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Llywodraeth Cymru  
Welsh Government

# Digital Economy Act (2017)

## Proposed List of Data Sharing bodies in Wales

April 2019

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.

This document is also available in Welsh.

## Introduction

The Digital Economy Act (2017) introduced new information and data sharing powers for public bodies. These new powers are intended to help support the effective delivery of public services, as well as to identify and tackle fraud against, and debts owed to, the public sector.

For a public body to be able to use these new powers, they need to be named in the Schedules to the Act itself. Additionally, to use the new powers in support of the delivery of public services to individuals and households, the public body must also be named against a specific objective which will be set out in separate regulations. The UK Government has laid new regulations which will set out four initial objectives for the public service delivery powers: Multiple Disadvantages, Television Retuning, Fuel Poverty and Water Poverty.

Between December 2017 and January 2018 we asked for views on which devolved, Welsh public bodies should be included in the Schedules to the Act, and which of those bodies should be named for each of the four objectives that have been defined by the UK Government. At the same time, we asked for views on what objectives Welsh Ministers could consider setting in the future, and for thoughts on how the new powers could be used to support and promote the use of the Welsh Language.

This document summarises the main themes in the responses we received, and explains what we have already done, and plan to do in the future, as a result of the feedback we received.

## 1. Summary of responses

25 responses were received in total, as follows:

- 17 Welsh public authorities (including 4 Welsh NHS Boards);
- 2 voluntary organisations (1 UK, one Welsh);
- 4 other organisations, and
- 2 individuals

All but two of the 25 responses received were from organisations or individuals based, or largely based, in Wales.

Responses were also received from both the Information Commissioner's Welsh Office and on behalf of the Scottish Ministers.

## 2. Method

The consultation document and the response form were accessible via the Welsh Government consultations website.

Public bodies across Wales were contacted by Welsh Government to encourage them to respond to the consultation. Welsh Government's Chief Digital Officer also published a short blog post on the consultation encouraging interested bodies and individuals to respond.

As part of this process, Welsh Government brought the consultation to the attention of the following statutory consultees as required by the Digital Economy Act 2017:

- The Ministers for the Cabinet Office;
- The Information Commissioner;
- The Scottish Ministers;
- The Commissioners for Her Majesties Revenue and Customs; and
- The Department for Finance in Northern Ireland

After the consultation closed, we reviewed all of the responses received and considered all of the suggestions for changes to what we had suggested in the consultation. These were assessed against the definition of a public body as set out in the Digital Economy Act 2017. We also sought advice from across Welsh Government about whether these bodies would

have, or could use, the type(s) of data that would mean they could effectively utilise the new data sharing powers.

The following sections summarise the responses we received and set out what changes were made as a result.

### 3. Fraud and Debt powers

The new powers in the Digital Economy Act will allow certain public bodies to share data with each other to help identify and tackle fraud against the public sector, and to identify and deal with debts owed to public authorities. Respondents were asked:

#### Question 1:

Are these the right individuals and devolved organisations to be given data sharing powers for fraud or debt?

We received 13 responses to this question, as follows:

Agree	7
Disagree	5
Neither agree nor disagree	1
Total	13

#### Question 2:

Are there additional individuals or devolved organisations that could be included? Please specify whether they would need to be included for the purposes of preventing fraud, or identifying and managing debt.

Twelve respondents answered this question. A good number of suggestions were made to include additional public authorities for the fraud and debt powers. The suggestions included:

- Welsh police forces
- Health bodies
- Registered Social Landlords

Policing is not a matter which is devolved to Wales so the Welsh Ministers are not responsible for its inclusion for these purposes. Therefore, police forces in England and Wales have not been included in the UK schedule for these powers. We do see the potential benefit of including the Police, particularly the fraud powers, and will consider carefully whether we need to work with UK Government Ministers to include Police forces in the future.

Health bodies were also suggested, particularly for the purposes of dealing with debts owed by non-EU nationals for non-emergency treatment. As outlined in the consultation, Welsh Government are unable to name health bodies in relation to UK objectives. A number of health bodies also expressed concerns that sharing data in relation to debts may make individuals reluctant to seek medical help when needed if they felt their personal information could be shared. We recognise and agree with the concerns raised about extending the new fraud and debt powers to health bodies, and will consider carefully any proposals to extend the powers to health bodies in the future.

We agreed with the suggestion to include Registered Social Landlords (RSLs). For the fraud powers, we felt that it would be helpful to include RSLs so the data they hold could be shared with local authorities and other government departments such as DWP and HMRC in cases of suspected fraud.

For the debt powers, we felt that in cases where individuals had multiple debts to public bodies, it would be helpful to include RSLs to ensure that the full picture of an individual's debt could be properly assessed when seeking and managing repayments.

## **Decision**

Registered Social Landlords (RSLs) were added to the schedules for both the Fraud and Debt powers.

The following bodies were also removed from the proposed list of bodies to be given the fraud power:

- Local Democracy and Boundary Commission for Wales
- Qualifications Wales
- A National Park Authority
- The National Museum of Wales

This is because we felt, after further investigation, that they did not have the kind of data required to be able to effectively use the powers.

## 4. Public Service Delivery Powers

The Digital Economy Act also gives some public authorities the powers to share data to deliver public services in relation to the following four objectives that have been defined by UK Government – Multiple Disadvantages, Television Retuning, Fuel Poverty and Water Poverty.

### 4.1 Multiple Disadvantages Objective

The new powers will enable public bodies to share data to improve the delivery of public services to both individuals and/or households that are affected by more than one disadvantage, such as disability, unemployment, or domestic abuse. Respondents were asked:

#### Question 3:

Are these the right individuals and devolved organisations to support the multiple disadvantages objective?

The 12 respondents answered the question as follows:

Agree	5
Disagree	4
Neither agree nor disagree	3
Total	12

#### Question 4:

Are there additional individuals or devolved organisations that could be included for the multiple disadvantages directive?

There were 18 responses to this question, with suggestions including:

- Welsh police forces
- Registered Social Landlords
- Fire and Rescue Authorities
- Further education colleges and universities
- Health bodies

As policing is not a devolved matter in Wales only the UK Parliament has the ability to include police forces. Paragraph 22 of Schedule 4 to the Digital Economy Act 2017 includes the 'chief officer of police for a police area in England and Wales.' Therefore police forces in Wales will be able to access the new powers alongside other devolved and non-devolved bodies.

A number of respondents felt that housing bodies and Registered Social Landlords could hold valuable information on tenants about the challenges and disadvantages they face. We agreed with this suggestion and Registered Social Landlords had already been included in our proposed list of bodies to be named against this objective.

Fire and Rescue Authorities were also suggested however these have already been included in the proposed list.

Many respondents felt that the exclusion of health bodies was unfortunate as they would have valuable information to contribute to any data sharing exercise. However, Welsh Government is unable to include health bodies for any of the public service objectives that the UK Government has defined. Further detail about the inclusion of health bodies can be found in Section 5.

## **Decision**

We removed Independent Schools and special post-16 educational establishments from the list – this is because on further consideration, these did not meet the definition of a public authority that could be named in Schedule 4 of the Digital Economy Act 2017.

We also removed National Park Authorities from the list of bodies to be named. This is because on investigation we felt that National Park Authorities would not have, or need, the types of data required to support data sharing arrangements under the Digital Economy Act.

## **4.2 Television Retuning Objective**

This objective is designed to allow relevant public bodies to share information that helps identify and contact individuals and households who may be eligible for assistance under a television retuning scheme. Respondents were asked:



**Question 5:**

Are these the right individuals and devolved organisations to support the television retuning objective?

The 12 respondents answered this question as follows:

Agree	6
Disagree	1
Neither agree nor disagree	5
Total	12

**Question 6:**

Are there additional individuals or devolved organisations that could be included for the television retuning objective?

Eleven responses were received to this question. Suggestions for additional bodies to be included were similar to those made for the multiple disadvantages objective; and included:

- Health bodies
- Housing authorities and registered social landlords
- Welsh police forces

As policing is not a devolved matter in Wales only the UK Parliament has the ability to include police forces. Paragraph 22 of Schedule 4 to the Digital Economy Act 2017 includes the 'chief officer of police for a police area in England and Wales.' Therefore police forces in Wales will be able to access the new powers alongside other devolved and non-devolved bodies.

As outlined in the consultation, Welsh Government are unable to name health bodies in relation to UK objectives. Further detail about the inclusion of health bodies can be found in Section 5.

We also agreed with the suggestion for Registered Social Landlords to be included for this objective, as social landlords are likely to have information about their tenants that would indicate they could be eligible for support in a television retuning scheme. We had already included Registered Social Landlords in our proposed list.

## Decision

No changes were made to the list of bodies able to share data under the television retuning objective.

### 4.3 Fuel Poverty Objective

This objective will permit specified public bodies to share information with other specified public bodies and gas and electricity suppliers to assist people living in fuel poverty.

Respondents were asked:

#### Question 7:

Are these the right individuals and devolved organisations to support the fuel poverty objective?

The 12 respondents answered this question as follows:

Agree	5
Disagree	4
Neither agree nor disagree	3
Total	12

#### Question 8

Are there additional individuals or devolved organisations that could be included for the fuel poverty objective?

Thirteen responses were received to this question. Suggestions for additional bodies included:

- Health bodies
- Educational organisations
- Registered Social Landlords

As already noted above, we are not able to include health bodies for any of the objectives as these also include UK public bodies.

Some responses also suggested that schools, colleges and universities would also be likely to have information about students and their families that could indicate that they were living in fuel poverty, and should be included. We agreed with this suggestion.

A suggestion was also made to include organisations – such as charities - that provide support to those with specific learning or other disabilities who may struggle to understand bills or other paperwork. Whilst these organisations may have a wealth of data that they could share to support the fuel and water poverty objectives, the new powers are only available to organisations that meet the definition set out in Part 45(1) of the Digital Economy Act 2017, which limits the powers to organisations that undertake tasks of a ‘public nature’. Section 45(8) also states that an organisation would not be considered a public body if they are undertaking those tasks on behalf of a public authority.

This means that charities and other organisations that provide support to individuals with learning or other disabilities cannot be given the new powers directly. However, if a support organisation is ‘providing services in connection with a specified objective to a specified person who is a public authority’ they may be able to share data in certain circumstances.

## **Decision**

Publicly funded schools, further education colleges and universities were all added to the list of bodies able to share data under the fuel poverty objective.

We also decided to include Natural Resources Wales (NRW) for this objective after further investigations within Welsh Government. NRW is a ‘first responder’ in the event of a major environmental incident, and we felt it would be useful for them to be able to share information about citizens they identify being in need that they may become aware of in course of responding to incidents.

## **4.4 Water Poverty Objective**

The water poverty objective is similar to the fuel poverty objective, in that public bodies named against this objective will be able to share data with other public bodies as well as

water and sewerage providers to assist lower income households who cannot be supplied with water or sewerage services at a reasonable cost. Respondents were asked:

**Question 9**

Are these the right individuals and devolved organisations to support the water poverty objective?

The 12 respondents answered this question as follows:

Agree	8
Disagree	2
Neither agree nor disagree	2
Total	12

**Question 10:**

Are there additional individuals or devolved organisations that could be included for the water poverty objective?

A number of suggestions were made for additional bodies to which these powers could be extended. These were similar to those suggested for the fuel poverty objective and the other objectives:

- Health bodies
- Educational organisations
- Registered Social Landlords (RSLs)
- Support organisations.

**Decision**

In common with the changes made under the fuel poverty section, publicly funded schools, further education colleges and universities were all added to the list of bodies able to share data under the water poverty objective. Similarly, we also decided to include Natural Resource Wales for the same reasons as for fuel poverty.

## 5. Wales only objectives

The legislation also enables Welsh Ministers to define additional Wales only objectives, which would allow devolved Welsh public bodies to share data under Chapter 5 of the Act. We asked for suggestions on what future Wales only objectives might be required to support public services in Wales. Respondents were asked:

### Question 11:

Are there other objectives that the Welsh Government could develop in future, and what are the current barriers for not sharing data for those purposes?

A number of suggestions were received including:

- Early intervention for troubled families;
- Supporting vulnerable people with utility bills;
- Reducing the levels of bad debt for water/sewerage services;
- Helping patients better understand and manage their illnesses;
- Supporting social care leavers;
- Supporting young people not in employment, education or training;
- Identifying and supporting service users with complex needs; and
- Reducing recidivism rates for specific categories of offenders

We also asked about what prevents data being shared for these reasons currently. A variety of reasons were given including:

- Doubts about the accuracy of the data and whether it relates to the right person(s);
- Uncertainty over the legal grounds for sharing;
- A lack of secure means to transfer data;
- Underdeveloped or unused sharing protocols; and
- Organisational caution

### Question 12:

Which individuals or organisations could be given powers to share data to support those objectives?

Only 4 suggestions were made for additional bodies that could be included, which were:

- Health workers;
- Public Service Board members;
- Any public sector body that holds information that could be of assistance to the specified objective; and
- Relevant voluntary sector organisations.

As set out in section 5, we have included health bodies for the public service delivery objective, which means that they will be able to share data with other Welsh public bodies once they are named against a specific objective.

We believe that the public authorities we have named are those which will be able to make full use of the powers. If a new objective would benefit from the addition of other public sector partners, we will work closely with UK Government to ensure that any changes to Schedule 4 of the Digital Economy Act 2017 were amended to allow them to be named.

As explained in section 5.3, we are not able to extend the new powers directly to voluntary or 3<sup>rd</sup> sector organisations as they do not meet the definition of a public authority for that purpose. However, if an organisation is undertaking work specifically in relation to an objective on behalf of a public authority that is named, they would be able to make use of the new powers on behalf of that public authority.

## **Decision**

There are no immediate plans to introduce new Wales only objectives for Welsh public authorities, however we will review all of these suggestions, and any future suggestions to consider whether they should be adopted. Some of the suggestions provided in response to Question 11 could be delivered through the objectives already put in regulation by UK Government. Welsh Government is committed to working with public sector partners across Wales and beyond to ensure that the new powers are utilised as effectively as possible.

Any objectives suggested that would benefit from the inclusion of non-devolved public bodies will need to be agreed by UK Government.

## 6. Health bodies

Whilst Welsh Government is unable to name health bodies in relation to UK objectives, the consultation outlined proposals to include a small number of health related public bodies, such as NHS Trusts, that may be able to share data in relation to future Wales only objectives. Naming Welsh health bodies in the legislation does not commit them to sharing data, but enables them to do so in the future, if it is determined that this would be of benefit. Respondents were asked:

### Question 13:

Do you agree that allowing health related bodies in Wales to share data to support specific public service objectives would be of benefit? Please explain your answer.

The 11 respondents answered as follows:

Agree	10
Disagree	1
Neither agree nor disagree	0
Total	11

### Question 14:

What safeguards would need to be in place for data held by health bodies to be shared in Wales?

Whilst responses varied, there were a number of key themes that were common across a number of the suggestions we received, such as:

- Data encryption and secure means of moving data around;
- The existing Caldicott principles on the access, use and transfer of identifiable patient information;
- Clear agreements on what could be shared, and what couldn't;
- Clear guidance and procedures to follow, in line with the requirements as set out in the new General Data Protection Regulations

**Question 15:**

What type of objectives could health bodies be able to support?

Respondents identified a number of suggestions for the types of objectives health bodies could support, including:

- Public safety and emergency planning;
- Supporting those with specific health needs;
- Reducing income inequality;
- Improving educational achievement;
- Supporting looked after children;
- Supporting the long term unemployed;
- Reducing homelessness; and
- Supporting victims of crime

Respondents from health bodies in Wales also felt that the new powers could be used to support existing health board objectives such as:

- Improving health and well-being;
- Reducing health inequalities;
- Partnership working to design and deliver care closer to patient's homes;
- Improving care outcomes;
- Learning from the experiences of individuals; and
- Using resources wisely, transforming services through innovation and research.

**Decision**

Welsh health bodies were added to Schedule 5 to the Digital Economy Act 2017, but not named against an objective. We will take this feedback into account when designing future objectives and are committed to further engagement before those objectives are set.

**Question 16:**

Should health bodies be able to share data for the purposes of dealing with debts owed to, or fraud against, public bodies? Please explain your answer.



Views on this were mixed; some respondents felt that these powers should not be given to health bodies at all, and others felt that there were circumstances in which health data could be useful for fraud and debt purposes.

For the debt powers, concerns were raised about the potential for the new powers for debt to deter people from seeking medical help when needed if they thought that this data could be used to help identify and locate them. Conversely, a number of responses felt that health bodies could make use of the new powers to help recover debts from overseas visitors who had used the NHS in non-emergency situations. Fewer concerns were raised around health bodies potential to share some data for the purposes of dealing with fraud.

### **Decision**

Health bodies in Wales are not able to share data using the new powers to identify and tackle fraud and debt. Welsh Government has no plans to alter this in the future.

## **7. Welsh Language**

The consultation outlined the importance of ensuring that data that is provided, captured or shared in the Welsh Language can be used in the same way as data in English, and that the service user's preferences are taken into account. Respondents were asked:

### **Question 16:**

How else do you think this legislation could be used to promote or support the Welsh Language?

Stakeholders responding to this question felt that the new powers could be used to ensure that an individual's preference to receive correspondence and other communications in Welsh was communicated effectively.

Additionally, one stakeholder felt the new regulations could be used as an opportunity to stress and reinforce the validity of Welsh as a language of official record creation.

### **Decision**

Welsh Government will consider whether the new powers could be used to ensure an individual's language preference are met. We are also committed to ensuring any impact on the Welsh Language is fully assessed in the development of any future objectives.

## 8. Other issues identified

Respondents were also asked:

### Question 17:

We have asked a number of questions, but are there any other issues you would like to raise about data-sharing between public bodies, or about any of the areas covered above?

A number of responses provided additional information or raised other concerns around data sharing, particularly around the safety of information, and its accuracy, and whether it's being used for its intended purpose. Welsh Government recognises that public concerns about how data is used, moved and shared are valid and expects that all public bodies that use the new powers take steps to ensure the data they share is accurate and stored safely.

Concerns were also raised about whether the public bodies named, especially the smaller ones, would have the capacity to be given the powers, particularly in light of the enhanced data protection requirements introduced in relation to the General Data Protection Regulations (GDPR) that came into force in May 2018.

Welsh Government recognises the importance of GDPR compliance and that using the new powers will result in some resource requirements for public bodies. However, the enhanced data protection regime should not prevent devolved Welsh bodies from having access to the same powers as non-devolved and English bodies. The new powers are permissive, and a public body that does not feel it has the capacity or ability to use the new powers safely will not be obliged to use them. The new powers will provide a clear and legal basis under which to share data and will not require the creation of new legal gateways that require new legislation, meaning data can be shared much more quickly.

The UK Government have published [Codes of Practice](#) for the use of all of the new powers. These set out the public body's obligations when sharing data along with details of what steps need to be taken before data is shared – including compliance with GDPR. These Codes are also available in [Welsh](#).

## **9. How we used your feedback**

The feedback we received helped us to fully review and finalise the lists of public authorities in Wales that were to be added to Schedules 4-8 of the Digital Economy Act, and the lists of bodies that were to be named against the four objectives UK Government were making.

The amendments to the Schedules to the Digital Economy Act were made through the Digital Government (Welsh Bodies) (Wales) Regulations 2018, which were approved by Welsh Ministers on 25<sup>th</sup> April 2018.

The multiple disadvantages, television retuning, fuel and water poverty objectives were set out in the Digital Government (Disclosure of Information) Regulations 2018, which were approved by the Houses of Parliament on 18<sup>th</sup> July 2018.

Welsh Government are now considering all of the suggestions made for new objectives for the public service delivery powers, and is committed to further engagement and consultation on any new objectives that we may wish to make.