

Consultation on devolved data sharing secondary legislation for the purposes of data sharing public service delivery powers, as defined in the Digital Economy Act (2017)

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Scottish Government
Riaghaltas na h-Alba
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1. Digital Economy Act 2017

1.1 The UK Digital Economy Act received Royal Assent on 27 April 2017. Part 5 of the new Act introduces new information sharing provisions to support more efficient and effective digital public services.

1.2 The Digital Economy Act 2017 allows the UK Government, as well as the devolved governments, in certain cases, to specify additional objectives for which data can be shared, and to name the individuals and organisations that can make use of the data sharing powers the Act provides. Part 5 of the Act then regulates what data can be shared and for which purposes. It also includes safeguards to make sure that the privacy of citizens' data is protected.

1.3 The UK Government has recently consulted on draft regulations ([Digital Economy Act, part 5: data sharing codes and regulations](#)). The consultation set out four specific objectives for which data would be able to be shared under the public service delivery provisions and which specific, non-devolved bodies are able to use these powers for the objectives specified. The four objectives are:

- multiple disadvantages
- television retuning
- fuel poverty
- water poverty

The provisions of the Act on the last of these, water poverty, do not apply in Scotland.

1.4 We would like public bodies in Scotland, where this is appropriate and safe, to be able to make use of the new data sharing powers set out in Part 5 of the Act for the purposes of public services delivery. For the objectives specified in the draft Regulations which the UK Government consulted on, this would allow data to be shared between specified bodies. The Digital Economy Act does not contain a list of devolved "Scottish bodies" and, should this function be desirable, it is for the Scottish Parliament to approve separate Regulations. The Scottish Parliament consented to the Act applying to Scottish bodies in this way.

1.5 To be able to use the data sharing provisions in the Act a Scottish public body needs to demonstrate an express need to share data with another body for the purpose of delivering a specified public service. Additionally, in this context, that

specified public service delivery function must meet one of the 3 objectives relevant to Scotland (outlined in Annex A) to be specified in the UK Government Regulations.

2. Public Service Delivery

2.1 The Digital Economy Act 2017 contains powers for a specified authority to share data with another specified authority for the purpose of public service delivery. Under the public service delivery power a “specified authority” is a public body listed in schedule 4 of the Act.

2.2 Section 35 of the Act provides a power for the “appropriate national authority” to amend the list of approved public bodies in schedule 4—that is to add, remove or modify entries in the schedule. In Scotland the Scottish Government is the appropriate national authority, subject to the approval of regulations by the Scottish Parliament.

2.3 Section 35 also provides powers for the appropriate national authority to specify in regulations objectives which meet the conditions set out at 2.4 (below). This section of the Act also enables appropriate national authorities to specify objectives in relation to persons or bodies which are detailed in schedule 4.

2.4 An objective may be specified by regulations only if:

(a) the objective has as its purpose:

(i) the improvement or targeting of a public service provided to individuals or households, or

(ii) the facilitation of the provision of a benefit (whether or not financial) to individuals or households.

(b) the objective has as its purpose the improvement of the well-being of individuals or households.

(c) the objective has as its purpose the supporting of:

(i) the delivery of a specified person’s functions, or

(ii) the administration, monitoring or enforcement of a specified person’s functions.

3. Data Sharing and Scottish bodies

3.1 We would like to be able to make use of the new powers for the objectives which the UK Government has identified. To do this, we need to specify any devolved Scottish bodies that would be able to make use of the data sharing powers outlined in the Act to be capable of using the power in respect of any reserved authority. In addition, the UK Government must specify which specified objectives are relevant to the relevant specified authorities.

3.2 Annex B lists those Scottish public bodies which we believe would be able to make use of the data sharing powers with reserved bodies, whose work links to one or more of the 3 objectives relevant to Scotland that have been set by the UK Government. Annex C contains short draft Regulations which we are consulting on under section 44(4) of Act, and which would be laid before the Scottish Parliament to add the relevant Scottish bodies into schedule 4 of the Act if approved.

3.3 In addition to listing Scottish public authorities to be added to the schedules, Regulations approved by the Scottish Parliament can also be used to create specific devolved objectives, aimed at improved information sharing for public service delivery, between devolved authorities within Scotland. We are not consulting on this issue within this consultation, but we may wish to identify and consult on devolved Scottish-only objectives at a later date.

4. Consultation

4.1 The current consultation sets out the public bodies in Scotland we would like to name in the legislation as being able to make use of the new powers under the objectives that have been set by the UK Government, and the draft Regulations to do so. We would like to know your views on whether the public bodies we have identified are the right ones, and whether there are other public bodies we could include.

4.2 Please note that sharing data under the Act will be in addition to any data sharing that can take place under existing legislation applying to public bodies. The Act does not exempt authorities from data protection controls (currently the Data Protection Act 1998 – see section 40(8) of the Act). Nor does it impose binding duties on public authorities to share data. The provisions will only give those bodies the power to share data where they can justify this in line with the objectives and conditions under Part 5 of the Act. Criminal offences for unauthorised disclosure of personal information are also created by section 41 of the Act.

4.3 We are also interested in hearing your views on what further objectives we might need to enable Scottish public bodies to share data; in particular, any objectives which might enable sharing with reserved public bodies for the purposes of improved public service delivery.

4.4 The current consultation is limited to the 3 objectives relevant to Scotland being delivered by UK Government regulations, and is driven by UK Government timescales. We are currently exploring the requirement for further objectives, with a view to considering whether to consult again on further detailed proposals. We would therefore also like your views on what devolved objectives we could set for Scotland in the future, and the Scottish public bodies we could name to support those objectives.

5. Next Steps

5.1 Following this consultation and analysis of your responses, we will finalise a list of Scottish public bodies which will then be included in the Regulations. This

legislation will be laid in the Scottish Parliament for approval, which if approved will allow the bodies named to make use of the data sharing powers for the objectives to be specified in the draft Digital Government (Disclosure of Information) Regulations 2017 (laid in Westminster), consulted on by the UK Government.

Extract defining the cross-UK objectives for data sharing, consulted on by the Cabinet Office, taken from the Digital Government (Disclosure of Information) Regulations 2017 (available [here](#)).

SCHEDULE

Specified objectives in relation to a specified person

1. --(1) The specified objectives are—

- (a) the multiple disadvantages objective;
- (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, the persons specified at paragraphs 1 to 5, 7 to 8, 10 to 16, 18 to 25 and 28 of Schedule 4 to the Act;
- (b) for the television retuning objective, the persons specified at paragraphs 2, 7, 11 to 17 and 28 of Schedule 4 to the Act;
- (c) for the fuel poverty objective, the persons specified at paragraphs 6 to 8, 10 to 21 and 26 to 28 of Schedule 4 to the Act;
- (d) for the water poverty objective, the persons specified at paragraphs 7 to 8, 10 to 17, and 27 to 28 of Schedule 4 to the Act.

Multiple disadvantages objective

2. (1) In paragraph 1(1)(a) the multiple disadvantages objective consists of the provision of assistance to individuals or households who are affected by multiple disadvantages.

(2) “Multiple disadvantages” means the presence of two or more factors which adversely affect individuals or households including, but not limited to —

- (a) the individual, or an individual in the household, carrying out, or being subject to, antisocial behaviour;
- (b) the individual being, or the household including, a care leaver;
- (c) the individual being, or the household including, a child in need;
- (d) disability, including learning disability;
- (e) domestic violence;
- (f) a failure to regularly attend school;
- (g) financial exclusion;
- (h) homelessness;
- (i) ill-health, including mental ill-health;
- (j) offending by the individual or by an individual in the household;
- (k) substance misuse;
- (l) unemployment.

(2) The following definitions apply for the purposes of sub-paragraph (2) —

“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 an eligible child for the purposes of paragraph 19B of Schedule 2 to the Children Act 1989(2) or a relevant child for the purposes of section 23A of that Act(3);

“child in need” means 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) and (11) of

the Children Act 1989(4);

“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 individuals who are associated with each other (where associated has the same meaning as in section 62(3) of the Family Law Act 1996(5));

“financial exclusion” means an inability to, reluctance to, 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(6); and

“homelessness” has the same meaning as in section 175 of the Housing Act 1996(7);

“offending” means having been convicted of a criminal offence of any nature, and includes being cautioned in respect of criminal activity;

“substance misuse” means the misuse of drugs, alcohol and other substances; and

“unemployment” includes —

- (a) individuals who—
 - (i) have actively sought work in the last four weeks; and
 - (ii) are available to start work in the next two weeks; or
- (b) individuals who—
 - (i) have found work; and
 - (ii) are waiting to start that work in the next two weeks.

Television retuning objective

3. In paragraph 1(1)(b) the television retuning objective consists of —

- (a) identifying an individual or a household who may be eligible for assistance under a relevant 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(8).

Fuel poverty objective

4. In paragraph 1(1)(c) the fuel poverty objective consists of assisting 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.
- (2) “Living in fuel poverty” has the meaning given in section 36(10) of the Act.

....

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 section 35 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 ... objectives enable the disclosure of information for the purposes of fuel poverty ... as defined in section... 36(10) ... of the Act.

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.

Scottish public bodies able to share data for each objective

This is an indicative note of proposed uses of data. Any use of data is subject to the continuing restrictions and safeguards on data protection noted at paragraph 4.2 in the body of this consultation.

Name of Scottish public body	Multiple Disadvantage Objective	Television Retuning Objective	Fuel Poverty Objective
Scottish Government	This would allow Scottish Government to share data with relevant bodies for the purpose of targeting and improving public services for individuals who meet two or more of the criteria under this objective.		This would allow the Scottish Government to share data with the Department for Business, Energy & Industrial Strategy for the purpose of: 1) handling data on behalf of Local Authorities in relation to heat mapping. 2) meeting approvals for Local Heat and Energy Efficiency Strategies
Local Government	This would allow Scottish Local Authorities to share data with relevant bodies for the purpose of targeting and improving public services for individuals who meet two or more of the criteria under this objective.	This would allow Scottish Local Authorities to share data with the Department for Work and Pensions and the Secretary of State for Defence to identify individuals and households to offer support with television retuning.	This would allow Scottish Local Authorities to share data with the Department for Business, Energy & Industrial Strategy for the purpose of introducing Local Heat and Energy Strategies.
Skills Development Scotland	This would allow, if the objective was adapted accordingly, Skills Development Scotland to share data with HMRC for the purpose of enhancing service delivery for, and reporting of, individuals under the age of 25 who are not in education or training and who meet two or more		

	criteria under this objective.		
Others			
A person providing services in connection with a specified objective to a specified person who is a public authority	This would allow data to be shared where bodies use contractors or other bodies to provide services limited to specific purposes subject to non-disclosure safeguards - see section 35(4)(b) and (5) and paragraph 28 of schedule 4 of the Act (and the criminal offence for any unauthorised disclosure of personal information in section 41).		

“Part 2
Scotland

- 29 The Scottish Ministers
- 30 A council constituted under section 2 of the Local Government etc. (Scotland) Act 1994⁽²⁾
- 31 The Skills Development Scotland Co. Limited⁽³⁾
- 32 A person providing services in connection with a specified objective (within the meaning of section 35) to a specified person who is a Scottish body.”; and
- (b) before paragraph 1 insert—

“Part 1
England or United Kingdom-wide”.

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 section 35 of the Digital Economy Act 2017 (“the Act”).

They specify the Scottish bodies listed in regulation 2 as specified persons to be added to those set out in schedule 4 of the Act for the purposes of improving public service delivery.

The specified persons may share information for the purposes of objectives specified in relation to that body in regulations made under section 35(7). Under that power, Digital Government (Disclosure of Information) Regulations 2018 (S.I. 2018/[Draft]) will set out:-

- a multiple disadvantages objective to enable the disclosure of information to enable the identification of individuals or households who face multiple disadvantages;
- a television retuning objective to enable 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;
- a fuel poverty objective to enable the disclosure of information for the purposes of fuel poverty as defined in section 36(10) of the Act.

The Scottish Government and local authorities in Scotland are to be specified in those Regulations in relation to the multiple disadvantages and fuel poverty objectives. Skills Development Scotland is to be specified in relation to the multiple disadvantages objective.

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

(2) 1994 c.39.
(3) Registered number SC202659

Responding to this Consultation

We are inviting responses to this consultation by **5 February 2018**.

Please respond to this consultation using the Scottish Government's consultation platform, Citizen Space. You view and respond to this consultation online at <https://consult.gov.scot/public-sector-data-sharing-and-access/digital-economy-act-2017-part-5/>. You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of 5 February 2018.

If you are unable to respond online, please complete the Respondent Information Form (see "Handling your Response" below) to:

DigitalEconomyActConsultation@gov.scot

Handling your response

If you respond using Citizen Space (<http://consult.scotland.gov.uk/>), you will be directed to the Respondent Information Form. Please indicate how you wish your response to be handled and, in particular, whether you are happy for your response to be published.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form attached included in this document. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

Next steps in the process

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <http://consult.scotland.gov.uk>. If you use Citizen Space to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them **Jessica Roscoe** at either Jessica.roscoe@gov.scot or Public Sector Data Sharing and Access, Scottish Government, 1G North, Victoria Quay, Edinburgh EH6 6QQ.

Scottish Government consultation process

Consultation is an essential part of the policy-making process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

You can find all our consultations online: <http://consult.scotland.gov.uk>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Consultations may involve seeking views in a number of different ways, such as public meetings, focus groups, or other online methods such as Dialogue (<https://www.ideas.gov.scot>)

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.



RESPONDENT INFORMATION FORM

Please Note this form **must** be completed and returned with your response.

Are you responding as an individual or an organisation?

- Individual
 Organisation

Full name or organisation's name

Phone number

Address

Postcode

Email

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name
 Publish response only (without name)
 Do not publish response

Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

- Yes
 No



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QUESTIONNAIRE

The Multiple Disadvantage Objective:

This objective, which has been set by the UK Government, is designed to improve the delivery of public services to both individuals and/or households that are affected by more than one disadvantage, such as disability, unemployment, or domestic abuse. A list of the disadvantages that can be considered when determining whether the multiple disadvantage is applicable is set out in the extract from the Digital Government (Disclosure of Information) Regulations 2017 at Annex A. The specified bodies under this objective will be able to share information with other specified bodies to ensure that affected individuals receive the support they need.

Annex B shows the public bodies in Scotland that we propose should be able to share data to help provide better public services to individuals and families experiencing multiple disadvantages.

Q1 *Are these the right individuals and devolved organisations to support this objective?*

Q2 *Are there additional individuals or devolved organisations that should be included?*

The Fuel Poverty Objective:

Section 36 of the Digital Economy Act 2017 allows public bodies to share information with gas and electricity suppliers where they identify that an individual or household is living in fuel poverty and may be eligible for support with fuel costs. A person or household is living in fuel poverty if they are on a lower income and cannot keep their home warm at a reasonable cost.

Annex B shows the proposed Scottish public bodies that will be able to share personal data to support public service delivery to those individuals or households in Scotland identified as living in fuel poverty.

Q3 *Are these the right individuals and devolved organisations to support this objective?*

Q4 *Are there additional individuals or devolved organisations that should be included?*

The Television Retuning Objective

Over the next few years, a portion of the broadcasting spectrum that is currently used by television broadcasters will be cleared for use for mobile broadband services. Most televisions will need to be retuned as a result. For most households, this will be a simple change that they will be familiar with. Some households may need additional support to make the change or new aerial equipment as a result. There may be similar changes in the future. The UK government is committed to assisting vulnerable households affected by these changes.

This objective is designed to allow relevant public bodies to share information that helps identify and contact individuals and households who may be eligible for assistance under a television retuning scheme.

Q5 *Are there any individuals or devolved organisations other than Scottish Local Authorities that should be included?*

Q6 *In addition to the objectives set out by the UK Government in the Digital Economy Act (multiple disadvantages, television retuning, fuel poverty, and water poverty), are there any other objectives which we could set for Scotland in the future to better target and improve public service delivery in Scotland?*

Q7 *If additional objectives are to be proposed what would be the purpose of these and what devolved Scottish public bodies could we name to support those objectives?*



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