

The Social Security Committee
The Scottish Parliament
Holyrood
Edinburgh
EH99 1SP

23 August 2017

Dear Convener

Social Security (Scotland) Bill

1. The Information Commissioner has responsibility for promoting and enforcing the Data Protection Act 1998 (the DPA) and the Privacy and Electronic Communications Regulations 2003 (PECR), as well as the Freedom of Information Act 2000 (FOIA), the Environmental Information Regulations 2004 (EIR) which apply to reserved matters in Scotland. She is independent of government and upholds information rights in the public interest, promoting openness by public bodies and data privacy for individuals. The Commissioner does this by providing guidance to individuals and organisations, solving problems where she can, and taking appropriate action where the law is broken.
2. From 25 May 2018, the General Data Protection Regulation (the GDPR) will come into force as the UK's new data protection legislation, supplemented by a Data Protection Bill which was announced in the last Queen's Speech. The GDPR will raise the standard of data protection law and require greater accountability of organisations and enhances the rights of individuals.
3. The Commissioner welcomes the opportunity to respond to the Social Security Committee's call for views on the Bill. We have also considered the Government's Privacy Impact Assessment (PIA) of the Bill.¹ As the social security service is unlikely to be operational prior to May 2018, the Commissioner provides her comments in the context of GDPR being the applicable law. The Scottish Government should plan ahead on this basis.
4. One of the proposed social security principles is that "respect for the dignity of individuals is at the heart of the Scottish social security system". The Commissioner believes that respect for the privacy of individuals and using

¹ <http://www.gov.scot/Topics/People/fairerscotland/Social-Security/Privacy-Impact-Assessment>

their personal information responsibly is an integral part of treating people with dignity.

Sharing of personal information

5. We note from chapter 7 of the PIA that the Scottish Government has identified that additional legislation is required to permit the sharing of personal information. This includes sharing between Scottish Ministers and Her Majesty's Revenue and Customs which will require UK legislation to implement.
6. The Government says at paragraph 7.5 of the PIA that it will bring forward amendments to the Bill to facilitate sharing between Ministers and relevant Scottish public authorities along the lines identified in Annex A to the PIA. We will provide additional comments to Parliament on the Government's amendments when they are tabled.
7. The Government has identified a range of data fields that may be shared between organisations. We welcome early consideration being given to the specifics of data sharing. However, this will need to be further refined so that only the information that is relevant and necessary for each type of application is shared with the relevant agency or agencies. In paragraph 3.5 of the PIA, the Government proposes to provide statutory guidance on information sharing and data management. This detail should be included in that guidance.

Individuals' rights

8. Section 21 of the Bill governs the ability of an individual to withdraw an application and allows Scottish Ministers to determine the form of the request to disregard an application.
9. In determining the 'form' it may be simply whether the request is to be in writing and whether this includes electronic copy. However, if this is also to prescribe the level of information that must be provided before a request will be considered, it should be borne in mind that the GDPR provides individuals with a number of rights in relation to their personal information, including a right to object to the processing. While Ministers may require certain information to enable them to identify the applicant's claim in order to cease processing it, Ministers should not require this to be in a particular form as this may be incompatible with the right under GDPR.

10. The GDPR requires personal data to be accurate and, where necessary, kept up to date. Individuals also have the right to request rectification or erasure of personal data held about them where it is inaccurate.
11. In addition to the ability to require notification of changes in section 31 of the Bill, Ministers should also take reasonable steps to proactively check the accuracy of claimants' details at regular intervals and update them as appropriate. We would expect the new agency to have robust procedures to ensure this occurs.

Regulations

12. The Bill allows Ministers to make regulations concerning each type of benefit, as well as regulations for making a determination without an application. We may have further comment to make in respect of the regulations when further information about them is provided by the Government.

Advising the Scottish Government

13. The Commissioner's staff are in contact with the Government to advise on the requirements of data protection law so that Ministers, in the guise of the new agency, are complying in such a way that it engenders public trust in the new social security system in respect of how it uses personal data.

We trust the Committee finds this response helpful. We would be happy to discuss any aspect of it further at the Committee's convenience if required.

Yours sincerely

Dr Ken Macdonald
Head of ICO Regions