



Cabinet Office

# Data sharing to support early learning and childcare in Scotland

## **Consultation on draft Digital Government (Disclosure of Information) Regulations 2022**

**This consultation begins on 10 January 2022**

**This consultation ends on 7 March 2022**

[back of cover – please leave this page blank]

# Data sharing to support early learning and childcare in Scotland

## Consultation on draft Digital Government (Disclosure of Information) Regulations 2022

A consultation produced by the Cabinet Office, also available on-line at [gov.uk](https://www.gov.uk).

# About this consultation

**To:** The organisations affected by this consultation are public authorities in England and Scotland, and/or other government departments, arms length bodies, non departmental public bodies or other organisations who may consider they could be affected by the draft regulations. It may also be relevant to other bodies that have an interest in funded early learning and childcare provision in Scotland. The specified organisations are not meant to be exhaustive or exclusive. Responses are welcome from anyone with an interest in or views on the subject covered by this paper.

**Duration:** From 10 January 2022 to 7 March 2022

**Enquiries (including requests for the paper in an alternative format) to:** Heather Neate, Head of Data Sharing Legislation at [dea-data-sharing@digital.cabinet-office.gov.uk](mailto:dea-data-sharing@digital.cabinet-office.gov.uk)

**How to respond:** We have provided a list of suggested questions for you to use when responding to this consultation on page 22. Our preference would be for you to respond through our survey which is available online at: <https://surveys.domains.gov.uk/s/B5EXQM/> by 7 March 2022 at 11:45pm.

For various pandemic related and logistical reasons, we cannot accept postal responses to this consultation unless there are exceptional circumstances. If you absolutely need to send in a postal submission please contact Heather Neate to discuss options.

Additional activity will be organised by the Scottish Government for bodies and individuals with an interest in how the powers will be used by Scottish bodies. More information on this activity will be provided through the monthly updates from the Directorate for Early Learning and Childcare:

<https://www.gov.scot/publications/early-learning-and-childcare-elc-expansion-monthly-updates/>

Please indicate in your response whether you are content for your comments to be published, with or without attributing it to you or your organisation.

**Additional way to feed in your views:**

Please send your response by 7 March 2022 to:

Heather Neate, Head of Data Sharing Legislation at [dea-data-sharing@digital.cabinet-office.gov.uk](mailto:dea-data-sharing@digital.cabinet-office.gov.uk)

Please include the following 'Response to the consultation on the data sharing for early learning and childcare in Scotland' in the subject line if you choose to respond this way.

**Response paper:**

A response to this consultation exercise is due to be published by 30 May 2022 on gov.uk.

# Contents

<b>About this consultation</b>	<b>2</b>
<b>Contents</b>	<b>5</b>
<b>Ministerial Foreword by Lord Agnew</b>	<b>7</b>
<b>Ministerial Foreword Clare Haughey, MSP</b>	<b>9</b>
<b>Executive summary</b>	<b>11</b>
<b>Introduction</b>	<b>12</b>
<b>The proposal</b>	<b>13</b>
What is the new data sharing objective?	14
Who will use the data sharing power?	14
Who may process data and why?	15
What data will be shared?	15
What is the likely impact of the new data sharing power?	16
Why introduce the power now?	18
What other options have been considered?	19
How does the data sharing align with UK government priorities?	19
Why is the UK Government taking this proposal forward?	19
Does the data sharing power apply across England, Scotland, Wales and Northern Ireland?	20
Will data sharing comply with the relevant data protection requirements?	20
Will you prepare a data protection impact assessment?	20
Does the proposed data sharing comply with current best practises?	21
Why consult?	21
<b>Impact Assessment</b>	<b>22</b>
<b>Questionnaire</b>	<b>23</b>
Table 1 - Questions	23
Timetable	26
Table 2 - Provisional timetable for the parliamentary process	26
<b>Annex 1 - Draft regulations - see separate document</b>	<b>28</b>
<b>Annex 2 - Background to funded early learning and childcare in Scotland</b>	<b>29</b>
<b>Annex 3 - Background to the Digital Economy Act 2017</b>	<b>30</b>
What is the Digital Economy Act 2017?	30
Why and how did we develop the legislation?	30
What do the public service delivery powers do?	30


What does the Public Service Delivery Review Board do?	31
Does the Digital Economy Act 2017 align with data protection legislation?	31
Who uses the Digital Economy Act 2017?	31
Is the government committed to being open and transparent about data shared under the Digital Economy Act 2017?	32
<b>Annex 4 - Table of organisations to be consulted</b>	<b>33</b>
<b>Annex 5 - Privacy Notice for Cabinet Office consultations</b>	<b>35</b>
Your data	35
Your rights	36
International transfers	37
Contact details	37
Complaints	37

## Ministerial Foreword by Lord Agnew



1. This Government has made a commitment to improve the way that data and information is shared and used across the public sector to deliver better, joined up services and better outcomes for our citizens. The Digital Economy Act was designed and passed in 2017 to give us flexibility to introduce new data sharing gateways to support the delivery of key services, as the need arises, by secondary legislation and with a pre-consultation stage.
2. This proposed legislation would mean Scottish local authorities are able to target the entitlement to funded early learning and childcare for certain 2 year olds more effectively, ensuring that disadvantaged children and families are made aware and are able to access their full entitlement. It would also give parity of service provision that families in England and Wales already enjoy. This would be introduced under draft Digital Government (Disclosure of Information) Regulations 2022.
3. Across the country, levelling up is spreading opportunity, boosting living standards and improving public services. This proposed data sharing is an example of the tangible benefits that can be realised when UK government departments work closely together. Efficient data sharing across the public sector should be the norm, rather than the exception.
4. I welcome responses from anyone with an interest or views on early learning and childcare to respond to this consultation.



A handwritten signature in black ink on a light gray background. The signature reads "Theresa Agnew" in a cursive style. The first letter 'T' is large and loops back. The name "Theresa" is followed by "Agnew". A long, sweeping horizontal line extends from the end of the signature across the bottom of the text area.

Lord Agnew of Oulton  
Minister of State for Efficiency and Transformation

# Ministerial Foreword Clare Haughey, MSP



5. The Scottish Government's [National Performance Framework](#) aims to get everyone in Scotland working together to achieve the [National Outcomes](#). The National Outcome for Scotland's children and young people is that "we grow up loved, safe and respected so that we realise our full potential". Similarly, there is a vision for our communities that "we live in communities that are inclusive, empowered, resilient and safe".
6. We know that high quality early learning and childcare (ELC) enriches children with skills and confidence to carry throughout their lives, and is a cornerstone for closing the poverty-related attainment gap between the most and least advantaged children. Evidence from both UK and international evaluations and studies of ELC programmes shows that all children, especially those from disadvantaged backgrounds, can benefit in terms of social, emotional and educational outcomes from attending high quality ELC.
7. To support this vision, in 2014 the Scottish Government committed to almost doubling the funded entitlement to early learning and childcare from 600 to 1,140 hours for all 3- and 4-year-olds and eligible 2-year-olds.

8. Our transformative ELC expansion programme was realised in August 2021, with all children and families across Scotland now being able to access up to 1,140 hours funded ELC – underpinned by ensuring that provision is of high quality, flexible, accessible and affordable.
9. Underpinning all of this is the joint commitment between Scottish Government and Scottish local authorities to maximise uptake of funded ELC in order to ensure we realise the benefits of the investment: Children's development improves and the attainment gap narrows; Parents' opportunities to be in work, training or study increase; and Family wellbeing improves through the enhanced nurture and support available through the funded hours.
10. We know however that we can do more, especially for those children who stand to benefit the most from early access to funded ELC.
11. Our entitlement for eligible 2-year-olds is a targeted offer with eligibility criteria<sup>1</sup> including children with experience of care or with a parent with experience of care; or children whose family are in receipt of low- or no-income benefits (out of work benefits or income-related benefits with income below a certain threshold).
12. While our qualifying criteria intend to target those 2-year-olds who stand to benefit the most from early access to high quality funded ELC, uptake of this targeted offer has consistently remained low and we must do all we can to remove barriers for families.
13. There are several factors that contribute to low uptake including those identified in research we commissioned in 2017. 'Drivers and barriers to uptake of early learning and childcare among 2-year-olds' published March 2017<sup>2</sup>, indicated that many eligible families are likely to take up the 2-year-old offer if they are aware of it, although we know that not all families will take up their entitlement even when they are aware. The research identified that one of the key barriers to raising awareness amongst eligible families is that the Scottish Government and Scottish Local Authorities do not have access to household level information about those families who are likely to be eligible. That report included a recommendation that *“as a priority, the Scottish Government should work with DWP (and HMRC if required) to allow data on eligibility to be shared with local authorities”*.
14. The draft Regulations that are the subject of this consultation will benefit local authorities in Scotland – allowing them to effectively and efficiently target local information to eligible families.

---

<sup>1</sup> <https://www.mygov.scot/childcare-costs-help/funded-early-learning-and-childcare>

<sup>2</sup> <https://www.gov.scot/publications/drivers-barriers-uptake-early-learning-childcare-amongst-2-year-olds/>

15. I would like to take this opportunity to encourage you to respond to this consultation.

*Clare Haughey*

Clare Haughey, MSP  
Minister for Children and Young People

# Executive summary

16. This consultation sets out the Cabinet Office's proposal to enable data sharing between HMRC, DWP, the Scottish Government and Scottish local authorities in order to help identify and contact households that are eligible for funded early learning and childcare (ELC) for 2 year olds in Scotland.

## Introduction

17. The Public Service Delivery ('PSD') power (Chapter 1 of Part 5 of the Digital Economy Act 2017) allows specified bodies to share personal information for objectives which are set out in regulations. This information sharing power is aimed at improving or targeting public services to individuals or households in order to improve their well-being. It also includes safeguards to make sure that the privacy of citizens' data is protected.
18. New objectives can be created providing they meet the criteria in [Section 35](#) of the Digital Economy Act 2017 and secure parliamentary approval. The criteria are as follows:
  - condition 1: the purpose is the improvement or targeting of a public service provided to individuals or households, or the facilitation of the provision of a benefit (whether or not financial) to individuals or households;
  - condition 2: the purpose is the improvement of the well-being of individuals or households; and
  - condition 3: the purpose is the supporting of the delivery of a specified person's functions, or the administration, monitoring or enforcement of a specified person's functions
19. In order to exercise the PSD power, the government must, via regulations, set specific objectives for which data may be shared and identify the specific bodies to which they apply. The [Code of Practice<sup>3</sup>](#) for the PSD power provides the principles and guidance on using the power and on ensuring compliance with data protection legislation.
20. This consultation paper sets out a proposed objective to support funded early learning and childcare ('ELC') in Scotland and the draft Digital Government

---

<sup>3</sup>

<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>

(Disclosure of Information) Regulations 2022 which would enact it. The consultation is aimed at UK and Scottish public authorities and other government departments, arms length bodies, non departmental public bodies or other organisations who may consider they could be affected by the draft regulations. It may also be relevant to other bodies that have an interest in funded ELC provision in Scotland.

21. The Scottish Government published an [Equality Impact Assessment<sup>4</sup>](#) in January 2021 on the policy framework for ELC in Scotland. It did not identify any direct or indirect unlawful discrimination. Furthermore, as the proposed statutory instrument has no direct impacts on UK businesses, the Regulatory Policy Committee sees no reason for a further impact assessment to be carried out.
22. Copies of the consultation paper are being sent to the bodies listed at Annex 4. However, this list is not meant to be exhaustive or exclusive and responses are welcomed from anyone with an interest in or views on the subject covered by this paper.

---

4

<https://www.gov.scot/publications/expansion-early-learning-childcare-reinstatement-1140-statutory-duty-equalities-impact-assessment-eqia/>

# The proposal

23. The UK Government, in partnership with the Scottish Government, is proposing to create a new PSD objective under Chapter 1 of Part 5 of the Digital Economy Act 2017. The proposed objective would provide for data sharing between HMRC, DWP, the Scottish Government and Scottish local authorities in order to help identify and contact households that are eligible for funded early learning and childcare (ELC) for 2 year olds in Scotland.
24. High quality ELC can make a huge difference to children's lives, particularly when they are growing up in more disadvantaged circumstances. Data sharing between HMRC, DWP, the Scottish Government and Scottish local authorities would help identify households that are eligible for funded ELC because they receive certain qualifying benefits, and thereby improve uptake. We have set out some background to the ELC scheme in Annex 2.
25. As required by the Code of Practice, the proposed new objective has been approved by the [Public Service Delivery Review Board<sup>5</sup>](#).

## What is the new data sharing objective?

26. The [Digital Government \(Disclosure of Information\) Regulations 2018<sup>6</sup>](#) will be amended and a new PSD objective added to allow sharing personal information in order to help identify and contact eligible households, and thereby support the improvement of uptake of funded ELC for eligible 2 year olds in Scotland. It would enable regular data sharing from HMRC and DWP with the Scottish Government and onward to Scottish local authorities. The data sharing would provide the relevant local authority with access to the necessary information to enable them to identify and then directly contact eligible families to inform them of their likely eligibility.

## Who will use the data sharing power?

27. The public authorities who would be able to exercise the power for the purposes of the new ELC objective will be the Scottish Government (defined as the Scottish Ministers), Scottish local authorities as defined under section 2 of the Local Government etc. (Scotland) Act 1994, Her Majesty's Revenue and Customs (HMRC) and the Secretary of State for Work and Pensions (DWP).

---

<sup>5</sup> <https://www.gov.uk/government/groups/digital-economy-act-public-service-delivery-review-board>

<sup>6</sup> <https://www.legislation.gov.uk/uksi/2018/912/introduction/made>

Question 1 - To what extent do you agree that the proposed new objective meets the first condition set out in s35 (9) of the [Digital Economy Act 2017](#)?

Question 2 - To what extent do you agree that the proposed new objective meets the second condition set out in s35 (10) of the [Digital Economy Act 2017](#)?

Question 3 - To what extent do you agree that the proposed new objective meets the third condition set out in s35 (12) of the [Digital Economy Act 2017](#)?

## Who may process data and why?

28. The data required by Scottish local authorities for ELC purposes sits with DWP and HMRC.
29. As HMRC and DWP do not have access to both datasets, it is envisaged that the Scottish Government would merge the HMRC and DWP data together, de-duplicate, and then split the data by relevant Scottish local authority. It is envisaged that HMRC and DWP will share data with the Scottish Government on a regular basis to meet business requirements.
30. Once local authorities receive the information, they will directly contact those eligible families and provide them with information on the local offer and on how to take it up.

## What data will be shared?

31. HMRC and DWP will share the minimum number of data items necessary for contacting eligible families. This will specifically include the customer name, address and National Insurance number (for unique identification), as well as a child(ren) indicator to confirm the existence of a child, or children, when writing to the family.
32. Prior to sharing any data, all parties to the data share will complete an agreed business case, information sharing agreement, data protection impact assessment and security plan in line with the Code of Practice. Data sharing will take place in accordance with data protection legislation, the Commissioners for Revenue and Customs Act 2005, and the Information Commissioner's Office Data Sharing Code of Practice.
33. All parties to the data share will ensure that data is held securely, to the appropriate security and information management standards, maintained to



the appropriate quality, used only for the specified purpose of ELC, kept only as long as necessary and then securely deleted.

34. Any and all data shares under the proposed objective will be included in the [Register of information sharing agreements](#) established under chapters 1, 2, 3 and 4 of part 5 of the Digital Economy Act 2017<sup>7</sup>.

Question 4 - To what extent do you agree that the data to be shared as outlined under this proposed objective is consistent with the delivery of the objective?

## What is the likely impact of the new data sharing power?

35. This proposed objective will ensure Scottish local authorities are able to target the entitlement to funded ELC for certain 2 year olds more effectively, ensuring that those children and families facing the most socio-economic disadvantage are made aware and are able to access their full entitlement. This will provide greater opportunity for Scotland to realise the full benefits of the significant investment in funded early ELC.
36. The expansion of funded ELC will deliver three main benefits for children and families:
- children's development improves and the attainment gap narrows;
  - parents opportunities to be in work, training or study increase; and
  - family well-being improves through enhanced nurture and support.

### **Case Study: Early Learning and Childcare (ELC)**

The council has access to a list of parents with a 2 year old, who receive one of the benefits that qualifies their child for funded hours of ELC for 2 year olds. The council doesn't know what benefit the parent receives or what the child's name is, just that the child is eligible at that time. The council sends letters to all the households on the list when they access it.

The council can access the list 3 times a year. The list is only available for a set period of time and can only be used to let the family know about funded ELC for 2 year olds. Only certain people can access the lists and there are rules in place to make sure the council knows how they can use the information.

---

7

<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>

Jemma, mum to Lucy, is on the list because she currently gets Universal Credit and works a few hours a week. Jemma receives the letter from the council telling her that they think she has a child that could get funded hours of 'early learning and childcare', earlier than the 'universal' offer at age 3 (which all children in Scotland get). The letter explains that in her area, Jemma just needs to choose where she would like Lucy to get the hours and she can speak directly to the provider about it. If she's not sure, she can call the council.

Jemma can choose from: a school nursery nearby that is only open when the school is open; a private nursery that is open year round; a childminder who looks after a couple of other children of different ages; or there's also a local charity that runs sessions in the local church hall. Part of that decision depends on how she would like to take the hours – either sending Lucy for the same as a school day and only during school term time, or for shorter days year round. Whichever provider she chooses, they all need to meet a 'National Standard' so Jemma can be sure Lucy will get high quality learning and care wherever she goes.

Jemma feels a bit confused about what to do. She speaks to her Health Visitor about it and her friends and her mum. Jemma's mum isn't sure about sending Lucy when she's so young. Jemma decides to speak to the council and has a really helpful chat with the admissions person there. She reassures Jemma that Lucy doesn't need to go for full days or use all the hours. Jemma decides to send Lucy to the private nursery because it means Lucy can go year round and Jemma can hopefully do a bit more work and have a bit of time to catch up on other things. The council helps her with the paperwork. Because of the information the council has already from the letter they sent Jemma, they don't need to check much.

Lucy goes to nursery 4 days a week from 8am to 2pm and she really enjoys it:

*"The person at the council helped me decide on the right place and the right hours for Lucy. The nursery themselves really helped Lucy (and me!) to settle in and they never rushed for her to leave me. Her teachers spent time working out the best ways to comfort Lucy and found what routine was best. Knowing the time they spent and the attention they gave her put me at ease. Watching her independence and confidence grow has been so satisfying.*

*For Lucy, starting nursery at 2 years helped prepare her better rather than being sent at 3 years straight from home.*

Jemma increases her hours at work and this doesn't affect Lucy's place at nursery at all. Jemma has more time to get other things done too and feels a bit more like herself:

*“As well as watching Lucy grow, the nursery place has also helped me grow. Getting back to work and not being ‘mum’ for a couple of hours a day really helps me to be the best mum I can be, stopping me from losing myself or finding myself locked away from real life.”*

Question 5 - To what extent do you consider that the proposed new objective supports the delivery of the described benefits to the specified individuals and/or households?

Question 6 - To what extent do you consider the delivery of the proposed new objective will lead to any individual and/or household incurring a loss of benefit/s?

Question 7 - To what extent do you consider the delivery of the proposed new objective will lead to any individual and/or household incurring a loss of access to services?

## Why introduce the power now?

37. Although most 2 year olds are eligible because their parents receive UK welfare benefits, uptake of the 2 year old entitlement is low in Scotland. The Scottish Government and local authorities in Scotland have recently increased the number of funded hours of ELC from 600 to up to 1,140 hours per year for all eligible children, including eligible 2 year olds<sup>8</sup>. The Scottish Government anticipates changes to the eligible population as a result of the economic and social impact of COVID-19.
38. English local authorities have existing legal gateways that they can use to access the information needed to identify and target eligible families for ELC.
39. In Wales, ELC support for 2 year olds is geographically targeted, and focused on areas of disadvantage. All families in those areas can access provision regardless of entitlement to welfare benefits, and local authorities have access to the data needed to target and raise awareness within those areas. However, these existing legal gateways do not extend to Scotland.
40. The Scottish Government, therefore, is seeking to enable similar data sharing arrangements to increase take up in Scotland. The proposed objective supports Scottish Government policy on ELC.

<sup>8</sup> <https://www.mygov.scot/childcare-costs-help/funded-early-learning-and-childcare/>

## What other options have been considered?

41. The Scottish Government, HMRC and DWP agree that no other legal gateway exists to allow the sharing of data in this way and so these draft regulations are necessary.

## How does the data sharing align with UK government priorities?

42. While the effect of the draft regulations extends only to Scotland, the UK Government has a clear duty to support citizens in areas where they are responsible, such as reserved benefits, and to ensure that the most vulnerable in society get the help that they need. The objective is designed to enable information sharing to improve the provision of ELC in Scotland. The draft regulations outline the proposed objective and the specific public authorities which would be able to make use of it.
43. The proposal aligns with arrangements for data sharing in England for [free early education and childcare provision for 2 year olds](#). The proposal aligns with the Public Sector Equality Duty to advance equality of opportunity for all eligible families with 2 year olds in Scotland, as it does in England.
44. Furthermore, this proposal:
  - supports the UK Government's levelling up agenda by ensuring data from across the public sector can be put to the best possible use in support of employment and childcare opportunities; and
  - demonstrates effective and constructive collaborative working between UK and Scottish Governments. It enables data held in the UK to be put to beneficial use for the delivery of wider objectives by the Scottish Government.

## Why is the UK Government taking this proposal forward?

45. The Scottish Parliament can only approve proposals for new objectives which solely involve specified Scottish bodies permitted to make use of the public service delivery power. Information sharing under this proposed objective would involve disclosure and processing of data held by UK departments: HMRC and DWP. The draft regulations must therefore be taken through the UK Parliament by the UK Government.

## Does the data sharing power apply across England, Scotland, Wales and Northern Ireland?

46. No - English<sup>9</sup> and Welsh<sup>10</sup> local authorities have existing legal gateways that they can use to access the information needed to identify and target eligible families for ELC and brings Scotland in line with England and Wales.
47. The PSD powers are not yet commenced in Northern Ireland.

## Will data sharing comply with the relevant data protection requirements?

48. Yes, the data sharing will comply with the relevant data protection requirements. The purpose of the underpinning Code of Practice is to provide a set of principles and guidance for the use and disclosure of information under Digital Economy Act 2017 powers. The Code also refers to other requirements when sharing information, including data protection legislation. This requires that data must be processed lawfully, fairly, in a transparent manner and only for specified and legitimate purposes.
49. The legal basis for processing (i.e. sharing) personal data in the proposed objective is that it will be necessary for the performance of a task in the exercise of official authority. This authority derives from section 35 of the Digital Economy Act 2017 where the data is being shared for the purposes of improving and targeting a public service and providing a benefit to individuals and households in Scotland.

## Will you prepare a data protection impact assessment?

50. The Code of Practice sets out that public authorities involved in the data share must carry out a data protection impact assessment before sharing data. The data protection impact assessment will assess the potential benefits of the information sharing agreement against the risk or potential negative effects, such as an erosion of personal privacy.

---

<sup>9</sup> Section 13A of the Childcare Act 2006, as inserted by the Education Act 2011, provides the gateway for English local authorities.

<sup>10</sup>The Childcare Funding (Wales) Act 2019 includes a regulation making provision enabling HMRC and other government departments to supply data to Welsh local authorities to support eligibility checking for ELC.

## Does the proposed data sharing comply with current best practises?

51. Yes, the proposed data sharing complies with the spirit of current government practice, including the [Data Ethics Framework](#)<sup>11</sup>, the [Government Data Quality Framework](#)<sup>12</sup>, initiatives for data standardisation work being taken forward by the [Data Standards Authority](#)<sup>13</sup> and the [Scottish Government Digital Strategy](#)<sup>14</sup>. All parties to the data share will intermittently review the arrangements to ensure that compliance is consistent throughout implementation.

## Why consult?

52. The Digital Economy Act 2017, supported by the underpinning Code of Practice requires consultation of certain named individuals, such as the Information Commissioner and the HMRC Commissioners It also sets out that, before making regulations, the appropriate national authority, in this case the Cabinet Office, must also consult such other persons as it thinks appropriate. Collaborative and constructive work with DWP and HMRC has taken place to date at official level to take this public consultation forward.
53. In any event, we are undertaking a public consultation on this proposed amendment to the regulations so we can be confident that all persons who might reasonably be considered appropriate to be consulted, have been consulted. This will ensure as wide a range of views as possible is considered and factored into the regulations before they are presented to Parliament for approval.

Question 8 - Do you think the objective proposal raises any equality questions?  
Question 9 - Do you have further comments on the suitability of this proposed objective?

<sup>11</sup> <https://www.gov.uk/government/publications/data-ethics-framework/data-ethics-framework-2020>

<sup>12</sup> <https://www.gov.uk/government/publications/the-government-data-quality-framework>

<sup>13</sup> <https://www.gov.uk/government/groups/data-standards-authority>

<sup>14</sup> [Digital - gov.scot \(www.gov.scot\)](#)

# Impact Assessment

54. Further to the equality assessment published in January 2021, the Scottish Government also updated the impact assessment for [2 year old eligibility<sup>15</sup>](#) to determine if those citizens within protected characteristics groupings faced any barriers, discrimination or harassment as a result of the expansion policy.
55. The impact assessments did not identify any policy elements that discriminate against any of the protected characteristics either directly or indirectly, but did find some positive impacts on the basis of sex, disability, race and religion or belief as these groups appear more likely to meet the relevant eligibility criteria.
56. The proposed statutory instrument has no direct impacts on UK businesses. The Regulatory Policy Committee sees no reason for a further impact assessment to be carried out. This will be reflected in the Explanatory Memorandum to the statutory instrument.
57. Overall, establishing the new objective under the public sector delivery power will help deliver valuable economic and social impacts for citizens in Scotland.

---

<sup>15</sup>

<https://www.gov.scot/publications/early-learning-childcare-2-year-old-eligibility-income-threshold-change-june-2021-eqia/>

# Questionnaire

58. We would welcome responses to the following questions set out in Table 1.

Table 1 - Questions

Reference	59. Questions to consider
1	<p>To what extent do you agree that the proposed new objective meets the first condition set out in s35 (9) of the <u>Digital Economy Act 2017</u>?</p> <p>(9) The first condition has as its purpose -</p> <ul style="list-style-type: none"> <li>(a) The improvement or targeting of a public service provided to individuals or households, or</li> <li>(b) The facilitation of the provision of a benefit (whether or not financial) to individuals or households</li> </ul> <p>Please choose one of the following options</p> <ul style="list-style-type: none"> <li>● Strongly agree</li> <li>● Agree</li> <li>● Neither agree nor disagree</li> <li>● Disagree</li> <li>● Strongly Disagree</li> </ul> <p>Please provide the reason for your response.</p>
2	<p>To what extent do you agree that the proposed new objective meets the second condition set out in s35 (10) of the <u>Digital Economy Act 2017</u>?</p> <p>(10) The second condition is that the objective has as its purpose the improvement of the well-being of individuals or households</p> <p>Please choose one of the following options</p> <ul style="list-style-type: none"> <li>● Strongly agree</li> <li>● Agree</li> <li>● Neither agree nor disagree</li> <li>● Disagree</li> <li>● Strongly Disagree</li> </ul> <p>Please provide the reason for your response.</p>



3	<p>To what extent do you agree that the proposed new objective meets the third condition set out in s35 (12) of the <u>Digital Economy Act 2017</u>?</p> <p>(12) The third condition is that the objective has as its purpose the supporting of -</p> <ul style="list-style-type: none"> <li>(a) The delivery of a specified person's functions, or</li> <li>(b) The administration, monitoring or enforcement of a specified person's functions</li> </ul> <p>Please choose one of the following options</p> <ul style="list-style-type: none"> <li>● Strongly agree</li> <li>● Agree</li> <li>● Neither agree nor disagree</li> <li>● Disagree</li> <li>● Strongly Disagree</li> </ul> <p>Please provide the reason for your response.</p>
4	<p>To what extent do you agree that the data to be shared as outlined under this proposed objective is consistent with the delivery of the objective?</p> <p>Please choose one of the following options</p> <ul style="list-style-type: none"> <li>● Strongly agree</li> <li>● Agree</li> <li>● Neither agree nor disagree</li> <li>● Disagree</li> <li>● Strongly Disagree</li> </ul> <p>Please provide the reason for your response.</p>
5	<p>To what extent do you consider that the proposed new objective supports the delivery of the described benefits to the specified individuals and/or households?</p> <p>Please choose one of the following options</p> <ul style="list-style-type: none"> <li>● Strongly agree</li> <li>● Agree</li> <li>● Neither agree nor disagree</li> <li>● Disagree</li> <li>● Strongly Disagree</li> </ul> <p>Please provide the reason for your response.</p>

6	<p>To what extent do you consider the delivery of the proposed new objective will lead to any individual and/or household incurring a loss of benefit/s?</p> <p>Please choose one of the following options</p> <ul style="list-style-type: none"> <li>● Strongly agree</li> <li>● Agree</li> <li>● Neither agree nor disagree</li> <li>● Disagree</li> <li>● Strongly Disagree</li> </ul> <p>Please provide the reason for your response.</p>
7	<p>To what extent do you consider the delivery of the proposed new objective will lead to any individual and/or household incurring a loss of access to services?</p> <p>Please choose one of the following options</p> <ul style="list-style-type: none"> <li>● Strongly agree</li> <li>● Agree</li> <li>● Neither agree nor disagree</li> <li>● Disagree</li> <li>● Strongly Disagree</li> </ul> <p>Please provide the reason for your response.</p>
8	<p>Do you think the objective proposal raises any equality questions?</p> <ul style="list-style-type: none"> <li>● Yes</li> <li>● No</li> <li>● Don't know</li> </ul> <p>If yes, please provide the reasons for your response</p>
9	<p>Do you have further comments on the suitability of this proposed objective?</p>
10	<p>Please indicate whether you are happy for the relevant points and comments you have made to be published in the consultation summary report:</p> <ul style="list-style-type: none"> <li>● I am happy for my responses to be published alongside my name and organisation</li> <li>● I am happy for my responses to be published alongside my organisation</li> </ul>

	<ul style="list-style-type: none"> <li>• I am happy for my responses to be published anonymously</li> <li>• I do not want any of my responses to be published</li> </ul>
--	--

## Timetable

(c) A provisional timetable for introducing the power is set out below. Please be aware this may be subject to change as we will rely on successful progression through the parliamentary process. A final timetable will be confirmed following the consultation period and published on GOV.UK.

**Table 2 - Provisional timetable for the parliamentary process**

Activity	When
Draft laying date for the Statutory Instrument	May 2022
Enactment of powers	July 2022
Data sharing in place	August 2022

Thank you for participating in this consultation exercise.

**Contact details and how to respond**

For information about how we treat your personal data when you respond to our consultation, please see the **Privacy Notice at Annex 4**.

**Complaints or comments**

If you have any complaints or comments about the consultation process you should contact the Cabinet Office at the above address.

**Extra copies**

Further paper copies of this consultation can be obtained from this address and it is also available on-line at gov.uk.

Alternative format versions of this publication can be requested from [dea-data-sharing@digital.cabinet-office.gov.uk](mailto:dea-data-sharing@digital.cabinet-office.gov.uk)

**Confidentiality**

If you want the information that you provide to be treated as confidential, please explain to us why you regard the information you have provided as confidential. We will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Cabinet Office.

Annex 1 - Draft regulations - see  
separate document

## Annex 2 - Background to funded early learning and childcare in Scotland

1. Education and training is a devolved power in Scotland. ELC is a generic term used to cover the full range of early learning and childcare available in Scotland today. Funded ELC relates to the statutory entitlement to eligible children of up to 1,140 hours of ELC each year.
2. ELC settings are all those which offer education and childcare to children up to school age. These include settings known as family centres, nursery schools, nursery classes attached to primary schools, and childminders. ELC settings can be operated by local authorities, private businesses, voluntary sector organisations, and in the case of childminders, self-employed individuals.
3. The term 'early learning and childcare' was introduced in the Children and Young People (Scotland) Act 2014. The Act replaced the previous entitlement of up to 475 hours per year of free sessions of pre-school education for 3-5 year olds, with a more flexible offer of up to 600 hours ELC per year for 3-5 year olds and certain eligible 2 year olds. The number of mandatory hours increased to up to 1,140 per year from August 2021.
4. The eligibility criteria for access to the entitlement for 2 year olds aims to target those children we know benefit most from high-quality early learning and childcare<sup>16</sup>. This includes children in families who face the most socio-economical disadvantages. Most 2 year olds are eligible because their parents receive UK welfare benefits. However, uptake of the 2 year old entitlement is low in Scotland with around 9% of the total 2 year old population accessing funded ELC (as at December 2020<sup>17</sup>), where we have previously estimated around 25% of the 2 year old population meet eligibility criteria.

---

<sup>16</sup>

<http://www.healthscotland.scot/publications/rapid-evidence-review-childcare-quality-childrens-outcome>

<sup>17</sup>

<https://www.gov.scot/publications/summary-statistics-schools-scotland-2020/>

# Annex 3 - Background to the Digital Economy Act 2017

## What is the Digital Economy Act 2017?

1. The Digital Economy Act 2017 contains a single, umbrella piece of legislation designed to reduce legal barriers to data sharing and enable public authorities to share personal information for specific purposes. Data sharing provisions are set out in Part 5 to the Digital Economy Act 2017. The Digital Economy Act 2017 is used where there are no other statutory gateways and where consent cannot be relied on or is not appropriate.

## Why and how did we develop the legislation?

2. The Digital Economy Act 2017 was introduced following the The Law Commission scoping report of July 2014 - '*Data Sharing Between Public Bodies*'. The report described the complex legal landscape around data sharing that impedes government's ability to respond quickly and effectively to the complex problems that people need help with. Where powers did not exist, it could take years to establish legislation to introduce new data sharing powers.
3. The data sharing chapters of the Digital Economy Act 2017 were developed through an open policy making process working collaboratively with over 50 public sector, civil society and privacy organisations for more than two years.
4. The data sharing provisions in the Digital Economy Act 2017 now allow public authorities to access data to deliver better services without the considerable delays required to create new legal powers by primary legislation.

## What do the public service delivery powers do?

5. The public service delivery powers allows for data sharing to support services and (positive) interventions for citizens and households as part of social and economic policies. Examples include supporting individuals and households with multiple disadvantages and/or living in fuel/water poverty. The regulations which created these objectives are here:  
<https://www.legislation.gov.uk/uksi/2018/912/contents/made>

## What does the Public Service Delivery Review Board do?

6. The Public Service Delivery Review Board reviews proposed data sharing objectives to improve and target public services for non-devolved and England-only data sharing. The board then makes recommendations to the relevant Cabinet Office Minister about whether a proposed data sharing objective should be added to the regulations. The relevant Minister for the public service delivery powers is currently the Cabinet Office Parliamentary Secretary.
7. The Review Board consists of senior officials from relevant information governance or social policy areas from across government and is attended by representatives from the Information Commissioner's Office and invited members from public representative bodies.

## Does the Digital Economy Act 2017 align with data protection legislation?

8. Yes, the data sharing provisions of the Digital Economy Act 2017, the regulations made under it, and Codes of Practice all align with UK data protection legislation including the UK GDPR. This is especially important when considering open and transparent use of personal data - see para 14 below. The Digital Economy Act 2017 provides the statutory gateway for public authorities who need to share data for a public task, which is one of the lawful bases in the UK GDPR. In using this statutory gateway, public bodies are required to comply with the data protection principles as laid out in the UK GDPR.

## Who uses the Digital Economy Act 2017?

9. Public authorities who are specifically included in each chapter and its accompanying Schedule use the Digital Economy Act 2017 to share data for specified purposes. Using the powers is permissive, that is, the public authority has the discretion to decide whether to disclose data or not, with the exception of chapter 7 relating to statistics. Adult health and social care bodies are not currently included in the scope of the Digital Economy Act 2017. This is something we plan to address, subject to the National Guardian's security review and public consultation.



## Is the government committed to being open and transparent about data shared under the Digital Economy Act 2017?

10. Yes, the government is committed to being open and transparent by making information about data shared under the Digital Economy Act 2017 easily available to all to find and understand. This helps citizens, the government and the Information Commissioner's Office understand what data sharing is taking place. Public authorities using the public service delivery must add data shares to a [public register](#).<sup>18</sup> The Cabinet Office is responsible for maintaining the register and the Public Service Delivery Review Board oversees strategic consistency.

---

<sup>18</sup>

<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>

## Annex 4 - Table of organisations to be consulted

<b>Table of organisations to be contacted</b>	
All 32 Scottish local authorities	
Early Learning and Childcare Joint Delivery Board <a href="http://www.gov.scot/Topics/early-learning-and-childcare">Early Learning and Childcare Joint Delivery Board - gov.scot</a>	
<ul style="list-style-type: none"> <li>● Aberlour Scotland's Children Charity</li> </ul>	<ul style="list-style-type: none"> <li>● Association of Directors of Education in Scotland</li> </ul>
<ul style="list-style-type: none"> <li>● Action for Children</li> </ul>	<ul style="list-style-type: none"> <li>● Audit Scotland</li> </ul>
<ul style="list-style-type: none"> <li>● Barnado's Scotland</li> </ul>	<ul style="list-style-type: none"> <li>● Care Inspectorate</li> </ul>
<ul style="list-style-type: none"> <li>● Child Poverty Action Group</li> </ul>	<ul style="list-style-type: none"> <li>● Children and Young People's Improvement Collaborative (CYPIC)</li> </ul>
<ul style="list-style-type: none"> <li>● Children 1st</li> </ul>	<ul style="list-style-type: none"> <li>● Children's Health Scotland</li> </ul>
<ul style="list-style-type: none"> <li>● Children's Parliament</li> </ul>	<ul style="list-style-type: none"> <li>● Children in Scotland</li> </ul>
<ul style="list-style-type: none"> <li>● Citizens Advice Scotland</li> </ul>	<ul style="list-style-type: none"> <li>● Connect</li> </ul>
<ul style="list-style-type: none"> <li>● Contact Scotland</li> </ul>	<ul style="list-style-type: none"> <li>● Convention of Scottish Local Authorities</li> </ul>
<ul style="list-style-type: none"> <li>● Cornerstone</li> </ul>	<ul style="list-style-type: none"> <li>● Scottish Local Authority Directors of Finance</li> </ul>
<ul style="list-style-type: none"> <li>● Early Years Scotland</li> </ul>	<ul style="list-style-type: none"> <li>● Education, Children and Young People Committee</li> </ul>
<ul style="list-style-type: none"> <li>● Education Scotland</li> </ul>	<ul style="list-style-type: none"> <li>● ELC Partnership Forum</li> </ul>
<ul style="list-style-type: none"> <li>● ELC Quality Improvement Practicum Teams</li> </ul>	<ul style="list-style-type: none"> <li>● Human Rights Consortium Scotland</li> </ul>
<ul style="list-style-type: none"> <li>● Home Start (Scotland)</li> </ul>	<ul style="list-style-type: none"> <li>● Just Right Scotland</li> </ul>

<ul style="list-style-type: none"> <li>● Information Commissioner's Office</li> </ul>	<ul style="list-style-type: none"> <li>● NSPCC Scotland</li> </ul>
<ul style="list-style-type: none"> <li>● National Parent Forum Scotland</li> </ul>	<ul style="list-style-type: none"> <li>● One Parent Families Scotland</li> </ul>
<ul style="list-style-type: none"> <li>● Parenting across Scotland</li> </ul>	<ul style="list-style-type: none"> <li>● Parent Network Scotland</li> </ul>
<ul style="list-style-type: none"> <li>● Play Scotland</li> </ul>	<ul style="list-style-type: none"> <li>● Poverty Alliance</li> </ul>
<ul style="list-style-type: none"> <li>● Poverty and Inequality Commission for Scotland</li> </ul>	<ul style="list-style-type: none"> <li>● Privacy and Consumer Advice Group</li> </ul>
<ul style="list-style-type: none"> <li>● Scotland's Commissioner for Children and Young People</li> </ul>	<ul style="list-style-type: none"> <li>● Save the Children</li> </ul>
<ul style="list-style-type: none"> <li>● Scottish Human Rights Commission Governor's House</li> </ul>	<ul style="list-style-type: none"> <li>● Scottish Information Commissioner</li> </ul>
<ul style="list-style-type: none"> <li>● Scottish Refugee Council</li> </ul>	<ul style="list-style-type: none"> <li>● Society of Local Authority Chief Executives and Senior Managers</li> </ul>
<ul style="list-style-type: none"> <li>● Society of Local Authority Lawyers and Administrations in Scotland</li> </ul>	<ul style="list-style-type: none"> <li>● Together Scotland</li> </ul>
<ul style="list-style-type: none"> <li>● UPSTART Scotland</li> </ul>	

# Annex 5 - Privacy Notice for Cabinet Office consultations

This notice sets out how we will use your personal data, and your rights. It is made under Articles 13 and/or 14 of the General Data Protection Regulation (GDPR).

## Your data

### **Purpose**

The purpose for which we are processing your personal data is to obtain the opinions of members of the public, parliamentarians and representatives of organisations and companies about departmental policies, proposals, or generally to obtain public opinion data on an issue of public interest.

### **The data**

We will process the following personal data: name, address, email address, job title (where given), and employer (where given), as well as opinions.

We will also process additional biographical information about respondents or third parties where it is volunteered.

### **Legal basis of processing**

The legal basis for processing your personal data is that it is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the data controller. In this case that is consulting on departmental policies or proposals, or obtaining opinion data, in order to develop good effective policies.

Sensitive personal data is personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation.

The legal basis for processing your sensitive personal data, or data about criminal convictions (where you volunteer it), is that it is necessary for reasons of substantial public interest for the exercise of a function of the Crown, a Minister of the Crown, or

a government department. The function is consulting on departmental policies or proposals, or obtaining opinion data, in order to develop good effective policies.

## **Recipients**

Where individuals submit responses, we may publish their responses, but we will not publicly identify them. We will endeavour to remove any information that may lead to individuals being identified.

Responses submitted by organisations or representatives of organisations may be published in full.

Where information about responses is not published, it may be shared with officials within other public bodies in order to help develop policy.

As your personal data will be stored on our IT infrastructure it will also be shared with our data processors who provide email, and document management and storage services.

We may share your personal data where required to be law, for example in relation to a request made under the Freedom of Information Act 2000.

## **Retention**

Published information will generally be retained indefinitely on the basis that the information is of historic value. This would include, for example, personal data about representatives of organisations.

Responses from individuals will be retained in identifiable form for three calendar years after the consultation has concluded.

## **Where personal data have not been obtained from you**

Your personal data were obtained by us from a respondent to a consultation.

## **Your rights**

You have the right to request information about how your personal data are processed, and to request a copy of that personal data.

You have the right to request that any inaccuracies in your personal data are rectified without delay.

You have the right to request that any incomplete personal data are completed, including by means of a supplementary statement.

You have the right to request that your personal data are erased if there is no longer a justification for them to be processed.

You have the right in certain circumstances (for example, where accuracy is contested) to request that the processing of your personal data is restricted.

You have the right to object to the processing of your personal data where it is processed for direct marketing purposes.

You have the right to object to the processing of your personal data.

## International transfers

As your personal data is stored on our IT infrastructure, and shared with our data processors, it may be transferred and stored securely outside the European Union. Where that is the case it will be subject to equivalent legal protection through the use of Model Contract Clauses.

## Contact details

The data controller for your personal data is the Cabinet Office. The contact details for the data controller are: Cabinet Office, 70 Whitehall, London, SW1A 2AS, or 0207 276 1234, or [publiccorrespondence@cabinetoffice.gov.uk](mailto:publiccorrespondence@cabinetoffice.gov.uk).

The contact details for the data controller's Data Protection Officer are: Data Protection Officer, Cabinet Office, 70 Whitehall, London, SW1A 2AS, or [dpo@cabinetoffice.gov.uk](mailto:dpo@cabinetoffice.gov.uk).

The Data Protection Officer provides independent advice and monitoring of Cabinet Office's use of personal information.

## Complaints

If you consider that your personal data has been misused or mishandled, you may make a complaint to the Information Commissioner, who is an independent regulator. The Information Commissioner can be contacted at: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF, or 0303 123 1113, or [casework@ico.org.uk](mailto:casework@ico.org.uk). Any complaint to the Information Commissioner is without prejudice to your right to seek redress through the courts.

[inside of back cover – please leave this page blank]

This document is available in large print,  
audio and braille on request. Please call  
[insert phone number] or email  
[insert email address]



© Crown copyright 2018

This publication is licensed under the terms of  
the Open Government Licence v3.0 except  
where otherwise stated. To view this licence,  
visit

[nationalarchives.gov.uk/doc/open-government-licence/version/3](http://nationalarchives.gov.uk/doc/open-government-licence/version/3) or write to the Information  
Policy Team, The National Archives, Kew,  
London TW9 4DU, or email:  
[psi@nationalarchives.gsi.gov.uk](mailto:psi@nationalarchives.gsi.gov.uk).

Where we have identified any third party  
copyright information you will need to obtain  
permission from the copyright holders  
concerned.

*Any enquiries regarding this publication  
should be sent to us at*  
[dea-data-sharing@digital.cabinet-office.gov.uk](mailto:dea-data-sharing@digital.cabinet-office.gov.uk)

*This publication is available at*  
[www.gov.uk/government/publications](http://www.gov.uk/government/publications)

*Printed on paper containing 75% recycled  
fibre content minimum.*