

EXPLANATORY MEMORANDUM TO
THE SOCIAL SECURITY (INFORMATION-SHARING IN RELATION TO WELFARE SERVICES ETC.) (AMENDMENT) REGULATIONS 2013

2013 No. 41

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 local authorities that administer Council Tax, including their service providers and persons exercising functions on their behalf

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’).

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

None.

4. Legislative Context

4.1 This is the second set of regulations being made using the powers in section 131 of the 2012 Act. The Social Security (Information-sharing in relation to welfare services etc.) Regulations 2012 prescribed a number of welfare services where data could be shared. This instrument amends that list by adding local council tax reduction schemes as a new purpose. This will enable certain data 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 local authorities 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.

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 Section 131(1) enables the Department for Work and Pensions or its service providers to supply social security information to local authorities and others for prescribed purposes relating to welfare services or council tax. In addition, Section 131(3) enables

local authorities 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 prescribed circumstances. The Social Security (Information-sharing in relation to welfare services etc) Regulations 2012 came into force on 2 July 2012, and prescribe a number of welfare services where information can be shared using the section 131 power. This instrument amends those Regulations by adding prescribed council tax purposes.

7.2 The Local Government Act 2012 includes powers allowing local authorities in England and Wales to set up a council tax reduction scheme. This Act received Royal Assent in November 2012. It was not appropriate to bring forward regulations prescribing local council tax support as a purpose for data sharing until these primary powers had been approved. Therefore it was not possible to include this purpose in the July 2012 set of information-sharing regulations.

7.3 Council Tax Benefit (CTB), a UK-wide social security benefit administered by local authorities which provides financial help with council tax to people on low incomes, is being abolished on 31 March 2013. From 1 April 2013, local authorities are able to provide new forms of support through a council tax reduction scheme. Local authorities will be able to design their own local schemes, although it is expected that initially schemes will closely resemble CTB.

7.4 Eligibility for the new reduction scheme will, at least initially, be based on income, and therefore it will be essential that local authorities are given access to the full details of a claimant's social security award, in order that a proper test of means can be carried out.

7.5 The provisions in this instrument ensure that the Department for Work and Pensions is able to share details about its claimants, where those claimants are also applying for help with council tax under the new local scheme. It will also enable local authorities to use locally held CTB data in order to smooth the transition of the CTB caseload over to the new local scheme.

7.6 Being able to share claimant data without needing to seek the consent of each individual every time will help to speed up decision making, make the process of applying for local help with council tax much simpler for the individual, and ease the administrative arrangements by removing the need to collect and record consent.

- ***Consolidation***

7.7 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-lawrelating-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, to specifically include council tax. It was made explicitly clear at the time that the new power would be used to enable data sharing for the purpose of supplying social security data to local authorities to help them decide eligibility for the new local schemes providing support with council tax.

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. All were supportive of the proposals to share information for more purposes, including local schemes such as help with council tax. A response summarising the findings from this consultation was published on 1 June 2012 and is available on the DWP website at <http://www.dwp.gov.uk/consultations>

8.3 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. The LAAs are very keen that these powers are introduced as soon as possible in 2013 so that they can start assessing their existing CTB caseload for the new reduction scheme.

9. Guidance

9.1 Guidance will be provided to local authorities explaining what the new data sharing powers will permit in practice, to coincide with the publication of the regulations in January 2013.

9.2 The Local Authority Data Share project team is working with the Department for Communities and Local Government and devolved administrations 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 in time for an April launch.

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 prescribed purposes connected to the assessment of entitlement to local council tax support. 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 An Impact Assessment has been published by the Department for Communities and Local Government in relation to the introduction of new local council tax support in England. A copy can be accessed at:
<http://www.communities.gov.uk/documents/localgovernment/pdf/2158675.pdf>

10.5 A Privacy Impact Assessment has been produced and will be made available to Parliament along with this instrument. A copy is 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@dpw.gsi.gov.uk instrument.

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

November 2012

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**.

1.4 The assessment is now further updated to reflect the publication of **The Social Security (Information-sharing in relation to welfare services etc.) Amendment Regulations 2012**. 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 2012 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 when a local authority 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 local authorities 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 2012** 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.

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.

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. Local authorities 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 For the purposes set out in the regulations, we expect the total volume of data being shared to be significant. Detailed figures are not available, but we do know that:

- Around 1,650,000 people in England receive home-based services. A small study by one group of local authorities estimates that among the 152 LAs in England with social care responsibilities, approximately 500,000 new applications are dealt with each year, and a similar number of cases reassessed, to establish how much a person can afford to pay towards the cost of their service. This results in around 810,000 request to DWP for details of a person's social security award.
- There are around 240,000 people in residential care in England and some 70% receive help with some or all of the fees for the place in care.
- Around 360,000 people in England could be eligible for a Disabled Facility Grant, but the actual number of awards is estimated to be smaller due to a ceiling on the overall funds available, which totalled some £180m for local authorities in England in 2011-12.
- Around 2.5m disabled person's badges are issued in England by 152 local authorities. Approximately 36% (918,000) of applicants for a Blue Badge apply on the basis that they are receiving the higher rate mobility component in Disability Living Allowance.

- The numbers of people likely to be affected by the new benefit rules on under occupancy in the social sector, where data may be shared with landlords, is expected to be around 660,000.
- Around 5.9 million people currently receive CTB (May 2012). The majority of these are expected to be entitled to help under new local council tax reductions schemes from April 2013.
- Data on around 120,000 families will be shared in connection with the Troubled Families Programme.

4.21 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.

4.22 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.

4.23 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.

4.24 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.

4. Contact details

4.1 Any questions about this assessment should be addressed in the first instance to:

Carol Foster-Middleton,
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Tothill Street
London. SW1H 9NA

email: carol.foster-middleton@dwp.gsi.gov.uk