

The Digital Government (Scottish Bodies) Regulations 2022

Fairer Scotland Duty Summary

February 2022



Scottish Government
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<p>Title of policy, strategy or programme</p>	<p>The Digital Government (Scottish Bodies) Regulations 2022</p>
<p>Summary of aims and expected outcomes of strategy, proposal, programme or policy</p>	<p>The Digital Government (Scottish Bodies) Regulations 2022 add certain Scottish public authorities with devolved functions (“Scottish Bodies”) to schedule 7 (debt) and 8 (fraud) of the Digital Economy Act 2017¹ (“the Act”) so providing a new legal gateway for Scottish Bodies to use to enter into information sharing agreements with other listed bodies. The UK and Welsh Governments have already added UK, English and Welsh bodies to the schedules.</p> <p>Part 5 of the Act 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. A listed public authority can only share data under these powers with other persons who are also listed in the relevant schedule. The Act regulates what data can be shared and for what purposes. The Act does not compel public authorities to share data. The information sharing powers in the Act are permissive. It is for the public authorities listed to decide to make use of the powers and to seek to enter into information sharing agreements with other listed bodies.</p> <p>The Scottish Bodies listed in the Regulations are in the Annex.</p>
<p>Summary of evidence</p>	<p>Public authorities listed in schedules 7 and 8 of the Act must have regard to <i>the Code of Practice</i>² <i>for public authorities disclosing information under Chapters 1, 3 and 4 (Public Service Delivery, Debt and Fraud) of Part 5 of the Digital Economy Act 2017</i> (the Code). The Code provides details on how the debt and fraud information sharing powers should operate. It provides that in the first instance, all information sharing under the debt and fraud powers is run as a pilot. The impact of Scottish Bodies using the debt and fraud powers will</p>

¹ <https://www.legislation.gov.uk/ukpga/2017/30/contents>

² <https://www.gov.uk/government/publications/digital-economy-act-2017-part-5-codes-of-practice/code-of-practice-for-public-authorities-disclosing-information-under-chapters-1-3-and-4-public-service-delivery-debt-and-fraud-of-part-5-of-the-di>

not be apparent until proposals to pilot the use of the powers are in development. Therefore, this is an introductory Fairer Scotland Duty Assessment which will be reviewed once initial evidence from pilots on their impacts becomes available. However, public authorities will have to act in accordance with equalities legislation in developing their data sharing arrangements and many are subject to the Fairer Scotland Duty.

The Code sets out the guidance on the process which bodies will need to follow to establish a new pilot. The purpose of such pilots is to allow for the benefit of the data share to be explored and to identify any potential impacts and ethical issues. Pilots will determine whether and how there is value in sharing personal information for the purposes of taking action in connection with debt owed to, or fraud against the public sector.

Public bodies wishing to establish a pilot submit a business case, information sharing agreement, data protection impact assessment and security plan to the secretariat of a review board. The UK Government has established a [review board](#)³ to oversee reserved and England-only data sharing under the fraud and debt powers. The board assesses and makes recommendations to UK Ministers on each pilot proposal. The Scottish Government will similarly establish its own structures for the oversight of data sharing arrangements for Scotland.

The Code also includes Fairness Principles which provide a set of best practice guidelines to help ensure a common approach to fairness is considered when sharing information under the debt power. The UK Government worked in partnership with non-fee paying debt advice providers to develop these Principles. Where a vulnerable customer is identified, the Fairness Principles provide that they should be given appropriate support and advice. This is particularly relevant in the wake of Covid-19 where individuals may be experiencing hardship.

The Code sets out that information about information sharing agreements should be published in a searchable electronic public register. The UK Government has established a [register](#)⁴ for reserved and England-only information sharing agreements. A similar register will be established for devolved information sharing agreements.

³ <https://www.gov.uk/government/publications/the-digital-economy-act-2017-debt-and-fraud-information-sharing-review-board>

⁴ <https://www.gov.uk/government/publications/register-of-information-sharing-agreements-under-chapters-1-2-3-and-4-of-part-5-of-the-digital-economy-act-2017>

	<p>Failure to have regard to the Code may result in a public authority or organisation losing the ability to disclose, receive and use data under the powers in the Act.</p> <p>Other safeguards are in place as bodies will have to comply with equality, data protection and Human Rights legislation and some the Fairer Scotland Duty.</p> <p>There have been two public consultations seeking views on Scottish Bodies to be included in the schedules. Amongst those invited to respond to the consultations were Scottish public bodies, poverty groups and the Information Commissioner.</p> <p>There was broad support for the proposals. No concerns were raised by stakeholders or individuals regarding negative impacts on inequality for those experiencing poverty.</p> <p>The only concern raised about the impact of the Regulations was in relation to the requirement to comply with section 22 of the Gender Recognition Act 2004 which provides that it is an offence for a person who has acquired protected information in an official capacity to disclose the information to another person. Protected information is information relating to an application for a gender recognition certificate. These arrangements are not affected by the Regulations</p> <p>The consultations, answers from respondents who gave permission for them to be published and analysis of responses, can be found here:</p> <p>Scottish public authorities sharing data: consultation https://consult.gov.scot/digital-directorate/public-authorities-sharing-data/</p> <p>Scottish public authorities sharing data: further consultation https://consult.gov.scot/digital-directorate/public-authorities-sharing-data-2/</p>
<p>Summary of assessment findings</p>	<p>Taking in to consideration the information above, no potential improvements have been identified.</p>
<p>Sign off</p>	<p>Albert King, Chief Data Officer</p>

Annex: Scottish Bodies listed in the Regulations

Scottish Public Body	Schedule 7 (debt)	Schedule 8 (fraud)
Accountant in Bankruptcy	✓	✓
Audit Scotland		✓
The Common Services Agency for the Scottish Health Service	✓	✓
A council constituted under section 2 of the Local Government etc. (Scotland) Act 1994	✓	✓
Creative Scotland		✓
Food Standards Scotland		✓
Highlands and Islands Enterprise	✓	✓
Independent Living Fund	✓	✓
Revenue Scotland	✓	✓
Scottish Courts and Tribunals Service	✓	
Scottish Enterprise	✓	✓
Scottish Environment Protection Agency	✓	✓
Scottish Legal Aid Board	✓	✓
Scottish Legal Complaints Commission	✓	✓
Scottish Qualifications Authority	✓	✓
Skills Development Scotland		✓
South of Scotland Enterprise	✓	✓
The Scottish Ministers	✓	✓
A person providing services to a specified person listed in Schedule 7 and is a public authority, in respect of the taking of action in connection with debt owed to a public authority	✓	
A person providing services to a specified person listed in Schedule 8 and is a public authority, in respect of the taking of action in connection with fraud against a public authority or to the Crown		✓

Executive Agencies

“The Scottish Ministers” includes [Executive Agencies](#)⁵. Accordingly, Executive Agencies will be specified persons in relation to the debt and fraud powers, even though they are not listed by name in the schedules. At the time of the consultations, the Scottish Public Pensions Agency, the Student Awards Agency for Scotland and the Scottish Social Security Agency wished to make use of these powers.

A person providing services to a specified person

In recognition of the fact that public services are also delivered by third parties who may hold key information which public authorities need, or who may need to access key information held by public authorities, bodies that provide services to a public authority that is specified in the schedules are covered by the addition of a general description to the schedules. Such bodies will not need to be listed individually by name. They can only use the data sharing powers in connection with the functions they exercise when providing services to a specified public authority.

⁵ <https://www.gov.scot/publications/national-public-bodies-directory/pages/executive-agencies/>



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