Scottish Public Authorities Sharing Data: Consultation

Analysis of Responses

October 2020

Introduction

1. The UK Digital Economy Act 2017 (“The Act”), Part 5 introduces new information sharing powers to reduce debt owed to, or fraud against, the public sector. To be able to use the information sharing powers, public authorities (and bodies which provide services to public authorities in Scotland) must be listed in Schedule 7 of the Act for the debt powers or Schedule 8 for the fraud powers. The Scottish Government intends to add Scottish public authorities with devolved functions (“Scottish Bodies”) to the Schedules via Regulations.
2. Before making the Regulations, the Act requires the Scottish Ministers to consult on the public authorities to be added to the Schedules. Listing the Scottish Bodies in the consultation (and in the illustrative draft Regulations) does not amount to an undertaking that the Regulations will ultimately specify those bodies.

Consultation Overview

3. The consultation was published on 21 January, initially for a 12 week period, which was extended to 15 June in response to Covid-19. Views were sought on a list of Scottish Bodies that the Scottish Ministers are considering including in the Schedules. Views were also sought on whether there are any other Scottish Bodies that should be considered for inclusion in the Schedules.

Overall Summary

4. There were 25 responses to the consultation, 20 via the online Citizen Space portal¹ and five via other routes; these did not directly answer the consultation questions. The table below shows the breakdown of respondents.

Respondent Type	Number of Responses
Organisations	18
Individuals	7
Total	25

5. The answers to the four questions can be summarised as follows:
 - Q1: The majority of respondents supported the proposed inclusion of the Scottish Bodies listed under Schedule 7 in the consultation.
 - Q2: A number of other bodies were suggested for inclusion in Schedule 7.
 - Q3: The majority of respondents supported the proposed inclusion of the Scottish Bodies listed under Schedule 8 in the consultation.
 - Q4: A number of other bodies were suggested for inclusion in Schedule 8.

¹ One individual responded twice and the two responses have been combined into a single response.

Analysis of Responses to Each Question

Q1: Should the Scottish Bodies listed in Annex A be added to Schedule 7 of the Act? If you think one or more of the Scottish Bodies should not be added, please explain why.

Option	Organisation	Individual
Yes - all the Scottish Bodies listed should be added	12	3
Yes - but only some of the Scottish Bodies listed should be added	0	0
No - none of the Scottish Bodies listed should be added	0	3
Not answered	6	1
Total	18	7

6. Two individuals who answered “No – none of the Scottish Bodies listed should be added” offered comments:
- One expressed concerns about the requirement to comply with section 22 of the Gender Recognition Act 2004.² These arrangements are not affected by the proposals in the consultation.
 - Views were expressed against the Digital Economy Act 2017.
7. Two organisations who answered “Yes – all the Scottish Bodies listed should be added” offered comments.
- Revenue Scotland supported “as a matter of principle the addition of all Scottish bodies that are involved in taking action in connection with debt owed to a public authority or to the Crown in order to put them on the same footing as their equivalent bodies in England, Wales and Northern Ireland”.
 - The Scottish Legal Complaints Commission supported the inclusion of the Scottish Legal Aid Board.

² The 2004 Act allows trans people to apply to the Gender Recognition Panel (a tribunal) for legal recognition of the gender in which they live. If their application is successful, and where they were born in the UK, they can then access an updated birth certificate. Section 22 of the 2004 Act is intended to protect the privacy of people who have applied for or who have obtained such legal recognition by making it an offence for a person who has acquired “protected information” in an official capacity to disclose that information. Protected information is information about a person’s application for recognition or about a successful applicant’s gender before their application was granted. There are exceptions, for example where disclosure of protected information is made for the purposes of crime prevention or detection, the social security system or pensions. There are further exceptions made in secondary legislation.

Gender Recognition Act 2004 c.7, section 22. Available at:

<https://www.legislation.gov.uk/ukpga/2004/7/section/22>

The Gender Recognition (Disclosure of Information) (Scotland) Order 2005 No. 125. Available at:

<https://www.legislation.gov.uk/ssi/2005/125/contents/made>

Q2: Are there any other Scottish Bodies that should be considered for inclusion in Schedule 7?

Option	Organisation	Individual
Yes	8	0
No	3	5
Not answered	7	2
Total	18	7

8. Five organisations who answered “Yes” asked to be considered for inclusion in Schedule 7, including:
- Independent Living Fund Scotland
 - Revenue Scotland
 - Scottish Legal Complaints Commission
 - Scottish Qualifications Authority
9. Five organisations who answered “Yes” suggested other Scottish Bodies and sectors for inclusion:
- Audit Scotland: All Scottish public sector bodies, universities, housing associations, arm's-length organisations and other organisations which Scottish Ministers have an interest in, such as Ferguson Marine, BiFab and Prestwick Airport.
 - Highlands and Islands Enterprise: Scottish Enterprise and South of Scotland Enterprise.
 - Scottish Local Authorities Investigators' Group: Police Scotland, Scottish Fire and Rescue Service and Transport Scotland.
 - Scottish Qualifications Authority: Skills Development Scotland and Scottish Funding Council.
10. We are unable to name, or include content from, those who asked for their response not to be published.

Q3: Should the Scottish Bodies listed in Annex A be added to Schedule 8 of the Act?

Option	Organisation	Individual
Yes - all the Scottish Bodies listed should be added	13	3
Yes - but only some of the Scottish Bodies listed should be added	0	0
No - none of the Scottish Bodies listed should be added	0	3
Not answered	5	1
Total	18	7

11. One individual who answered “No – none of the Scottish Bodies listed should be added” offered comment in line with that described in Q1 about section 22 of the Gender Recognition Act 2004.

Four organisations who answered “Yes – all the Scottish Bodies listed should be added” offered comments.

- Revenue Scotland supported “as a matter of principle the addition of all Scottish bodies that are involved in taking action in connection with debt owed to a public authority or to the Crown in order to put them on the same footing as their equivalent bodies in England, Wales and Northern Ireland”.
- The Scottish Legal Complaints Commission supported the inclusion of the Scottish Legal Aid Board.
- The Scottish Local Authorities Investigators' Group welcomed adding local authorities to the Schedule and commented on local authority powers to obtain information.
- Stirling Council confirmed support for all the bodies listed.

Q4: Are there any other Scottish Bodies that should be considered for inclusion in Schedule 8?

Option	Organisation	Individual
Yes	10	0
No	3	6
Not answered	5	1
Total	18	7

12. Six organisations who answered “Yes” asked to be considered for inclusion in Schedule 8, including:

- Independent Living Fund Scotland
- Revenue Scotland
- Scottish Legal Complaints Commission
- Scottish Qualifications Authority

13. Six organisations who answered “Yes” suggested other Scottish Bodies for inclusion:

- Audit Scotland: All Scottish public sector bodies, universities, housing associations, arm's-length organisations and other organisations which Scottish Ministers have an interest in, such as Ferguson Marine, BiFab and Prestwick Airport.
- Highlands and Islands Enterprise: Scottish Enterprise and South of Scotland Enterprise.
- Scottish Local Authorities Investigators' Group: Police Scotland, Scottish Fire and Rescue Service and Transport Scotland.
- Scottish Qualifications Authority: Skills Development Scotland and Scottish Funding Council.
- Stirling Council: Scottish Courts and Tribunals Service.

14. We are unable to name, or include content from, those who asked for their response not to be published.

Responses received other than through Citizen Space

15. One response was from an individual and four from organisations. These responses did not answer directly the consultation questions and are recorded under the “Not answered” numbers in the four questions above.
- An individual supported the inclusion of the Scottish Courts and Tribunals Service in Schedule 7.
 - COSLA supported the inclusion of Scottish local authorities in Schedules 7 and 8.
 - The Information Commissioner’s Office had no comment on the bodies identified for inclusion in the Schedules. It reminded those using the debt and fraud powers in the Act of the duty to comply with data protection legislation when information sharing and welcomed the requirement to carry out a data protection impact assessment where bodies propose to undertake a pilot.
 - The Scottish Courts and Tribunals Service supported its inclusion in Schedule 7.
 - The Scottish Prison Service noted that it was included in both Schedules under the Scottish Ministers.

Conclusion

16. The consultation responses show that there is broad support for the Scottish Bodies listed in the consultation being added to Schedules 7 and 8 of the Act.
17. Amongst the responses were requests from additional Scottish Bodies, which were not mentioned in the consultation, to confer information sharing powers on them. In response to those views, the Scottish Government is now considering including additional Scottish Bodies in the Schedules. A further consultation on additional Scottish Bodies was published on 7 September and will run until 6 November. The consultation can be found at the following link: <https://consult.gov.scot/digital-directorate/public-authorities-sharing-data-2>
18. Following the further consultation and analysis of responses, we will finalise the list of Scottish Bodies for inclusion in the draft Regulations to be laid before the Scottish Parliament. To be added to the Schedules a body must satisfy the conditions in Chapters 3 and 4 of Part 5 of the Act. If approved, the Regulations will add the named Scottish Bodies to Schedules 7 and 8, enabling them to progress making use of the debt and fraud powers set out in the Act.

October 2020



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The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

ISBN: 978-1-80004-213-1 (web only)

Published by The Scottish Government, November 2020

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS777766 (11/20)

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