

HOUSE OF LORDS

Secondary Legislation Scrutiny Committee

32nd Report of Session 2017–19

**Draft Digital
Government (Disclosure
of Information)
Regulations 2018
and four related Codes**

Includes 6 Information Paragraphs on 7 Instruments

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Secondary Legislation Scrutiny Committee

The Committee was established on 17 December 2003 as the Merits of Statutory Instruments Committee. It was renamed in 2012 to reflect the widening of its responsibilities to include the scrutiny of Orders laid under the Public Bodies Act 2011.

The Committee's terms of reference are set out in full on the website but are, broadly, to scrutinise —

(a) every instrument (whether or not a statutory instrument), or draft of an instrument, which is laid before each House of Parliament and upon which proceedings may be, or might have been, taken in either House of Parliament under an Act of Parliament;

(b) every proposal which is in the form of a draft of such an instrument and is laid before each House of Parliament under an Act of Parliament,

with a view to determining whether or not the special attention of the House should be drawn to it on any of these specified grounds:

(a) that it is politically or legally important or gives rise to issues of public policy likely to be of interest to the House;

(b) that it may be inappropriate in view of changed circumstances since the enactment of the parent Act;

(c) that it may inappropriately implement European Union legislation;

(d) that it may imperfectly achieve its policy objectives;

(e) that the explanatory material laid in support provides insufficient information to gain a clear understanding about the instrument's policy objective and intended implementation;

(f) that there appear to be inadequacies in the consultation process which relates to the instrument.

The Committee may also consider such other general matters relating to the effective scrutiny of secondary legislation as the Committee considers appropriate, except matters within the orders of reference of the Joint Committee on Statutory Instruments.

Members

Lord Chartres

Lord Goddard of Stockport

Baroness O'Loan

Lord Cunningham of Felling

Lord Haskel

Lord Sherbourne of Didsbury

Lord Faulkner of Worcester

Rt Hon. Lord Janvrin

Rt Hon. Lord Trefgarne (Chairman)

Baroness Finn

Lord Kirkwood of Kirkhope

Registered interests

Information about interests of Committee Members can be found in the last Appendix to this report.

Publications

The Committee's Reports are published on the internet at www.parliament.uk/seclegpublications

The National Archives publish statutory instruments with a plain English explanatory memorandum on the internet at <http://www.legislation.gov.uk/uksi>

Information and Contacts

Any query about the Committee or its work, or opinions on any new item of secondary legislation, should be directed to the Clerk to the Secondary Legislation Scrutiny Committee, Legislation Office, House of Lords, London SW1A 0PW. The telephone number is 020 7219 8821 and the email address is hseclegscrutiny@parliament.uk.

Thirty Second Report

INSTRUMENTS DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Draft Digital Government (Disclosure of Information) Regulations 2018

Date laid: 17 May 2018

Parliamentary procedure: affirmative

Draft Data Sharing Code of Practice: Code of practice for civil registration officials disclosing information under section 19AA of the Registration Service Act 1953

Draft Information Sharing Code 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 Digital Economy Act 2017

Draft Research Code of Practice and Accreditation Criteria

Draft Statistics Statement of Principles and Code of Practice on Changes to Data Systems

Date laid: 21 May 2018

Parliamentary procedure: affirmative

Summary: Under the provisions of the Digital Economy Act 2017 these Regulations and Codes allow public authorities, including local authorities, to share personal information so that they can target public services more effectively towards those who need them. In line with the recommendations of the Delegated Powers and Regulatory Reform Committee, the Regulations limit the disclosure of information to (four) specific objectives: multiple disadvantages, television retuning, fuel poverty, and water poverty, and specify which public authorities will be permitted to disclose or receive information for each objective. A submission from medConfidential asked why only two items from the list in Regulation 2(2) are sufficient to count as “multiple” disadvantages and why data can be exchanged about the whole household if only one individual meets these criteria. The Department for Digital, Culture, Media and Sport’s responses are included in the report.

This group of instruments is drawn to the special attention of the House on the ground of policy interest.

1. These draft instruments have been laid by the Cabinet Office but, due to a machinery of government change, will be made by the Department for Digital, Culture, Media and Sport (DCMS). The Regulations and five Codes are accompanied by two Explanatory Memoranda. They are made under the Digital Economy Act 2017 (“the Act”) to allow public authorities, including local authorities, to share personal information so that they can target public services more effectively towards those who need them.

Delegated Powers Committee concerns

2. Because information gathered from members of the public about their personal affairs by a public body may usually only be used for the purpose for which it was originally obtained, the Delegated Powers and Regulatory Reform Committee (DPRRC) expressed grave concerns during the passage of the Bill about the breadth of the powers the Government were seeking.¹
3. In line with the DPRRC's recommendations these Regulations limit the disclosure of information to (four) specific objectives: multiple disadvantages, television retuning, fuel poverty, and water poverty, and specify which public authorities will be permitted to disclose or receive information for each objective. The Regulations also amend section 36 of the Act, to include an additional fuel poverty measure for which information can be disclosed to licensed gas and electricity suppliers.
4. There are further constraints on the use of these powers: any information sharing under these objectives must be processed in line with the requirements of data protection legislation, and any person using or disclosing information under these powers must have regard to the *Information sharing Code of Practice: Public Service Delivery, Debt and Fraud* laid on 21 May 2018.
5. The Government have also laid several other Codes required by the Act to provide information on the processing and the use of such data and the safeguard and oversight arrangements, so that the public can understand what data is being shared and why. These Codes are all subject to the affirmative procedure initially but later amendments can be made using the negative procedure.

Concerns about the definition of "multiple disadvantages"

6. We received a submission from medConfidential expressing some concerns about the Government's approach in the Codes. (The full submission and DCMS' response to the key points raised are published on our webpage).²
7. MedConfidential asked why in the Codes and Regulations two items on the list in Regulation 2(2) are sufficient to count as "multiple" disadvantages. DCMS responded:

"Multiple' in the context of the multiple disadvantages objective means an individual or household that is affected by two or more disadvantages. The complete list of factors that constitute a disadvantage are listed in Schedule 2, paragraph 2(3) in the regulations.

For sharing to be permitted, there must not only be the presence of two or more disadvantages which adversely affect an individual or household, but any sharing must also meet the conditions in paragraph 2(1)(a) - (c) of the Schedule to the Regulations. When the criteria of this objective are fully met, information-sharing is permitted whether presenting at an individual or household level.

We are not looking for the minimum threshold for data to be shared. The purpose of the objective is to assist individuals or households with a combination of disadvantages through improvement or targeting of

1 DPRRC [13th Report](#), Session 2016–17 (HL Paper 95), paragraph 25.

2 See <https://www.parliament.uk/business/committees/committees-a-z/lords-select/secondary-legislation-scrutiny-committee/publications/> [accessed 13 June 2018].

a public service or facilitation of the provision of a benefit provided to individuals or households, and improving the well-being of individuals or households. The objective was initially developed to support the Troubled Families programme, which supports the identification of families across England who face multiple problems and helps ensure appropriate services are provided to them. But it is also intended to be available for similar programmes. Grouping the factors into categories would unnecessarily limit the ability of authorities to provide positive interventions when other combinations of factors arose.”

8. MedConfidential also asked why data can be exchanged about the whole household if only one individual meets these criteria. DCMS responded:

“The problems of one household member can affect the outcomes of others in the same household. In particular, public services need to be able to offer services to children who are impacted due to the problems of adults in the households, such as unemployment, domestic abuse or addiction. For example, DWP analysis³ shows just how stark the difference is between outcomes for children in workless families and those in lower-income working families. Children growing up in workless families are almost twice as likely as children in working families to fail at all stages of their education.”

9. In their response, DCMS have also offered assurances that these codes of practice are consistent with each other and have been drafted to be compliant with the new Data Protection Act 2018 and the latest standards of best practice for information sharing, including the “Data Science Ethical Framework”. DCMS state that they have regularly consulted the Office of the Information Commissioner (ICO) during the development of the Codes. The current Codes will be reviewed when the new ICO data-sharing code and other relevant guidance is published to determine whether changes need to be made.

3 Department for Work and Pensions, [Improving Lives](#), April 2017 [accessed 13 June 2018].

INSTRUMENTS OF INTEREST

Air Navigation (Amendment) Order 2018 (SI 2018/623)

10. There is growing concern about the increase in the number of small unmanned aircraft (“drones”) coming into proximity with manned aircraft (92 reported incidents in 2017, up from 71 in 2016 and 29 in 2015). From 30 July 2018 this Order extends current restrictions by prohibiting all drones from flying above 400 feet or within 1 kilometre of airport boundaries. Further restrictions apply to drone flights within the airport boundary to prevent drones being used to fly items in or out of the airside security area. From 30 November 2018 the operator of a drone larger than 250 grammes will need to obtain a certificate of registration from the Civil Aviation Authority (CAA) and to display the registration number on the side of the machine. Remote pilots will also be required to obtain a certificate of competency from the CAA. This Order comes ahead of the Government’s intention to introduce a draft Drones Bill to give the police more powers to intervene if drones are being used inappropriately.⁴

Network and Information Systems (Amendment) Regulations 2018 (SI 2018/629)

11. These Regulations have been laid by the Department for Digital, Culture, Media and Sport (DCMS) with an Explanatory Memorandum (EM). The Regulations correct several defects and errors in the previous Network and Information Systems Regulations 2018 (SI 2018/506) which were laid on 20 April 2018. According to DCMS, the purpose of the original Regulations was to implement the EU’s Directive on Security of Network and Information Systems (“the EU Directive”), with the aim of increasing the UK’s security and resilience in relation to cyber attacks. The original Regulations established a legal framework to ensure that essential services and digital service providers put in place adequate measures to improve the security of their network and information systems. The Committee published information about the original Regulations in its 27th Report.⁵
12. The new Regulations make several corrections to the original Regulations. While these mainly correct cross-references, typographical errors and other minor mistakes, one of the typographical errors in the original Regulations had the effect of leaving the digital infrastructure sector out of the scope of the Regulations. The correction made by the new Regulations ensures that this important sector is now brought into scope as originally intended, and fulfils the UK’s obligations under the EU Directive, as required.
13. **The Committee is concerned that the error in the original Regulations, while of a typographical nature, had such significant consequences, and that the EM to the new Regulations failed to explain the position clearly. We look to Departments to ensure that EMs give full and accessible explanations.**

4 See press notice <https://www.gov.uk/government/news/new-drone-laws-bring-added-protection-for-passengers>.

5 [27th Report](#), Session 2017–19 (HL Paper 131).

Renewable Heat Incentive Scheme and Domestic Renewable Heat Incentive Scheme (Amendment) Regulations 2018 (SI 2018/635)

14. This instrument makes changes to the domestic and non-domestic Renewable Heat Incentives (RHI) Scheme. Under the RHI Scheme, subsidies are paid to domestic and non-domestic producers of renewable and low-carbon heating in Great Britain, to encourage a switch from fossil fuel heating systems, in support of the Government’s commitment to meeting EU renewable energy obligations by 2020 and the UK’s statutory carbon reduction targets until 2050. According to the Department for Business, Enterprise and Industrial Strategy (BEIS), the Regulations form part of the Department’s response to a report by the National Audit Office (NAO) from February 2018. This report raised concerns about the value for money of the RHI Scheme and about areas of ‘gaming’, where people comply with the rules but act in a way which does not support the Scheme’s objectives. The Committee drew a related instrument (the Renewable Heat Incentive Scheme Regulations 2018 (SI 2018/611)) to the attention of the House in March 2018 in the light of the NAO report.
15. BEIS explains that this instrument addresses some of the NAO’s value for money concerns, by limiting the use of estimated data when meter readings cannot be provided and by clarifying the rules around replacing plants that are subsidised under the RHI Scheme. BEIS also says that tighter rules on the registration of biogas production plants will address a key area of gaming, by ensuring that only one plant can be used for one registration and subsidy. BEIS told us that it intends to bring forward further changes to the RHI Scheme in 2019 in response to the issues raised by the NAO report.

Civil Enforcement of Parking Contraventions (England) General (Amendment) Regulations 2018 (SI 2018/653)

16. The Ministry of Housing, Communities and Local Government (MHCLG) has laid these Regulations with an Explanatory Memorandum (EM), stating that the purpose of the instrument is to correct an error in Regulations dating from 2007.⁶ That error was introduced by a set of amending Regulations laid in 2015 (SI 2015/1001) (“the 2015 Regulations”),⁷ and was identified by the Joint Committee on Statutory Instruments (JCSI) in a report published in September 2015.⁸
17. We also commented on SI 2015/1001, in our 3rd Report of Session 2015–16.⁹ Those Regulations were laid on 27 March 2015 and brought into force on 1 April 2015, breaching the “21-day rule”. We noted at the time that the Government said that it was important to change the law as quickly as possible, since “the delay between announcing the intention to legislate and the legislation coming into force has caused significant confusion amongst the public”. We commented that, since the intention to legislate had been confirmed in a Government response to a 2013–14 consultation on local authority parking, the Government might have been expected to foresee the delay cited.

6 Civil Enforcement of Parking Contraventions (England) General Regulations 2007 ([SI 2007/3483](#)).

7 Civil Enforcement of Parking Contraventions (England) General (Amendment No. 2) Regulations 2015 ([SI 2015/1001](#)).

8 [3rd Report](#), Session 2015–16 (HL Paper 33).

9 [3rd Report](#), Session 2015–16 (HL Paper 10).

18. We asked MHCLG why it had taken nearly three years to correct the error made by the 2015 Regulations, and we have been told that “[w]hen undertaking a review of legislation, the outstanding matter highlighted by the [JCSI] came to light. We responded by drafting an SI to correct the error, and laid it as the first opportunity”. Because of miscommunication between MHCLG and the Ministry of Justice, the latest set of Regulations were also brought into force sooner than 21 days after laying.
19. **The Department’s handling of both the 2015 and the latest Regulations has fallen well short of good practice, and we trust that it will make efforts to improve in future.**

Animal Health (Miscellaneous Fees) (England) Regulations 2018 (SI 2018/664)

Animal By-Products and Pet Passport Fees (England) Regulations 2018 (SI 2018/666)

20. These instruments adjust existing, and introduce new, fees for services delivered by the Animal and Plant Health Agency (“APHA”). According to the APHA, the aim is to achieve full cost recovery in line with government policy that businesses using and benefiting from a service should bear the cost of its provision. Existing fees that are being adjusted include, for example, fees for poultry producers that register with the APHA under the Poultry Health Scheme to enable them to export hatching eggs or live poultry to the EU and third countries. Some fees will be reduced, reflecting savings the APHA has made, and new fees will be introduced for a number of services provided by the APHA. This includes fees that veterinarians will have to pay for blank pet passport authorisation documents and fees for the inspection and approval of premises that handle animal by-products or produce pet food. APHA explains that, in response to feedback received during the consultation on the proposals, full cost recovery will be phased in over a two-year period in some cases to reduce the initial impact on businesses.

Time Off for Public Duties Order 2018 (SI 2018/665)

21. The Ministry of Justice wishes to improve the diversity of the lay observers who monitor the conditions of those in custody. The majority of these observers are currently over 55 years old and retired. With the objective of encouraging more diversity, this Order amends the Employment Rights Act 1996 (“ERA”) to grant unpaid time off work to volunteers who monitor conditions in court custody facilities, Immigration Removal Centres, immigration facilities at ports and airports and in Scottish prisons.¹⁰ The change brings these groups into line with Prison Independent Monitoring Boards, who perform a very similar function and are already granted time off work by the ERA. The Government hope that by attracting monitors in full-time employment, who tend to be younger, prisoners will be more likely to engage with them about their issues of concern.

¹⁰ This group does not include those who monitor conditions in police station cells.

INSTRUMENTS NOT DRAWN TO THE SPECIAL ATTENTION OF THE HOUSE

Instruments subject to annulment

- SI 2018/622 European Communities (Designation) Order 2018
- SI 2018/623 Air Navigation (Amendment) Order 2018
- SI 2018/629 Network and Information Systems (Amendment) Regulations 2018
- SI 2018/635 Renewable Heat Incentive Scheme and Domestic Renewable Heat Incentive Scheme (Amendment) Regulations 2018
- SI 2018/647 Water Supply (Water Quality) Regulations 2018
- SI 2018/653 Civil Enforcement of Parking Contraventions (England) General (Amendment) Regulations 2018
- SI 2018/654 Education (Designated Institutions) (England) Order 2018
- SI 2018/658 Tenements (Scotland) Act 2004 (Gas Services) Order 2018
- SI 2018/664 Animal Health (Miscellaneous Fees) (England) Regulations
- SI 2018/665 Time Off for Public Duties Order 2018
- SI 2018/666 Animal By-Products and Pet Passport Fees (England) Regulations

APPENDIX 1: INTERESTS AND ATTENDANCE

Committee Members' registered interests may be examined in the online Register of Lords' Interests at <http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests>. The Register may also be inspected in the Parliamentary Archives.

For the business taken at the meeting on 12 June 2018, Members declared no interests.

Attendance:

The meeting was attended by Lord Chartres, Lord Cunningham of Felling, Lord Faulkner of Worcester, Lord Goddard of Stockport, Lord Haskel, Lord Janvrin, Lord Kirkwood of Kirkhope, Baroness O'Loan, Lord Sherbourne of Didsbury and Lord Trefgarne.