

## LEGISLATIVE CONSENT MEMORANDUM

### DIGITAL ECONOMY BILL

#### Background

1. This memorandum has been lodged by Fergus Ewing MSP, Cabinet Secretary for the Rural Economy and Connectivity, under Rule 9B.3.1(a) of the Parliament's Standing Orders. The Digital Economy Bill ("the Bill") was introduced by the UK Government in the House of Commons on 5 July 2016 and brought to the House of Lords on 29 November 2016. The Bill can be found at: <http://services.parliament.uk/bills/2016-17/digitaleconomy.html> Due to the technical nature of the Bill, the requirement for clarity on the effect of provisions on Scotland and consequent requirement for amendments to the Bill, there has been a prolonged discussion with the UK Government which has led to delay in lodging this memorandum.

#### Content of the Bill

##### Overview

2. The Bill contains measures on:

- electronic communications infrastructure and services;
- restricting access to online pornography;
- protection of intellectual property in connection with electronic communications;
- data-sharing;
- functions of OFCOM in relation to the BBC;
- determination by the BBC of age-related TV licence fee concessions;
- the regulation of direct marketing;
- OFCOM and its functions

3. The Bill is in seven parts:

- Part 1 relates to access to digital services.
- Part 2 relates to digital infrastructure and includes provisions on the Electronic Communications Code ("the Code").
- Part 3 contains provisions on on-line pornography and, in particular, provisions aimed at preventing access by persons under the age of 18.
- Part 4 contains provisions on intellectual property.
- Part 5 contains provisions on data sharing between public authorities.
- Part 6 makes provision on OFCOM, the BBC and the Direct Marketing Code.
- Part 7 contains general provision.

Part	Title	Consent required
Part 1	Access to Digital Services	No
Part 2	Digital Infrastructure	Yes
Part 3	Online pornography	No
Part 4	Intellectual Property	No
Part 5	Digital Government	Yes
Part 6	Miscellaneous	No
Part 7	General	No

### **Provisions which relate to Scotland and require legislative consent**

4. Nearly all of the Bill extends to Scotland. However, much of the Bill deals with matters which extend to Scotland but are reserved to the UK Parliament by Schedule 5 to the Scotland Act 1998 and make no alteration to the executive competence of the Scottish Ministers. The areas of the Bill where the consent of the Scottish Parliament is needed relate to:

- the Scottish Ministers laying down fees for the Lands Tribunal for Scotland (“the Tribunal”) to charge for hearing any disputes under the Code and laying down rules for the Tribunal to follow in any such cases; and
- the Digital government provisions on data sharing between public authorities and statistical data from larger undertakings.

### **Reasons for seeking consent - general**

#### The Electronic Communications Code

5. The Code is reserved by Section C10 of Schedule 5 of the Scotland Act 1998, which reserves telecommunications and wireless telegraphy. Nearly all of the provisions in the Bill on the Code relate to reserved matters. Clause 4 of the Bill introduces a new Code, contained in Schedule 1 of the Bill, which inserts Schedule 3A into the Communications Act 2003. This would replace the existing Code in Schedule 2 of the Telecommunications Act 1984.

6. Under the new Code, jurisdiction for disputes under the Code may be moved from the Sheriff Court to the Lands Tribunal for Scotland (referred to in this memorandum as “the Tribunal”). The Scottish Ministers can make rules and lay down fees for cases heard in the Tribunal. However, as the Code is reserved, paragraph 106 makes express provision enabling the Scottish Ministers to make any rules and lay down fees for cases heard in the Tribunal relating to the Code. This provision affects the executive competence of the Scottish Ministers and, therefore, legislative consent is needed.

7. Without this provision, it may be uncertain whether the Secretary of State or the Scottish Ministers would have the power to make rules or lay down fees for cases heard in the Tribunal relating to the Code.

## Data sharing

8. For a public authority to access information held in another part of the public sector it requires appropriate legal powers, which are often provided by express legal gateways, to disclose information. At present, there is a wide variety of legal provisions which may be relevant to data sharing. Accordingly, there can be a lack of clarity as to what can be shared by whom. In addition, some of the procedures are complex and lengthy, resulting in long delays for projects to get underway.

9. The Bill firstly provides a gateway to enable public authorities, to be specified by regulations, to share personal information for tightly constrained reasons under the Bill and to be approved by the relevant Parliament, where the purpose is to improve the welfare of the individual in question. To use the gateway, the proposed sharing of information must be for the purpose of one of the specified objectives, which will be set out in regulations. Illustrative draft data-sharing regulations have been prepared<sup>1</sup>.

10. The Bill also streamlines the data sharing landscape for research purposes; enables Her Majesty's Revenue and Customs (HMRC) to overcome their restrictive powers to share data under the right conditions for restrictive research purposes; and allows the UK Statistics Authority (UKSA) to obtain identifiable data from the public, private and third sectors to improve national statistics whilst reducing cost and burdens. The Bill contains provisions for relevant identifiable data to be onward shared with the devolved administrations. This package has the potential to substantially enhance the range and quality of insights which Scottish Government analysts can provide to the development and evaluation of policy.

11. The legislative proposals fall into a number of strands:

- Public service delivery (Chapter 1 of Part 5 of the Bill).
- Civil registration (Chapter 2 of Part 5). These provisions do not directly impact on Scotland and so the legislative consent of the Scottish Parliament is not needed for Chapter 2 of Part 5.
- Debt owed to the Public Sector (Chapter 3 of Part 5).
- Fraud against the Public Sector (Chapter 4 of Part 5).
- Sharing for research purposes (Chapter 5 of Part 5).
- Her Majesty's Revenue and Customs (Chapter 6 of Part 5). These provisions about HMRC relate to a reserved matter and so the legislative consent of the Scottish Parliament is not needed in respect of HMRC.
- Statistics (Chapter 7 of Part 5).

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<sup>1</sup> The draft data-sharing regulations are at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/535311/2016-07-05\\_Digital\\_Government\\_Disclosure\\_of\\_Information\\_draft\\_regs.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/535311/2016-07-05_Digital_Government_Disclosure_of_Information_draft_regs.pdf)

12. Legislative consent is needed as the data-sharing provisions affect a number of devolved matters:

- There are regulation-making powers which would be exercised by the Scottish Ministers.
- There are provisions which relate to sharing of devolved matters and functions.

13. The Scottish Ministers are of the view that data sharing in these areas would enable better public service delivery; would allow issues relating to debt owed to the public sector and prevention of fraud to the public sector to be better tackled and would allow data sharing for research and statistical purposes. Therefore, the Scottish Ministers are of the view that legislation in this area would help to achieve more efficient and effective management of the public sector in Scotland. There will be UK Codes of Practice in relation to data-sharing under this Bill. Drafts of these Codes of Practice have been prepared<sup>2</sup>.

### **Structure of this Memorandum**

14. This Memorandum is structured as follows:

- The main body reflects the detailed reasons for seeking consent.
- Annex A outlines the provisions in the Bill for which an LCM is sought.
- Annex B outlines the delegated powers which the Bill would provide to the Scottish Ministers.

### **Reasons for seeking consent – detail**

15. Annex A gives more details of provisions in the Bill which apply to Scotland and for which legislative consent is sought. This part of the memorandum outlines where more detail can be found in Annex A.

**The Code: relevant provisions in relation to the LCM – paragraph 106 of schedule 3A of the Communications Act 2003 (as inserted by schedule 1 of the Bill).**

### Policy intent

16. The Code enables electronic communication network providers to install and maintain electronic communication networks by giving network operators certain rights. The policy intent is to update the Code to reflect the up to date position in relation to electronic communications. The key aim of reform in this area is to help roll-out of digital communications infrastructure.

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<sup>2</sup> Draft Codes of Practice are at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/567319/2016-10-20\\_Digital\\_government\\_codes\\_of\\_practice.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/567319/2016-10-20_Digital_government_codes_of_practice.pdf)

## Background

17. The UK Government asked the Law Commission for England and Wales to review the Code in 2012. The Law Commission published a detailed [report](#) on 28 February 2013. In early 2015, the previous UK Government introduced amendments to the UK Infrastructure Bill, which would have reformed the Code along the lines of the Law Commission's recommendations. However, the measure was subsequently removed from the Bill, to allow further consultation and research to take place.

18. Following public [consultation](#) in February 2015 and further analysis work, on 17 May 2016 the UK Government published [A New Electronic Communications Code](#), setting out plans to legislate.

19. Amongst other things, the Bill:

- Restates and reforms the current statutory Code which enables electronic communication network operators to install and maintain electronic communications apparatus on land. This includes provision about the consideration payable by operators to other persons, usually the occupiers of land, for installing the apparatus.
- Paragraph 23 of the proposed new Code provides for this consideration to be based on market value, assessed on the basis of the value to the relevant person rather than the value to the operator, and without having regard to the use which the operator intends to make of the land.
- Provide new rights to upgrade and share infrastructure.

20. The Code is reserved by Section C10 of schedule 5 of the Scotland Act 1998, which reserves telecommunications and wireless telegraphy. Paragraph 95 of the proposed new Code contains a regulation-making power which would enable the Secretary of State to transfer the jurisdiction for hearing disputes under the Code from the ordinary courts to tribunals. The types of disputes that might arise relate to whether an agreement should be made in the first place; what consideration and compensation should be payable in relation to an agreement and whether agreements should be brought to an end. In relation to Scotland, transferring the jurisdiction would mean cases being heard by the Tribunal rather than the Sheriff Courts. This proposal reflects that the Tribunal is specialist and is well suited to deal with disputes about consideration and compensation payable for use of land. Before making any regulations in relation to Scotland, the Secretary of State must consult the Scottish Ministers (paragraph 95(5)(a) refers).

## Reasons for requiring legislative consent

21. The Scottish Ministers generally make rules and lay down fees for cases heard in the Tribunal. However paragraph 106 makes express provision to make it clear that the Scottish Ministers can make rules and lay down fees for cases heard in the Tribunal relating to the Code. This affects the executive competence of the Scottish Ministers, and therefore, legislative consent is required.

22. Without this provision, there could be some doubt as to whether fees and rules for the Tribunal in relation to disputes under the Code would be made by the

Secretary of State (given that the Code is reserved) or the Scottish Ministers. Given that the Scottish Ministers make fees and rules for the Tribunal in other areas, the UK Government and the Scottish Government agreed it was sensible to put beyond doubt that the Scottish Ministers could make fees and rules for the Tribunal in relation to disputes under the Code.

**Data-sharing: public service delivery: Chapter 1 of Part 5: relevant provisions in relation to the LCM: clauses 30, 31, 32, 33, 34, 36, 37 and 38 [Paragraphs 2 to 23 of Annex A of this memorandum gives more details].**

### Policy intent

23. The proposal is to introduce a permissive power for defined public authorities to share data with other defined public authorities for the purposes of improving the delivery or targeting of public services in areas of social policy and resulting in an offer of help to an individual or household. This power is intended to operate in accordance with a number of principles. The defined authorities must be a public authority or an authority providing services to a public authority. Where the latter is the case, its ability to disclose information is limited to functions it exercises for that public authority.

### Background

24. Public service delivery is dependent on timely and accurate data to ensure that citizens receive the services they need. Public authorities are reliant on the existence of appropriate legal gateways to access data held elsewhere in the public sector for the purposes of improving service delivery. The current legal landscape of data sharing for public service delivery is complex and inconsistent across public services and organisations. This legislation will create a single gateway to enable public authorities to share personal data for tightly constrained reasons agreed by Parliament, so long as its purpose is to improve the welfare of the individual in question. Any scheme would have to be developed but in Scotland the legislation could, for example, potentially be used to:

- allow local authorities to find out who is eligible for free school meals and to automatically apply it to eligible families;
- enable a targeted childcare offer to 2 year olds in Scotland. Eligibility is based on receipt of UK wide benefits.

### Reasons for requiring legislative consent

25. Data in this area covers devolved matters and reserved matters. Given the impact on devolved matters, legislative consent is required.

26. Given that data sharing in this area requires co-operation from both UK and Scottish bodies, the Scottish Ministers considers that there are good reasons for granting legislative consent. For example, the Department for Work and Pensions (DWP) and the Scottish Prison Service (SPS) may need to share data. This would enable the SPS to tell DWP advance of individuals leaving prison so that benefits can be claimed prior to release.

**Data-sharing – debt owed to the public sector – Chapter 3 of Part 5: relevant provisions in relation to the LCM: clauses 41, 42, 43, 45, 46, 47 and 48. [Paragraphs 24 to 44 of Annex A of this memorandum gives more details]**

Policy intent

27. The debt proposals would help citizens manage their debt more effectively and reduce the estimated £24.1bn of overdue debt owed to government across the UK as a whole. Public authorities would be able to pilot projects that identify where individuals have debts with a number of public agencies, and then have a single interaction with them to help manage those debts.

Background

28. Debt owed to the public sector is due by individuals and businesses, and comes from a wide range of sources including overdue tax liabilities, outstanding fines, benefit or tax credit overpayments, and court confiscation orders, but is not limited to these. Public authorities already have the ability to share debt data. Around 86 legal gateways to share debt data have grown organically across the public sector over a number of years. However, these gateways are restrictive, often misinterpreted, and are complex and time consuming to use. The legislation would enable specified public authorities (and private bodies who fulfil a public function on behalf of a public authority) to share identified debt data to:

- a) identify those individuals or businesses with multiple debts to government, so government can provide greater support to those who have difficulties repaying;
- b) avoid multiple contacts from government with individuals and businesses in relation to outstanding debts; and
- c) ensure more efficient and effective cross-government debt recovery and management.

Reasons for requiring legislative consent

29. Debt can be owed to the Scottish Government (which, by definition, deals with devolved matters) and, therefore, legislative consent is required. Given that debt may be owed to both UK and Scottish Governments, the Scottish Government considers that legislative consent should be given to enable the two Governments to work together. The gateway would allow for sharing between UK and Scottish bodies to allow the potential for cross-border pilots enabling individuals to consolidate their public sector debt and develop repayment plans.

**Data-sharing – fraud against the public sector – Chapter 4 of Part 5: relevant provisions in relation to the LCM: clauses 49, 50, 51, 53, 54, 55 and 56 [Paragraphs 45 to 63 of Annex A of this memorandum give more details]**

Policy intent

30. The objective is a legal gateway to clarify what is permissible by way of data sharing for the purposes of preventing, detecting, investigating and prosecuting of fraud and bringing civil proceedings and taking administrative action.

31. The gateway will be ‘purposive’ (one that is constrained by the purposes for which the data will be used).

32. The new powers would supplement, rather than replace, existing powers.

33. The proposed gateway will allow public bodies to share identified information in alignment with Data Protection Act principles (e.g. adequate, relevant and not excessive to the purpose for which they are processed).

Background

34. Tens of billions of taxpayers’ pounds are lost through fraud against the public sector every year. It is difficult to give an exact figure as there are unquantifiable considerations such as the activity of the shadow economy, Cabinet Office provided estimates ranging from £20bn to £67bn across the UK as whole. This represents a significant loss both in terms of taxpayers’ money and potential business revenue. At present there are numerous express gateways which allow specific public authorities to share types of data for the purposes of combating different types of fraud, including fraud against government. However, they lack the flexibility to adapt to changing circumstances. The new power will enable better sharing of information to combat fraud against government, improving the prevention, detection and investigation of fraud by:

- a) aiding better targeting and threat profiling of potentially fraudulent individuals;
- b) saving taxpayers’ money by streamlining processes; and
- c) increasing the ability for Government to act more quickly on fraud and simplifying the legislative landscape.

Reasons for requiring legislative consent

35. Legislative consent is needed as fraud against the public sector may be against devolved public sector bodies.

36. Given that fraud may be against both reserved and devolved public bodies, the Scottish Government considers that legislative consent should be given to enable the two Governments to work together. The gateway would allow for sharing between UK and Scottish bodies to tackle fraud. In Scotland, this power could be used to share information to aid Revenue Scotland’s compliance activity undertaken

in order to reduce avoidance and tax evasion. This could involve sharing data with HMRC or other UK Government departments.

**Data-sharing – sharing for research purposes – Chapter 5 of Part 5: relevant provisions in relation to the LCM: clauses 57, 58, 59, 61, 62, 63 and 64 [Paragraphs 64 to 81 of Annex A of this memorandum gives more details].**

### Policy intent

37. These provisions create a generic legal gateway for sharing personal data that has been “de-identified” (i.e. has had personal identifiers removed) thus simplifying the complex patchwork of existing provisions. They are based on the Scottish Government’s own successful model of sharing with a trusted third party, for example for medical research purposes. A great deal of our analytical and policy modelling work can be carried out using de-identified data and as such these clauses will deliver a lot for analysts working in the Scottish Administration, as well as researchers outwith the Scottish Administration.

### Background

38. At present there are various data sharing agreements in place across the public sector drawing on specific pieces of legislation. However, the existing provisions can be complex and time consuming and in places there may be a lack of clarity as to whether data which it would be desirable to share can be lawfully shared. The intention here is to provide a new generic data sharing gateway which can also help to streamline this activity, drive up consistency of decision making and standards as well as saving time. The proposals do not limit the circumstances in which data can be shared apart from using the new gateway. The proposals were subject to a Cabinet Office Open Policy Making Process during 2014 and 2015, with subsequent UK wide consultation in February 2016.

39. In order that the data is handled appropriately and to reassure the public of the integrity of this work, the proposals include having the UK Statistics Authority (“UKSA”) develop a Code of Practice and also accredit:

- the research facilities where the data will be made available,
- the individuals using the data, and
- the research proposals themselves – which must be in the public interest.

40. UKSA will also publish and maintain a register of all of this activity and will be empowered to remove accreditation.

41. The Scottish Ministers will be consulted on the Code and in time the UKSA can delegate the accreditation to the Chief Statistician in the Scottish Government as there is provision for this in clause 63. Until such time as this is enacted, the UKSA would be accrediting research on devolved as well as reserved matters.

### Reasons for requiring legislative consent

42. Statistics related to devolved functions in Scotland are devolved and as such an LCM is required.

43. The Scottish Government's understanding of complex societal issues would be enhanced by the ability to link data from Departments like DWP and HMRC to the Scottish Government's own statistics. In addition, the quality of economic statistics could be greatly improved through better access to HMRC and private sector data. The Scottish Government often only requires access to de-identified data in order to carry out analysis such as modelling the potential impact of new policies on different types of individual or business. These powers would improve the current position, in particular by allowing the Scottish Government to use linked administrative data to understand outcomes. A further gain is that such work maximises the value for money of existing data.

### Revenue Scotland and planned amendments

44. The provisions also generally cover disclosure of information by Revenue Scotland. The UK Government have agreed to amend the Bill to make clear Revenue Scotland (and the Welsh Revenue body) can enable information to be disclosed for de-identified research purposes in the public interest, as can HMRC under clause 60 of the Bill. Provision would also be made so it cannot be disclosed onwards to others without Revenue Scotland and the Welsh Revenue body's consent, again consistent with the treatment for HMRC in the Bill, and with the penalty of criminal sanctions for unlawful disclosure.

**Data-sharing – statistics – Chapter 7 of Part 5: relevant provisions in relation to the LCM: clauses 67, 68 and 69 [Paragraphs 82 to 104 of Annex A of this memorandum gives more details].**

### Policy intent

45. This Chapter covers the sharing of identifiable data for statistical purposes with the UKSA, and with the scope for onward transmission of such data pertaining to each of the devolved administrations should they require it for their own statistical (not operational) purposes. The clauses span the public, private and third sectors – and in doing so are intended to provide the UK wide statistical system with full access to relevant data for their statistical purposes. This should, among other things, save money through the use of administrative data as opposed to running surveys.

## Background

46. Government statistics in Scotland is part of a UK wide statistical service with professional accountability to the UK National Statistician, who is accountable to the four legislatures of the UK as well as to Eurostat, the European statistical body, in respect of EU-wide statistics. Following the crisis which hit the Greek economy there were changes to EU statistical legislation which came into force in June 2016<sup>3</sup>. Provision was made for each Member State's National Statistics Institute (in the case of the UK the Office for National Statistics (ONS) which is the executive office of the UKSA) to have the right to access administrative records from the public sector to the extent necessary to produce European statistics. More recently, ONS received heavy criticism by Prof Sir Charles Bean in his independent review of economic statistics for reliance on surveys where administrative data from business could be more accurate and timely – and also less of a burden on business to supply. The clauses in this chapter give UKSA access for statistical purposes to administrative data from the public, private and third sector. This includes Crown bodies such as (for Scotland) the Scottish Government, National Records of Scotland, Registers of Scotland etc.

47. The provisions will benefit the statistical functions of the devolved administrations. In particular (with the consent of the original data provider) UKSA will be able to onward share the relevant data they obtain with each of the devolved administrations. This gives the Scottish Government the opportunity to benefit, together with ONS, from more comprehensive and up to date data at no extra cost, except the cost to data providers of supplying the data.

48. The process involved will be governed by a Code of Practice that spans both the principles involved and the practicalities such as security of IT systems. The Scottish Ministers will be consulted on this Code, which will be laid before the Scottish Parliament.

49. At present the UK statistical system does not enjoy the benefits of having modern data sharing legislation. These proposals not only put the UK on a par with other countries, but go further in so far as they span access to private and third sector data. Not only does this reduce the cost of providing data and improve timeliness, it will also drive up quality through more extensive analysis of the information flushing out any data quality problems.

## Reasons for requiring legislative consent

50. Statistics relating to devolved functions in Scotland are devolved. Scottish statisticians produce data which reflects the devolved nature of services (e.g. statistics on the NHS) and data for international comparisons (e.g. the European Health Interview Survey). The devolved nature of statistics is also reflected in the four different Pre-release Access Orders for the Statistics and Registration Services Act 2007<sup>4</sup> (“the SRSA 2007”), reflecting the different requirements across the UK. The new clauses replace and supplement provisions in the SRSA 2007, which

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<sup>3</sup> Regulation (EC) 223/2009 on European statistics, amended by Regulation (EU) 2015/759 of 29 April 2015.

<sup>4</sup> e.g. the Pre-release Access to Official Statistics (Scotland) Order 2008 (SSI 2008/399)

required an LCM, and provide powers to the UKSA to obtain data from Crown bodies, other public bodies, business and charities.

51. Although the existing SRSA 2007 allows for the creation of data sharing orders the two key limitations of this are considered to be:

- the lengthy process which can span 18-24 months by which time things have moved on; and
- it is not possible to use them for bodies which came into being after 2007 (notably Revenue Scotland).

## **Consultation**

### The Code

52. The UK Government asked the Law Commission for England and Wales to review the existing Electronic Communications Code in 2012. The Law Commission published a detailed [report](#) on 28 February 2013.

53. In early 2015, the previous UK Government introduced amendments to the UK Infrastructure Bill, which would have reformed the code along the lines of the Law Commission's recommendations. However, the measure was subsequently removed from the Bill, to allow further consultation and research to take place.

54. The Department for Culture, Media and Sport (DCMS) issued a public [consultation](#) in February 2015. Whilst this consultation was live, the DCMS, the Scotland Office and the Scottish Government organised a round table discussion on 16 March 2015 with stakeholders in Scotland about the Code.

### Data-sharing

55. The UK Government carried out a [consultation](#) earlier this year on better use of data in Government. In parallel, the UK National Statistician issued a [paper](#) setting out why the data sharing for research and statistics is needed and what the benefits are flowing from that. This all followed a two year long Open Policy Making Process which included a Cabinet Office consultation event in Scotland in March 2015.

## **Financial implications**

### The Code

56. DCMS obtained some financial analyses on the impact of the proposed changes to the Code. Following these analyses, DCMS estimates that the communications sector is likely to see benefits of £1 billion over a 20 year period. The figure relates to the United Kingdom as a whole<sup>5</sup>.

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<sup>5</sup> This [Impact Assessment](#) by the UK Government provides more details in relation to the potential financial impact of the new Electronic Communications Code.

57. The changes to the Code may lead to more disputes going to judicial resolution (as the consideration paid by communications operators to occupiers and other relevant persons for installing equipment on land will be lower than at present). This could have resource implications for the Lands Tribunal for Scotland. As the Code is reserved, the Scottish Government has advised the United Kingdom Government that, in line with principle 10 of paragraph 1.17 of HM Treasury's [Statement of Funding Policy](#), the UK Government will need to meet any additional costs arising for the Scottish Administration.

### Data-sharing

58. Part of the drive for this is to save money through ONS not having to run surveys of business and also through transforming population statistics such as the census. The savings from ONS accessing HMRC data as opposed to running ten of their surveys alone were quantified in the business case as being £23.2m per annum for ONS and £3.4m per annum for businesses. In addition a material gain will be through more effective use of the administrative data to support more sophisticated analysis in support of new policies and in the evaluation of the effectiveness of existing ones. Better data and analysis should also improve the Scottish Government's allocation of increasingly scarce resources – thus improving the cost effectiveness of policies.

### **Conclusion**

59. In relation to the Electronic Communications Code, the Bill puts beyond doubt that the Scottish Ministers could lay down fees and rules for the Lands Tribunal in Electronic Communications Code cases.

60. In relation to data sharing, the Bill will allow UK and Scottish bodies to improve public service delivery and tackle debt owed to the public sector and fraud against the public sector. The Bill also allows data sharing for research and statistical purposes.

61. The Scottish Government invites the Scottish Parliament to agree the Legislative Consent Motion.

### **Draft Legislative Consent Motion**

62. The draft motion, which will be lodged by the Cabinet Secretary for the Rural Economy and Connectivity, is:

63. “That the Parliament agrees that the relevant provisions of the Digital Economy Bill, introduced in the House of Commons on 5 July 2016, relating to the Scottish Ministers laying down fees and rules for the Lands Tribunal for Scotland in cases concerning the Electronic Communications Code and Part 5 (Digital government), so far as these matters fall within the legislative competence of the Scottish Parliament, or alter the executive competence of the Scottish Ministers, should be considered by the UK Parliament.”

Scottish Government  
January 2017

## **ANNEX A**

### **PROVISIONS IN THE DIGITAL ECONOMY BILL WHICH APPLY TO SCOTLAND AND FOR WHICH CONSENT IS SOUGHT IN TERMS OF THE LEGISLATIVE CONSENT MOTION**

#### **Part 2 of the Bill: Digital Infrastructure**

##### **Paragraph 106 of schedule 3A of the Communications Act 2003 (as inserted by schedule 1 of the Bill)**

1. Paragraph 106 contains express provision to make it clear that the Scottish Ministers can make rules and lay down fees for cases heard in the Tribunal relating to the Code. This provision is for the avoidance of any doubt and is in line with the usual current practice in relation to cases heard in the Tribunal.

#### **Chapter 1 of Part 5 of the Bill: Public Service delivery**

##### **Clause 30: Disclosure of information to improve public service delivery**

2. Clause 30 provides a gateway which enables specified persons to share information with other specified persons for the purposes of a specified objective. The clause sets out that the definition of specified persons means a person specified, or of a description specified, which will be set out in regulations made under clause 30(2) by the appropriate national authority.

3. By virtue of clause 38(2) of the Bill, the appropriate national authority making regulations defining specified persons for Scotland is the Scottish Ministers, where the specified persons are a “Scottish body”. “Scottish body” is defined by clause 38(3) as:

- (a) a person who is part of the Scottish Administration;
- (b) a Scottish public authority with mixed functions or no reserved functions (within the meaning of the Scotland Act 1998); or
- (c) a person providing services to a person within paragraph (a) or (b).

4. Under clause 37(9) of the Bill, any regulations made by the Scottish Ministers under Chapter 1 of Part 5 of the Bill are subject to the affirmative procedure.

5. In deciding whether to make regulations under clause 30(2), the appropriate national authority must consider the systems and procedures the person(s) in question have in place to ensure secure handling of information shared.

6. In deciding whether to make regulations which remove a specified person from the list of persons permitted to exercise the power, the appropriate national authority must consider whether the person in question has had regard to the code of practice to be prepared under clause 36.

7. Clause 30(6) provides that a specified objective means an objective specified in regulations made by the appropriate national authority.

8. An objective may be specified by regulations only if it complies with two conditions laid down by the clause:

- The first condition is that the objective has as its purpose either (a) the improvement or targeting of a public service provided to individuals or households or (b) the facilitation of the provision of a benefit (whether or not financial) to individuals or households.
- The second condition is that the objective has as its purpose the improvement of the well-being of individuals or households.

### **Clause 31: Disclosure of information to gas and electricity suppliers**

9. Clause 31 allows the persons specified in regulations made under clause 30 to disclose information to licensed gas or electricity suppliers. The disclosure must be for the purpose of reducing the energy costs, or improving energy efficiency or the health or financial well-being of people living in fuel poverty and it must be disclosed for use in connection with an energy supplier obligation scheme. These schemes are the Warm Home Discount (which is made under Part 2 of the Energy Act 2010); the Energy Company Obligation (which is made under various provisions of the Gas Act 1986 and the Electricity Act 1989) and grants made by the Scottish and Welsh Governments.

10. Under clause 31(4)(a), the appropriate national authority can make regulations, subject to the affirmative procedure, amending the list of permitted recipients of the information. Under clause 31(4)(b), the appropriate national authority can make regulations, subject to the affirmative procedure, and amending the list of support schemes for which the information may be disclosed. The purpose of the disclosure must always be to assist people living in fuel poverty.

11. Under clause 38(2), the Scottish Ministers are the appropriate national authority:

- Where the regulations would add or remove a person or a description of persons who is a Scottish body (defined as outlined in paragraph 3 of this Annex).
- Where the regulations would have the effect only of enabling a Scottish body to disclose information for the purposes of an objective which does not relate to a reserved matter.

### **Clause 32: disclosure of information by gas and electricity suppliers**

12. Clause 32 allows gas and electricity suppliers (and any other permitted recipient of information under the previous clause) to share information with specified persons, for the purpose of assisting people living in fuel poverty by reducing their energy costs; or improving efficiency in their use of energy; or improving their health or financial well-being. This clause will enable energy suppliers to share details of their customers with the public authority, or with the person providing

services to the public authority, who will then be able to 'flag' which of the supplier's customers should be eligible for assistance under the fuel poverty support scheme.

### **Clause 33: further provisions about disclosures under section 30, 31 or 32**

13. Clause 33 provides that the person receiving the information can only use it for the purpose for which it was disclosed, unless it meets one of the exceptions set out in clause 33(2).

14. These exceptions provide that information can be shared if:

- the information is already lawfully in the public domain; or
- the data subject has given consent to the information being shared; or
- the data is to be used for the prevention or detection of crime or the prevention of anti-social behaviour; or
- the data is to be used for the purposes of criminal investigations; or
- the data is to be used for the purposes of civil or criminal legal proceedings; or
- the information can be used to prevent serious physical harm to a person, prevent loss of human life, safeguard vulnerable adults or children, respond to an emergency or protect national security.

15. The exceptions do not apply to information disclosed by HMRC unless the Commissioners for HMRC have provided consent.

16. Information cannot be disclosed in ways which contravene the Data Protection Act 1998 or if it is prohibited in Part 1 of the Regulation of Investigatory Powers Act 2000.

### **Clause 34: confidentiality of personal information**

17. Clause 34 is designed to ensure personal information is only disclosed to appropriate persons and used for appropriate purposes. A person receiving the information under clause 30, 31 or 32 or any other person who receives that information either directly or indirectly from the original person cannot disclose that personal information, unless one of the exceptions apply.

18. The exceptions are if the disclosure:

- is required or permitted by any enactment (including, by virtue of clause 38, an Act of the Scottish Parliament and secondary legislation made under Acts of the Scottish Parliament); or
- is required by an EU obligation; or
- is made following a court order; or
- relates to information which is already lawfully in the public domain; or
- is for the prevention or detection of crime or the prevention of anti-social behaviour; or
- is for the purposes of criminal investigations or civil or criminal legal proceedings;
- is made with the consent of the data subject; or

- is for the purpose of preventing serious physical harm to a person, preventing loss of human life, safeguarding vulnerable adults or children, responding to an emergency or protecting national security

19. Any person who knowingly or recklessly contravenes this prohibition on further disclosure is guilty of an offence.

20. Clause 34 does not apply to personal information disclosed by HMRC under the power at clause 30 or 31.

### **Clause 36: Code of practice**

21. Clause 36 provides that a code of practice must be issued by the Secretary of State or the UK Minister for the Cabinet Office about the disclosure and use of information under clauses 30, 31 and 32. All specified persons disclosing or using information under the power must have regard to the code of practice. Before issuing or reissuing the code of practice, the Secretary of State or the Minister must consult the Information Commissioner, the Scottish Ministers and others. The code of practice must be laid before the Scottish and UK Parliaments when it is issued and every time it is reissued.

### **Clause 37: Regulations under this Chapter**

22. Clause 37 makes provision on regulation making functions under Chapter 1 of Part 5. In relation to regulation making powers to be exercised by the Scottish Ministers, this impacts on the powers at clauses 30(2), 30(6), 31(4)(a) and 31(4)(b).

### **Clause 38: Interpretation of this Chapter**

23. Clause 38 makes provision on the interpretation of Part 5 of Chapter 1 of the Bill.

## **Chapter 3 of Part 5 of the Bill: Debt owed to the public sector**

### **Clause 41: Disclosure of information to reduce debt owed to the public sector**

24. Clause 41 provides a gateway that enables specified persons to share information with other specified persons for the purposes of taking action in connection with debt owed to a specified person or the Crown.

25. A specified person must be a public authority or a person providing services to a public authority. The power to make regulations laying down specified persons is conferred on the appropriate national authority by clause 41(4).

26. By virtue of clause 48(2) of the Bill, the appropriate national authority making regulations defining specified persons for Scotland is the Scottish Ministers, where the specified persons are a “Scottish body”. “Scottish body” is defined as outlined in paragraph 3 of this Annex above.

27. Where a specified person is a person providing services to a public authority its ability to disclose information is limited to the functions it exercises for that public authority.

28. In deciding whether to make regulations under clause 41(4), the appropriate national authority must consider the systems and procedures the person(s) in question have in place to ensure secure handling of information shared.

29. In deciding whether to make regulations which remove a specified person from the list of persons permitted to exercise the power, the appropriate national authority must consider whether the person in question has had regard to the code of practice to be issued under clause 45.

#### **Clause 42: Further provision about power in section 41**

30. This clause provides that the person receiving the information can only use it for the purpose for which it was disclosed, unless one of the exceptions set out in clause 42(2) applies.

31. The exceptions are if:

- the information is already lawfully in the public domain; or
- the data subject has given consent to the information being used for another purpose; or
- the use is for the prevention or detection of crime or the prevention of anti-social behaviour; or
- the use for the purposes of criminal investigations; or
- the use is for civil or criminal legal proceedings; or
- the use is for the purpose of safeguarding vulnerable adults or children; or
- the use is for the purposes of protecting national security.

32. The exceptions do not apply to information disclosed by HMRC unless the HMRC Commissioners have provided consent.

33. Information cannot be disclosed or used in ways which contravene the Data Protection Act 1998 or if it is prohibited in Part 1 of the Regulation of Investigatory Powers Act.

#### **Clause 43: confidentiality of personal information**

34. This clause aims to provide safeguards to ensure personal information is only disclosed to appropriate persons and used for appropriate purposes. It provides that a person receiving personal information under the power at clause 41 or any other person who receives that information either directly or indirectly from that original person cannot further disclose that personal information, unless one of the exceptions applies.

35. The exceptions are if the disclosure:

- is required or permitted by any enactment (including, by virtue of clause 48, an Act of the Scottish Parliament and secondary legislation made under Acts of the Scottish Parliament); or
- is required by an EU obligation; or
- is made following a court order; or
- relates to information which is already lawfully in the public domain; or
- is for the prevention or detection of crime or the prevention of anti-social behaviour; or
- is for the purposes of criminal investigations or civil or criminal legal proceedings; or
- is made with the consent of the data subject; or
- is for the purpose of safeguarding vulnerable adults or children; or
- is to protect national security

36. Any person who knowingly or recklessly contravenes this prohibition on further disclosure is guilty of an offence

37. Clause 43 does not apply to personal information disclosed by HMRC under the power at clause 40.

#### **Clause 45: Code of practice**

38. Clause 45 provides that a code of practice must be issued by the Secretary of State or the UK Minister for the Cabinet Office about the disclosure and use of information under clause 41. All specified persons disclosing or using information under the power must have regard to the code of practice. Before issuing or reissuing the code of practice, the Secretary of State or the Minister must consult the Information Commissioner, the Scottish Ministers and others. The code of practice must be laid before the Scottish and UK Parliaments when it is issued and every time it is reissued.

#### **Clause 46: Duty to review operation of Chapter**

39. Clause 46 provides that three years after Chapter 3 of Part 5 comes into force, the Secretary of State or the UK Minister for the Cabinet Office must, as soon as is reasonably practicable, carry out a review of the operation of the power to determine whether it should be amended or repealed.

40. Before carrying out the review the Secretary of State or Minister must publish criteria against which the determination will be made.

41. In carrying out the review, the Secretary of State or Minister is required to consult the Information Commissioner, the Scottish Ministers and others.

42. Upon completion of the review, the Secretary of State or Minister must publish a report setting out its findings, and have a copy of the report laid before the Scottish and UK Parliaments. The clause provides a regulation-making power for the Secretary of State or the Minister to amend or repeal the Chapter as a result of

the review. The Secretary of State or the Minister may only make any such regulations with the consent of the Scottish Ministers if the regulations:

- repeal Chapter 3 of Part 5; or
- amend or remove the power of the Scottish Ministers to make regulations under clause 41(4); or
- affect the disclosure of information under clause 41 by a Scottish body to another such body; or
- affect the use by a Scottish body of information disclosed under that section by such a body; or
- affect the further disclosure to a Scottish body by such a body, or by a member, officer or employee of such a body, of information disclosed under Chapter 3 of Part 5 by a Scottish body.

#### **Clause 47: Regulations under this Chapter**

43. Clause 47 makes provision on regulation making functions under Chapter 3 of Part 5. This impacts on the powers exercised by the Scottish Ministers at clause 41(4).

#### **Clause 48: Interpretation of this Chapter.**

44. Clause 48 makes provision on the interpretation of Chapter 3 of Part 5 of the Bill.

#### **Chapter 4 of Part 5 of the Bill: Fraud against the public sector**

##### **Clause 49: Disclosure of information to combat fraud against the public sector**

45. This clause provides a gateway, which enables specified persons to share information with other specified persons for the purposes of taking action in connection with fraud against a public authority.

46. The specified persons permitted to make use of the power provided in the clause will be set out in regulations. A specified person must be a public authority or a person providing services to a public authority. The power to make regulations laying down specified persons is conferred on the appropriate national authority by clause 49(5).

47. By virtue of clause 56(2) of the Bill, the appropriate national authority making regulations defining specified persons for Scotland is the Scottish Ministers, where the specified persons are a “Scottish body”. “Scottish body” is defined as outlined in paragraph 3 of this Annex above.

48. Where a specified person is a person providing services to a public authority its ability to disclose information is limited to the functions it exercises for that public authority.

49. In deciding whether to make regulations, the appropriate national authority must consider the systems and procedures the person(s) in question have in place to ensure secure handling of information shared.

50. In deciding whether to make regulations which remove a specified person from the list of persons permitted to exercise the power, the appropriate national authority must consider whether the person in question has had regard to the code of practice to be prepared under clause 53.

#### **Clause 50: further provisions about power in section 49**

51. Clause 50 provides that the public authority or person receiving the information can only use it for the purpose for which it was disclosed, unless one of the exceptions applies. The exceptions are if:

- the information is already lawfully in the public domain; or
- the data subject has given consent to the information being used for another purpose; or
- the data is to be used for the prevention or detection of crime or the prevention of anti-social behaviour; or
- the data is to be used for the purposes of criminal investigations; or
- the data is to be used for the purposes of civil or criminal legal proceedings; or
- the data is to be used for the purpose of preventing serious physical harm to a person; or for preventing loss of human life; or for safeguarding vulnerable adults or children; or for responding to an emergency or for protecting national security.

52. The exceptions do not apply to information disclosed by HMRC unless the HMRC Commissioners have provided consent.

53. Information cannot be disclosed or used in ways which contravene the Data Protection Act 1998 or if it is prohibited in Part 1 of the Regulation of Investigatory Powers Act 2000.

#### **Clause 51: confidentiality of personal information**

54. Clause 51 is designed to provide safeguards to ensure personal information is only disclosed to appropriate persons and for appropriate purposes. It provides that a person who receives personal information under the power at clause 49, or any other person who receives that information either directly or indirectly from that original person, cannot further disclose that personal information subject to some exceptions.

55. The exceptions are if the disclosure:

- is required or permitted by any enactment (including, by virtue of clause 56, an Act of the Scottish Parliament and secondary legislation made under Acts of the Scottish Parliament); or
- is required by an EU obligation; or

- is made following a court order; or
- relates to information which is already lawfully in the public domain; or
- if made for the prevention or detection of crime or the prevention of anti-social behaviour; or
- is made for the purposes of criminal investigations; or
- is made for the purposes of civil or criminal legal proceedings; or
- is made with the consent of the data subject; or
- is for the purpose of preventing serious physical harm to a person; or for preventing loss of human life; or for safeguarding vulnerable adults or children; or for responding to an emergency or for protecting national security.

56. Any person who knowingly or recklessly contravenes this prohibition on further disclosure is guilty of an offence.

### **Clause 53: Code of practice**

57. Clause 53 provides that a code of practice must be issued by the Secretary of State or the UK Minister for the Cabinet Office about the disclosure and use of information under clause 49. All specified persons disclosing or using information under the power must have regard to the code of practice. Before issuing or reissuing the code of practice, the Minister must consult the Information Commissioner, the Scottish Ministers and others. The code of practice must be laid before the Scottish and UK Parliaments when it is issued and every time it is reissued.

### **Clause 54: Duty to review operation of Chapter**

58. Clause 54 provides that three years after Chapter 4 of Part 5 comes into force, the Secretary of State or the UK Minister for the Cabinet Office must, as soon as is reasonably practicable, carry out a review of the operation of the power to determine whether it should be amended or repealed.

59. Before carrying out the review the Secretary of State or Minister must publish criteria against which the determination will be made.

60. In carrying out the review, the Secretary of State or Minister is required to consult the Information Commissioner, the Scottish Ministers and others.

61. Upon completion of the review, the Secretary of State or Minister must publish a report setting out its findings, and have a copy of the report laid before the Scottish and UK Parliaments. The clause provides a regulation-making power for the Secretary of State or the Minister to amend or repeal the Chapter as a result of the review. The Secretary of State or the Minister may only make any such regulations with the consent of the Scottish Ministers if the regulations:

- repeal Chapter 4 of Part 5; or
- amend or remove the power of the Scottish Ministers to make regulations under clause 49(5); or

- affect the disclosure of information under clause 49 by a Scottish body to another such body; or
- affect the use by a Scottish body of information disclosed under that section by such a body; or
- affect the further disclosure to a Scottish body by such a body, or by a member, officer or employee of such a body, of information disclosed under Chapter 4 of Part 5 by a Scottish body.

### **Clause 55: Regulations under this Chapter**

62. Clause 55 makes provision on regulation making functions under Chapter 4 of Part 5 of the Bill. This impacts on the powers exercised by the Scottish Ministers under clause 49(5).

### **Clause 56: interpretation of this Chapter.**

63. Clause 56 makes provision on the interpretation of this Chapter of the Bill.

### **Chapter 5 of Part 5 of the Bill: Sharing for research purposes**

#### **Clause 57: Disclosure of information for research purposes**

64. Clause 57 allows public authorities to share information that they hold, including personal information, for the purpose of research in the public interest. Public authorities are defined in clause 64 and exclude bodies which only have functions which relate to the provision of health services or adult social care services.

65. Personal information may only be disclosed if conditions laid down by clause 57 are met:

- Information provided must be de-identified, that is modified by removing any information (such as name or address) that could lead to direct identification of an individual or legal entity.
- It must not be reasonably likely that the identity of an individual or organisation will be deduced, even when information is combined with other information.
- Each person involved in processing the information for disclosure must take reasonable steps to minimise the risk of the accidental disclosure of information which identifies a particular person and prevent the deliberate disclosure of such information (except in accordance with Chapter 5 of Part 5 of the Bill).
- Information provided for interrogation by researchers must be provided either by the public authority that holds the information or by a person who processes the data on its behalf for this purpose.
- All research carried out under these provisions must be accredited (as set out at clause 62).
- All those who are involved in processing information for this purpose, and researchers who examine the information provided must be accredited as set out at clause 62.

- Each person who discloses the information or processes it for disclosure under this clause must have regard to the code of practice to be prepared by the UK Statistics Authority (“the UKSA”) under clause 61.

### **Clause 58: Provisions supplementary to section 57**

66. This clause sets out the parameters of the Chapter 5 of Part 5 power to share for research purposes and how it interacts with existing statute or common law. It:

- provides that disclosure of information under this power does not breach duties of confidentiality or any other restrictions on disclosing the information;
- provides that information cannot be disclosed under this power if to do so would breach the Data Protection Act 1998 or Part 1 of the Regulation of Investigatory Powers Act 2000;
- provides that it does not authorise disclosure of information held by an authority with health or social care functions in connection with those functions;
- provides that clause 57 does not limit any power to disclose that exists apart from this clause;
- allows public authorities to charge fees for providing information to researchers. Fees must be charged on a cost recovery basis.

### **Clause 59: bar on further disclosure of personal information**

67. Clause 59 is designed to provide safeguards to ensure personal information is only disclosed to appropriate persons and used for appropriate purposes, when the information is being processed so it is de-identified for disclosure under clause 57.

68. The person receiving the information or any other person who receives that information either directly or indirectly from the original person cannot disclose personal information disclosed under the power, unless an exception applies.

69. The exceptions are if the disclosure:

- is required or permitted by any enactment (including, by virtue of clause 59(4), an Act of the Scottish Parliament and secondary legislation made under Acts of the Scottish Parliament); or
- is required by an EU obligation; or
- is made following a court order; or
- relates to information which is already lawfully in the public domain; or
- is made for the prevention or detection of crime or the prevention of anti-social behaviour; or
- is made for the purposes of criminal investigations; or
- is made for the purposes of civil or criminal legal proceedings; or
- relates to information the data subject has given consent to being shared.

70. Any person who knowingly or recklessly contravenes this prohibition on further disclosure is guilty of an offence.

### *Revenue Scotland*

71. The Bill also covers disclosure of information by Revenue Scotland and restricts the onward disclosure of personal information disclosed by Revenue Scotland. Amendments are planned so they may not be further disclosed without the consent of Revenue Scotland. Criminal sanctions apply for unlawful disclosure.

### **Clause 61: Code of practice**

72. Clause 61 provides that a code of practice must be issued by the UKSA about the disclosure, processing, holding or use of information under clause 57.

73. Under clause 61:

- a public authority must have regard to the code of practice in disclosing or participating in the processing of information;
- a person accredited to process information for disclosure under clause 62(1)(a) must have regard to the code of practice in participating in the processing of information for disclosure;
- a person accredited to receive or use information under clause 62(1)(b) or (c) must have regard to the code of practice in holding or using information.

74. Before issuing or reissuing the code of practice, the UKSA must consult the Information Commissioner, the Scottish Ministers and others. The code of practice must be laid before the Scottish and UK Parliaments when it is issued and every time it is reissued.

### **Clause 62: Accreditation for the purposes of Chapter 5**

75. Clause 62 sets out the requirements by which the UKSA as the oversight body for the conditions set out in clause 57 accredits persons and research.

76. Clause 62 gives the UKSA the power to accredit, and withdraw accreditation, for:

- a person who may process information;
- persons to whom information may be disclosed;
- researchers for the purposes of clause 57; and
- research for the purposes of clause 57.

77. Clause 62 imposes duties on the UKSA to establish and publish conditions for accrediting the persons or research as well as for withdrawing accreditation.

78. The conditions for accreditation must include that persons must be fit and proper persons to carry out the function for which they are seeking accreditation, and that the proposed research is in the public interest. The conditions for withdrawal of

accreditation must include the ground that the person failed to have regard to the code of practice issued under clause 61.

79. Clause 62 requires the UKSA to consult the Scottish Ministers and others before publishing conditions for accredited persons and research to meet and before publishing grounds for the withdrawal of accreditation.

#### **Clause 63: Delegation of functions of Statistics Board (UK Statistics Authority)**

80. Clause 63 provides the UKSA with the power to delegate any of its functions under clause 62 to another person providing that the person is a fit and proper person and has expertise in statistical research and analysis. This has the potential for the accreditation to be delegated to statisticians in the Scottish Administration.

#### **Clause 64: Interpretation of this Chapter**

81. Clause 64 makes provision on the interpretation of this Chapter of the Bill. It includes provisions defining health services and adult social care.

#### **Chapter 7 of Part 5 of the Bill: Statistics**

#### **Clause 67: Disclosure of information by public authorities to the Statistics Board**

82. Clause 67 inserts new section 45A into the Statistics and Registration Service Act 2007 (“the 2007 Act”) to make provision for the disclosure of information held by public authorities to the UKSA where the public authority is satisfied that UKSA requires that information for the purposes of any one or more of the UKSA’s functions.

83. Such information may not be used by the UKSA for the purposes of its functions under section 22 of the 2007 Act (statistical services), and personal information may not be disclosed by the UKSA to an approved researcher for the purposes of statistical research, without the consent of the public authority providing that information.

84. Clause 67 provides that any such disclosure does not breach any obligation of confidence, or other restriction on disclosure, however imposed.

85. Clause 67 does not authorise a disclosure that would:

- contravene the Data Protection Act 1998; or
- be prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000; or
- would contravene EU legislation.

86. This clause replaces sections 47 to 49 of the 2007 Act which make provision for regulations to authorise disclosure to the UKSA.

## **Clause 68: Access to information by Statistics Board**

87. Clause 68 inserts new sections 45B to 45G into the 2007 Act to give the UKSA access to information held by a range of different bodies.

### *Crown bodies*

88. It includes in section 45B a right of access by the UKSA to information held by Crown bodies, as well as the Bank of England, a subsidiary undertaking of the Bank of England, the Financial Conduct Authority and the Payment Systems Regulator established under the Financial Services (Banking Reform) Act 2013. Crown bodies include the UK central government departments, the Scottish Administration and, for example, Revenue Scotland. This allows the UKSA to make a formal written request for information from those bodies. The body must respond in writing, either indicating it is willing to provide the information (and the date it will provide it) or that it is not willing to provide the information (and give reasons for not providing it).

89. This clause makes provision that the UKSA may only issue a request or a notice if the information to be disclosed is required by the UKSA for any one or more of the UKSA's functions. Information disclosed in response to a request or a notice may not be used by the UKSA for the purposes of its functions under section 22 of the 2007 Act (statistical services). Personal information may not be disclosed by the UKSA to an approved researcher for the purposes of statistical research, without the consent of the public authority or undertaking providing that information.

90. The UKSA must prepare and publish a statement of principles and procedures by which it will exercise its functions under this clause. In preparing or revising the Statement, the UKSA must consult the Information Commissioner, the Scottish Ministers and others. The UKSA must lay the Statement before the UK and Scottish Parliaments

91. If the authority is unwilling to provide the information or the UKSA considers it has failed to take reasonable steps to do so, the UKSA may choose to lay the correspondence with the public body before the relevant legislature. The relevant legislature is the Scottish Parliament if the authority is part of the Scottish Administration or is a Scottish public authority with only devolved functions or with mixed devolved and reserved functions.

92. The clause specifies that section 45B does not authorise a disclosure that:

- contravenes the Data Protection Act 1998; or
- is prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000; or
- contravenes EU legislation.

### *Other public authorities and undertakings*

93. Clause 68 also includes at inserted sections 45C and 45D the power for the UKSA, by notice, to require the disclosure of information held by other (non-Crown) public authorities and some undertakings, but not from small or micro businesses.

The information required will be specified in the notice. The clause provides that a disclosure in compliance with a notice does not breach any obligation of confidence or any other restriction on disclosure.

94. Sections 45C and 45D do not authorise a disclosure that is:

- prejudicial to national security; or
- contravenes the Data Protection Act 1998; or
- is prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000; or
- expressly in the case of section 45C, contravenes EU legislation.

95. The UKSA must obtain the consent of the Scottish Ministers before giving a notice to a Scottish public authority with only devolved functions or with mixed devolved and reserved functions.

96. Under section 45E, also inserted by clause 68, the UKSA may only use information obtained from such a request or notice if it is required by the UKSA for any one or more of the UKSA's functions. Information disclosed in response to a request or a notice may not be used by the UKSA for the purposes of its functions under section 22 of the 2007 Act (statistical services). Personal information may not be disclosed by the UKSA to an approved researcher for the purposes of statistical research without the consent of the public authority or undertaking providing that information.

97. The UKSA must prepare and publish a statement of principles and procedures by which it will exercise its functions under this clause. In preparing or revising the Statement, the UKSA must consult the Information Commissioner, the Scottish Ministers and others. The UKSA must lay the Statement before the Scottish and UK Parliaments.

98. Section 45F, also inserted by this clause, makes provision for it to be an offence for the public authorities or undertakings to fail to comply with a notice under section 45C or 45D without reasonable excuse or, in purporting to comply with a notice, to knowingly or recklessly provide false information.

*Notices and Code of practice on processes for collecting, organising, storing or retrieving information and providing information to the UKSA*

99. The provision for notices in inserted sections 45C and 45D includes provision that the UKSA may include in a notice a requirement for a public authority (but not a Crown body) or undertaking to consult the UKSA before making changes to its processes for collecting, organising, storing or retrieving information to which the notice relates, or to processes for supplying such information to the UKSA.

100. The UKSA must also prepare, consult on (including with the Scottish Ministers), and publish a code of practice setting out guidance that public authorities need to take into account when making those changes, and the code must be laid before the Scottish and UK Parliaments.

## **Clause 69: Disclosure by the Statistics Board to devolved administrations**

101. Clause 69 inserts a new section 53A into the 2007 Act. Section 53A will allow the UKSA to disclose information it holds in relation to the exercise of any of its functions to a devolved administration (including the Scottish Administration).

102. Information may only be disclosed under section 53A for the purpose of any or all of the statistical functions of the devolved administration.

103. Section 53A does not authorise a disclosure which would:

- breach any obligation of confidence owed by the UKSA; or
- contravene the Data Protection Act 1998; or
- be prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000; or
- breach any other restriction on the disclosure of the information (however imposed).

104. Section 53A sets out the procedure by which the devolved administration must request the information. Section 53A only permits disclosure in specific circumstances, including in the case of information received from public authorities that the public authority consents to its disclosure. Section 53A allows the UKSA to set conditions the devolved administration must meet before the information will be disclosed. Section 53A also limits use of the information disclosed to the purposes for which it was disclosed.

**Scottish Government**  
**January 2017**

## **ANNEX B**

### **PROVISIONS IN THE BILL WHICH RELATE TO DELEGATED POWERS EXERCISABLE BY THE SCOTTISH MINISTERS**

#### **Introduction**

1. This Annex briefly outlines, for convenience, provisions in the Digital Economy Bill which relate to delegated powers exercisable by the Scottish Ministers.

#### **“The appropriate national authority”**

2. As outlined in the table below, a number of the powers in the Bill are to be exercised by “the appropriate national authority”. The Bill contains provisions (at clause 38 [in Chapter 1 of Part 5 of the Bill], clause 48 [in Chapter 3 of Part 5 of the Bill] and clause 56 [in Chapter 4 of Part 5 of the Bill] which lay down that the Scottish Ministers are “the appropriate national authority” in relation to regulations which deal with a “Scottish body”. A “Scottish body” is defined as meaning:

- (a) a person who is a part of the Scottish Administration,
- (b) a Scottish public authority with mixed functions or no reserved functions (within the meaning of the Scotland Act 1998), or
- (c) a person providing services to a person within paragraph (a) or (b).

#### **Summary of delegated powers**

3. The table below gives a brief summary of the delegated powers in the Bill to be exercised by the Scottish Ministers and also outlines one proposed repeal of a delegated power.

Provision	Purpose	Power exercised by	Parliamentary procedure
Clause 30(2)	Power to make regulations specifying persons who may disclose information in relation to public service delivery.	The appropriate national authority	Affirmative
Clause 30(6)	Power to make regulations to specify objectives for which information may be disclosed in relation to public service delivery.	The appropriate national authority	Affirmative
Clause 31(4)(a)	Power to make regulations to amend the list of permitted recipients of information from specified persons for use in connection with fuel poverty support schemes.	The appropriate national authority	Affirmative
Clause 31(4)(b)	Power to make regulations to amend the second condition that must be met for the disclosure of information to gas and electricity suppliers for fuel poverty purposes	The appropriate national authority	Affirmative
Clause 41(4)	Power to make regulations specifying persons who may disclose information in relation to debt owed to the public sector.	The appropriate national authority	Affirmative
Clause 49(5)	Power to make regulations specifying persons who may disclose information in relation to tackling fraud against the public sector.	The appropriate national authority	Affirmative
Clause 67(3)(b) repeals section 48 of the Statistics and Registration Act 2007.	Clause 67 inserts section 45A into the Statistics and Registration Act 2007. This makes provision on public authorities disclosing information to the UKSA. As a consequence, clause 67(3)(b) repeals section 48 of the 2007 Act, the power for the Scottish Ministers to make regulations for the purpose of authorising a Scottish public authority, so far as exercising functions which relate to matters which are not reserved, to disclose information to the UKSA.	Not applicable – repeal of a delegated power	
Paragraph 106 of Schedule 3A of the Communications Act 2003 (inserted by Schedule 1 of the Bill).	Power to make rules for the Lands Tribunal for Scotland	The Scottish Ministers	Laid

In addition:

- the Bill requires UK Ministers to review after 3 years, the operation of Chapter 3 of Part 5 (on disclosure of information to reduce debt owed to the public sector) and Chapter 4 of Part 5 (on disclosure of information to combat fraud against the public sector). The Bill then empowers UK Ministers to make regulations amending or repealing these two chapters: clauses 46 and 54 refer. Clauses 46 and 54 provide that the consent of the Scottish Ministers must be obtained before any such regulations impacting on devolved matters are made.
- the Bill empowers UK Ministers to make regulations moving functions under the Electronic Communications Code to the Lands Tribunal for Scotland: paragraph 95 of the new Code at Schedule 1 to the Bill refers. Under paragraph 95, the Scottish Ministers must be consulted before any such regulations impacting on Scotland are made.

**Scottish Government**  
**January 2017**

*This Legislative Consent Memorandum relates to the Digital Economy Bill (UK legislation) and was lodged with the Scottish Parliament on 19 January 2017*

# **DIGITAL ECONOMY BILL – LEGISLATIVE CONSENT MEMORANDUM**

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