

Social Security information-sharing: draft regulations

Informal consultation on new arrangements extending data sharing powers between DWP and local authorities, in relation to the provision of welfare services and social security benefits.

November 2011

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1. Introduction

1.1 The Government is planning to extend current data sharing arrangements between the Department for Work and Pensions (DWP) and local authorities (LAs) and their service providers. This consultation seeks views and comments on draft regulations which we plan to bring into force by April 2012.

1.2 In March 2011 we sent out a Call for Evidence to gather views about the potential impact of the new data sharing arrangements. Responses were very positive, and a summary of findings can be accessed at:

<http://www.dwp.gov.uk/consultations/>

1.3 Primary legislation is being amended through the inclusion of four clauses in the Welfare Reform Bill, which is being considered by Parliament. Clauses 125 and 126 introduce new regulation making powers in relation to data sharing for certain welfare services and social security benefit purposes. Clauses 127 and 128 deal with certain supplementary matters. A copy of the draft clauses are provided at **Annex A**. A full copy of the Bill can be accessed at:

<http://services.parliament.uk/bills/2010-11/welfarereform.html>

1.4 Draft regulations are set out at **Annex B** and include details about the welfare services we intend to prescribe for the purposes of clause 125 and 126. We are publishing them here for comment as part of this new consultation.

About this consultation

Who is the consultation aimed at?

1.5 This consultation is aimed at all LAs across England, Scotland and Wales, including parts of the LA that deliver HB or welfare services. We welcome views from other people or organisations who might also be interested, such as applicants for a benefit or service, or welfare rights organisations. We are happy to receive responses from anyone who wants to comment on the new policy.

How to respond to this consultation

1.6 Please send your written responses to:

Joanne Blackwood

1st Floor, Caxton House, Tothill Street, London SW1H 9NA

Or by email to:

LACONSULTATION.CALLFOREVIDENCE@DWP.GSI.GOV.UK

1.7 Please ensure your response reaches us by Friday 13 January 2012

1.8 When responding, please state whether you are doing so as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation represents. We will acknowledge your response.

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1.9 If you have any queries about this consultation please contact Joanne Blackwood at the address given above.

1.10 We have notified people and organisations who have already been involved in this work or who have expressed an interest in it. Please share this document with, or tell us about, anyone you think will want to be involved in this consultation.

1.11 We will publish a summary of the responses on the consultations section of our consultation website. The summary will also set out the next action that we will take. This can be accessed at:

<http://www.dwp.gov.uk/consultations/>

Freedom of information

The information you send us may need to be passed to colleagues within the Department for Work and Pensions and published in a summary of responses received.

All information contained in your response may be subject to publication or disclosure if requested under the Freedom of Information Act 2000. By providing personal information for the purposes of the public consultation exercise, it is understood that you consent to its disclosure and publication. If this is not the case, you should limit any personal information provided, or remove it completely. If you want the information in your response to the consultation to be kept confidential, you should explain why as part of your response, although we cannot guarantee to do this.

More information about the Freedom of Information Act can be found on the Ministry of Justice website: [Ministry of Justice: FoI Guidance](#)

Feedback on this exercise

1.15 We value your feedback on how well we consult. If you have any comments on the process of this call for evidence, for example, how it could be improved, but not about the issues raised, please contact our Consultation Coordinator:

[Roger Pugh](#)

DWP Consultation Coordinator

1st floor

Crown House

2 Ferensway

Hull HU2 8NF

2. Description of the changes

2.1 Clause 125 of the Welfare Reform Bill allows LAs to supply certain information to DWP and to LA benefit teams¹, for the purpose of assessing certain social security benefits. This will help to ensure claimants receive the correct benefit at the right time. It will make it easier for changes to be reported quickly, reducing the level of over or underpaid benefit.

2.2 Clause 126 replaces and expands existing data sharing provisions between DWP, LAs, and others such as service providers, to help fulfil our commitment to making front line public services more efficient. By widening the category of welfare services for which claimant information can be shared, LAs will be able to make it easier for those with particular needs, such as elderly and disabled people, to receive the services they are entitled to. It will also provide the opportunity to reduce administrative costs and target funds appropriately.

2.3 Clause 127 applies criminal sanctions to the unlawful disclosure of information under clause 126. And clause 128 includes some supplementary provisions relating to clauses 125 and 126.

What is the current policy?

2.4 Current legislation enables social security data to be shared to a limited extent. This is set out in the DWP's 'Guidance for local authorities on the use of social security data' which can be accessed at:

<http://www.dwp.gov.uk/docs/data-sharing-guide.pdf>

This consultation focuses on two specific provisions (Housing Benefit and Supporting People) and the introduction of new powers which will make data sharing easier for certain welfare services and social security purposes.

Housing and Council Tax Benefit

2.5 DWP is currently able to share social security data with LAs for the purpose of administering Housing Benefit and Council Tax Benefit (HB/CTB).

Supporting People

2.6 In addition, section 42 of the Welfare Reform Act 2007 allows DWP and LA HB teams to supply information to other parts of the LA to help determine eligibility to pay for a limited category of welfare services administered under a grant paid under a 'relevant enactment'. This provision has been used to assist LAs in England and Wales to decide if a person is eligible for help under the **Supporting People** scheme.

¹ For the purposes of this document all references to local authority housing benefit teams (LA HB teams) includes teams administering council tax benefit (CTB).

Supporting People services

The Supporting People programme began on 1 April 2003, bringing together seven housing-related funding streams from across central government.

Supporting People services provide housing related support to help vulnerable people to live as independently as possible in the community. This could be in their own homes or in hostels, sheltered housing or other specialised supported housing. It traditionally provides complementary support for people who may also need personal or medical care, and can be part of a package of differently funded, but co-ordinated, support which meets the needs of individuals. Supporting People may offer support with:

- Debt, benefits and money management
- Tenancy sustainment
- Independent living
- Accessing health or mental health treatment
- Provision of emergency alarms

It is now a wholly decentralised programme, administered through LAs in England and Wales, who have discretion over where to direct their funds to best meet local needs.

2.7 The regulations made under the section 42 provision also enable LA Supporting People teams in England and Wales to share information with LA HB teams in order to decide if a person is vulnerable and requires housing support to be paid direct to the landlord. In addition, the regulations enable the LA HB teams to confirm that a tenant lives in supported accommodation and is exempt from having their HB decided under Local Housing Allowance (LHA) rules.

2.8 Since April 2011 changes in the way LAs are funded have raised questions about the way section 42 works for LAs in England. The new provisions gave us the opportunity to make the situation clearer. In addition the extension to include Scotland will enable the regulations to cover Housing Support services, which are similar to Supporting People and are delivered by local authorities in Scotland.

Housing Support in Scotland

Housing support services help people to live as independently as possible in the community. They can be provided in the individual's own home or in temporary accommodation such as hostels for homeless people.

Housing support services help people manage in their home in different ways. These include assistance to claim welfare benefits, fill in forms, manage a household budget, keep safe and secure, get help from other specialist services, obtain furniture and furnishings and help with shopping and housework. They also include the provision of community alarm services in sheltered housing. The type of support that is provided will aim to meet the specific needs of the individual.

The Scottish Government is responsible for overall policy on housing support services, with local authorities responsible for the planning and delivery of services. Supporting People grant was rolled up into the main local government funding settlement in Scotland from 2008-2009 onwards.

Other welfare services

2.9 There is no general legal gateway allowing DWP or LA HB teams to share social security data with other teams in LAs to help them decide eligibility for or liability to pay for other types of welfare services. Furthermore, LAs have no general power to share customer information about welfare services with DWP for social security benefit purposes.

Obtaining consent

2.10 Without a legal gateway information can only normally be shared where the individual has given their consent. While consent is not defined in the Data Protection Act, the European Data Protection Directive defines an individual's consent as '*any freely given specific and informed indication of his wishes by which the data subject signifies his agreement to personal data relating to him being processed*'. Many of the people who are likely to be affected by the new data sharing arrangements described below are elderly people or disabled people. Some will have learning difficulties or mental health conditions. It is difficult to obtain consent unless people fully understand what it is they are consenting to. Data sharing on the basis of consent is not appropriate as individuals need to understand what they are being asked so that consent is 'informed'.

2.11 Collecting consent can be difficult and adds to administrative costs as LAs often have to visit individuals to do this. The scale of the data being shared is considerable. Dealing with this work on a case by case basis is inefficient and gives rise to possible inconsistencies in decision making. Having a legal gateway will ensure everyone is clear about the circumstances where personal data can be shared; it will allow a streamlined system to be put in place to ease the administrative problems; and with training and guidance to support the new rules, it will provide extra reassurance that personal data is being handled legally and securely.

2.12 Being able to share data in specific circumstances will reduce the burden on individuals having to provide detailed information about their benefits, or about changes in their circumstances, to different parts of government, and it will allow them to more easily receive the benefits and services to which they are entitled.

What is the change in policy?

2.13 The provisions in clauses 125 and 126 of the Welfare Reform Bill introduce new regulation making powers which will make sharing data easier for certain welfare services and social security purposes.

Clause 125

2.14 This clause will allow LAs to tell DWP or LA HB teams when a person is admitted to or discharged from hospital or a care home, for the purposes of assessing awards of a relevant benefit.

2.15 This will provide an additional route for reporting changes relating to being admitted or discharged from hospital or a care home to the relevant benefit team, helping to ensure more awards are assessed promptly and accurately at a time when the claimant may not realise the need to report the change.

2.16 This clause will also allow LA social services departments to tell the HB team whether a person needs overnight care at home. New HB rules have been introduced which mean some disabled people are entitled to receive a higher rate of benefit where they need an extra room for a non resident overnight carer. This will help to ensure that the claimant's application for help with housing costs is dealt with quickly and the correct amount is awarded.

2.17 There are two regulation making provisions in this clause. The first is set out at subsection (2) (c) of that clause. DWP requires certain information from LAs when a person receives help with the cost of any residential care fees, and this is prescribed in regulation 3 in the draft regulations (see Annex B). The second is set out in subsection (7) (d). This allows DWP to prescribe benefits that are a relevant benefit for the purpose of clause 125 and this is provided at regulation 4 in Annex B.

Clause 126

2.18 This clause introduces a power allowing:

(a) the Secretary of State (DWP) to supply relevant information to a qualifying person (LAs, or others including service providers),

and

(b) qualifying persons to use or supply relevant information to DWP or other qualifying persons, for purposes relating to welfare services, HB or certain purposes relating to social security benefit. The details as prescribed in the regulations are set out in paragraph 2.21.

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2.19 Since publication of the Welfare Reform Bill, a Government amendment has been tabled to clause 126, which changes the definition of relevant information to include relevant “social security benefit”. This has the effect of removing the need to prescribe each benefit individually in the regulations, making it much simpler to understand. As a consequence of this amendment, clause 128 will also need amendment, removing the definition of income-based Jobseeker’s Allowance and Employment and Support Allowance. The amended version of both clauses is shown in Annex A.

2.20 Neither of these provisions interferes with the current data-sharing provision in Wales and Scotland and will not introduce restrictions. Where information has been supplied by, or derived from information supplied by the Secretary of State, a person providing services to the Secretary of State or a person engaged in the administration of housing benefit, and it is held by a Welsh or Scottish local authority only for an excepted purpose, these provisions allow that information to be supplied to another Welsh or Scottish authority where it is to be used for an excepted purpose. However, if it has not been supplied in this manner, these provisions do not allow this information to be shared between authorities for an excepted purpose. This is because an excepted purpose (in this context welfare services) relates to a provision within the legislative competence of devolved administrations. It would be up to Wales and Scotland to legislate on devolved matters. For example, a Welsh or Scottish local authority may obtain financial details direct from their customer in order to calculate the amount the customer needs to contribute towards their domiciliary care. Clause 126(3)(b) and these regulations will not permit that Welsh or Scottish local authority to supply this information to another Welsh or Scottish authority for them to use this information to calculate contributions towards residential care.

2.21 A number of welfare services, along with related purposes for which information may be held and used have been prescribed in the draft regulations. The effect will be to allow social security data to be shared between DWP, LA HB teams and other parts of a LA, for the purpose of deciding a person’s eligibility for a service, and in particular whether a person has to pay towards any fees or charges. The services prescribed are as follows:

- **Blue Badge scheme:** special parking permits for disabled people. Those in receipt of the higher rate mobility component of Disability Living Allowance (DLA) are automatically entitled to a Blue Badge upon application.
- **Disabled Facilities Grant (England and Wales) and Disability Adaptations Grant (Scotland):** provision of grants to adapt a disabled person’s home, awarded to people on a low income.
- **Discretionary Housing Payments:** financial help for people on HB or CTB when a LA considers that help with housing costs is needed. An assessment of overall income is taken into account, along with other factors. Arrangements need to be reviewed in light of the introduction of Universal Credit in 2013.
- **Non Residential Care:** this covers services such as day care, home helps and meals. Under ‘Fairer Charging’ rules people are expected to pay a charge for each service, which is subject to a means test.

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- **Residential care:** a means test is used to determine how much a person must pay towards the fees for their place in a residential home.
- **Supporting People (England and Wales), and Housing Support (Scotland):** referred to in the regulations as ‘Non Statutory’ services in respect of services in England. The types of services provided are very similar across England, Scotland and Wales, as illustrated in the text boxes on pages 7 and 8 above. Can be free to people who are in receipt of HB and subject to a means test for everyone else.
- **Homelessness Functions:** information sharing to help ensure LAs provide advice and assistance to people at risk of becoming homeless.

Question

Have we included the right list of purposes for which information may be held and used? What other purposes relating to information held and used do we need to prescribe?

Housing Benefit decisions

2.22 The regulations in conjunction with clause 126 (3) will allow information to be used or reused by LA Supporting People teams and HB teams in England and Wales, relating to whether a person may have difficulty managing their financial affairs or be unlikely to pay their rent (so that the HB team may need to consider paying HB direct to the landlord). They will also allow the LA to confirm that a person is living in supported accommodation or certain other types of accommodation (which will mean that it is not the LHA rules that apply). And they will continue to allow HB teams to confirm that a person is receiving HB which entitles them to free Supporting People services.

2.23 The regulations will extend these provisions to cover Housing Support services in Scotland, which although similar to the Supporting People scheme, had not previously been covered by the data sharing provisions in the 2007 Welfare Reform Act.

2.24 The regulations will be amended from 2013 to allow data to be supplied to DWP by qualifying persons, such as LAs following the replacement of HB with housing costs included in Universal Credit and Pension Credit.

Homelessness Functions

2.25 The regulations together with clause 123 (3) will allow information to be shared between LA HB teams, and LA Housing Departments (including Housing Options, and Homelessness Prevention teams) in relation to any of a local authority’s homelessness functions under the housing legislation (Part 7 of the Housing Act 1996 in England and Wales, and Part 2 of the Housing (Scotland) Act 1987)).

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2.26 Clause 126(3)(b) will allow a two-way gateway, between the teams delivering the homelessness service and HB teams, to share information. This typically might include details about the following:

- claimants affected by changes to HB;
- applicants who have applied for a Discretionary Housing Payment;
- claimants who have received a significant reduction in CTB;
- people in rent arrears who may not be receiving any HB they are entitled to;
- people who are at risk of becoming homeless, and who may not be claiming any HB they are entitled to.

It will be up to each LA to decide how much information needs to be shared and how the data sharing would work in practice. A legal gateway will enable different teams within the LA (or with another LA or service provider where appropriate), to provide a joined-up service around homelessness functions.

2.27 The changes to HB legislation introduced from April 2011 have reduced entitlement to HB for some claimants and we need to enable both HB teams and homelessness prevention teams to work together to identify people affected by the changes. This will allow LAs to offer them targeted support, particularly in the case of vulnerable individuals who may be more at risk of becoming homeless as a result of the reforms. Many authorities have judged it is not possible for the HB teams to alert the homelessness team to those particularly at risk, which has limited timely homelessness prevention support to be put in place. This measure along with clause 126(3) (b) will allow the two LA teams to share information to help prevent homelessness.

2.28 We have not included provision for a gateway to allow DWP to supply data to LAs in relation to the homelessness function as we understand the bulk of the information to be shared and re-used will be between housing and HB teams in a LA. Where a person is receiving or has applied for HB or CTB the LA will hold a significant amount of information locally in relation to that claim. However if LAs believe that there is a need for access to wider social security data we would like you to tell us that, and we will consider whether there is a good case for widening the gateway.

2.29 The regulations will be amended from 2013 to allow the supply of data to DWP by qualifying persons, such as LAs following the replacement of HB with housing costs included in Universal Credit and Pension Credit.

Question

The regulations along with clause 126(3) (b) will allow data to be exchanged and used between different parts of a LA. Would it be useful to have a gateway allowing DWP to provide social security data to LAs in relation to homelessness functions?

Re-using information

2.30 The new provisions will give LAs the ability to reuse any information held for any of the purposes set out in the regulations. For example, DWP supplies information to one part of the LA so they can assess a person's contribution to non residential care. Shortly after the individual applies for a Disabled Facility Grant, the LA can reuse the information they hold in order to assess if the person is entitled to a Disabled Facility Grant, without having to go back to the DWP with a separate request for information. Please note paragraph 2.20

2.31 This provision includes information already held by HB teams, as well as information that has been supplied by DWP.

2.32 We could set out in guidance some advice on how long data can be kept for and reused in this way. Alternatively LAs may wish to decide for themselves whether any information held is still current or has become out of date.

Question

How long should information be kept with the possibility of it being reused in this way? Should this be set out in guidance or should LAs be allowed to determine for themselves whether information is out of date?

3. Implementation and Next Steps

3.1 If Parliament approves clauses 125-128 as part of the Welfare Reform Bill, we intend to bring regulations into force by April 2012.

3.2 The introduction of the legislation will mean that individuals will no longer need to give their consent for their data to be used for the purposes prescribed. In order to implement the new regulations, existing processes for sharing data between DWP and LAs will need to be reviewed. DWP is currently considering various options.

3.3 Guidance will be provided as early as possible in 2012 so that LAs can consider in advance how the new arrangements might work. We will work with LAs to develop our plans and will consult widely on the drafting of the Guidance.

Questions

- **What issues would you like to see covered in the Guidance?**
- **Would your authority like to have very detailed Guidance?**
- **Would you prefer Guidance that just gives a general framework, leaving LAs to develop their own practices locally?**

3.4 This set of draft regulations prescribes a number of welfare services which, in conjunction with clause 126(3) (b) will enable data sharing without needing individual consent. We intend to bring forward a second set of regulations during 2012, to come into force in 2013, prescribing further welfare services as necessary. This is likely to include local schemes replacing elements of the Social Fund. We are also looking at other schemes, for example Concessionary Travel, and the sharing of data with Fire and Rescue Services. These and other schemes that are put forward as a result of this consultation could be included in the next set of regulations if there is a strong case to do so.

Questions

Are there any additional schemes or services you would like to see included in future data sharing regulations?

4. Consultation

4.1 The evidence and arguments submitted in the responses to the March consultation document (***Sharing customer data between DWP and local authorities***) showed that there was clear support for increased data sharing between DWP and LAs. The data sharing clauses remain part of the Welfare Reform Bill that is still making its way through Parliament. We have now decided to publish draft regulations so that Parliament, LAs and others can see how we propose to use the new measures.

4.2 This consultation gives LAs and others, who may be interested, a second opportunity to comment on the new legislation. In particular, we welcome any views about the content of the draft regulations. Some specific questions have been posed in this document:

Questions

Welfare Services

- Have we included the right list of purposes for which information may be held and used? What other purposes relating to information held and used do we need to prescribe?

Homelessness Functions

- The regulations along with clause 126(3)(b) will allow data to be exchanged and used between different parts of a LA. Would it be useful to have a gateway allowing DWP to provide social security data to LAs in relation to homelessness function?

Reusing information

- How long should information be kept with the possibility of it being reused in this way?
- Should this be set out in Guidance or should LAs be allowed to determine for themselves whether information is out of data?

Implementation and Next Steps

- What issues would you like see covered in the Guidance?
- Would your authority like to have very detailed Guidance?
- Would you prefer Guidance that just gives a general framework, leaving LAs to develop their own practices locally?
- Are there any additional schemes or services you would like to see included in future data sharing regulations?

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4.3 Please do not feel constrained by these questions. If you have any other comments or views you want to express, we will be very pleased to receive them.

4.4 The responses to this consultation will be used to help finalise the drafting of regulations, and the format of Guidance.

4.5 Deadline for responses is **13 January 2012**.

ANNEX A – Welfare Reform Bill

125. Information-sharing in relation to provision of overnight care etc

(1) This section applies where a local authority holds information falling within subsection (2) in relation to a person who is receiving or is likely to receive a relevant service.

(2) The information referred to in subsection (1) is

(a) information as to the fact of the provision or likely provision of the service;

(b) information about when the provision of the service begins or ends or is likely to do so;

(c) other prescribed information relating to the service provided and how it is funded (including the extent to which it is funded by the recipient).

(3) In this section “relevant service” means-

(a) a service consisting of overnight care in the individual’s own home provided by or on behalf of a local authority;

(b) a residential care service provided by or on behalf of a local authority;

(c) a service consisting of overnight hospital accommodation.

(4) In subsection (3)(c) “hospital accommodation” means-

(a) in relation to England, hospital accommodation within the meaning of the National Health Service Act 2006 which is provided by a Primary Care Trust, an NHS trust or an NHS foundation trust;

(b) in relation to Wales, hospital accommodation within the meaning of the National Health Service (Wales) Act 2006 which is provided by a Local Health Board or an NHS trust;

(c) in relation to Scotland, hospital accommodation within the meaning of the National Health Service (Scotland) Act 1978 which is provided by a Health Board or Special Health Board but excluding accommodation in an institution for providing dental treatment maintained in connection with a dental school.

(5) The local authority may-

(a) itself use the information for purposes relating to the payment of a relevant benefit to the individual, or

(b) supply the information to a person specified in subsection (6) for those

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purposes.

(6) The persons referred to in subsection (5) are.

- (a) the Secretary of State;
- (b) a person providing services to the Secretary of State;
- (c) a local authority;
- (d) a person authorised to exercise any function of a local authority relating to a relevant benefit;
- (e) a person providing services relating to a relevant benefit to a local authority.

(7) In this section “relevant benefit” means-

- (a) universal credit;
- (b) housing benefit;
- (c) council tax benefit;
- (d) any prescribed benefit.

(8) Regulations under subsection (7) may not prescribe a benefit provision for which is within the legislative competence of the Scottish Parliament.

126. Information-sharing in relation to welfare services etc

(1) The Secretary of State, or a person providing services to the Secretary of State, may supply relevant information to a qualifying person for prescribed purposes relating to welfare services.

(2) A qualifying person who holds relevant information for a prescribed purpose relating to welfare services may supply that information to-

- (a) the Secretary of State, or
- (b) a person providing services to the Secretary of State, for a prescribed purpose relating to a ~~prescribed~~ relevant social security benefit.

(3) A qualifying person who holds relevant information for a prescribed purpose relating to welfare services or housing benefit may-

- (a) use the information for another prescribed purpose relating to welfare services or housing benefit;
- (b) supply it to another qualifying person for use in relation to the same or another prescribed purpose relating to welfare services or housing benefit.

(4) Relevant information supplied under subsection (1) or (3) to a qualifying person may be supplied by that person to a person who provides qualifying welfare services for purposes connected with the provision of those services.

(5) In subsection (4) services are qualifying welfare services if.

- (a) a local authority, or
- (b) a person who is a qualifying person by virtue of subsection (11)(g),

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contributes or will contribute to the expenditure incurred in their provision.

(6) The Secretary of State may not exercise the power under subsection (3) to prescribe purposes for which information may be supplied by a qualifying person so as to prescribe an excepted purpose in relation to excepted information held by a Welsh body.

(7) In subsection (6)

- (a) excepted information is information held by the Welsh body that-
 - (i) is not supplied by, or derived from information supplied to another person by, the Secretary of State or a person providing services to the Secretary of State or a person engaged in the administration of housing benefit, and
 - (ii) is held only for an excepted purpose;
- (b) an excepted purpose is a purpose relating to a matter provision for which
 - (i) is within the legislative competence of the National Assembly for Wales, or
 - (ii) is made by the Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Assembly Government.

(8) The Secretary of State may not exercise the power in subsection (3) to prescribe purposes for which information may be supplied by a qualifying person so as to prescribe an excepted purpose in relation to excepted information held by a Scottish body.

(9) In subsection (8)

- (a) excepted information is information held by the Scottish body that-
 - (i) is not supplied by, or derived from information supplied to another person by, the Secretary of State or a person providing services to the Secretary of State or a person engaged in the administration of housing benefit, and
 - (ii) is held only for an excepted purpose;
- (b) an excepted purpose is a purpose relating to a matter provision for which is within the legislative competence of the Scottish Parliament.

(10) Subsections (1) to (4) do not apply in a case where the supply or use of information is authorised by section 125.

(11) In this section “qualifying person” means-

- (a) a local authority;
- (b) a person authorised to exercise any function of such an authority relating to welfare services;
- (c) a person providing services to a local authority relating to welfare services;
- (d) an authority which administers housing benefit;
- (e) a person authorised to exercise any function of such an authority relating to housing benefit;
- (f) a person providing to such an local authority services relating to housing benefit;

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(g) a person prescribed or of a description prescribed by the Secretary of State.

~~(12) In this section “relevant information” means information relating to-~~

- ~~— (a) universal credit;~~
- ~~— (b) state pension credit;~~
- ~~— (c) income support;~~
- ~~— (d) income-based jobseeker’s allowance;~~
- ~~— (e) income-related employment and support allowance;~~
- ~~— (f) housing benefit;~~
- ~~— (g) any prescribed benefit;~~
- ~~— (h) welfare services.~~

(13) In this section -

~~“welfare services” includes services which provide accommodation, support, assistance, advice or counselling to individuals with particular needs, and for these purposes “assistance” includes assistance by means of a grant or loan or the provision of goods or services;~~

~~“person engaged in the administration of housing benefit” means-~~

- ~~(a) an authority which administers housing benefit,~~
- ~~(b) a person authorised to exercise any function of such an authority relating to housing benefit, or~~
- ~~(c) a person providing to such an authority services relating to housing benefit;~~

~~“relevant information” means information relating to~~

- ~~(a) any relevant social security benefit, or~~
- ~~(b) welfare services~~

~~“relevant social security benefit “ has the meaning given in section 121DA(7) of the Social Security Benefit Administration Act 1992.”~~

~~“Scottish body” means-~~

- ~~(a) a local authority in Scotland,~~
- ~~(b) a person authorised to exercise any function of such an authority relating to welfare services,~~
- ~~(c) a person providing to a local authority in Scotland services relating to welfare services, or~~
- ~~(d) a person prescribed or of a description prescribed by the Secretary of State;~~

~~“Welsh body” means~~

- ~~(a) a local authority in Wales,~~
- ~~(b) a person authorised to exercise any function of such an authority relating to welfare services,~~
- ~~(c) a person providing to a local authority in Wales services relating to welfare services, or~~
- ~~(d) a person prescribed or of a description prescribed by the Secretary of State;~~

“welfare services” includes services which provide accommodation, support, assistance, advice or counselling to individuals with particular needs, and for these purposes “assistance” includes assistance by means of a grant or loan or the provision of goods or services

127. Unlawful disclosure of information

(1) A person to whom subsection (3) applies is guilty of an offence if the person discloses without lawful authority any information—

- (a) which comes to the person by virtue of section 126(1), (3) or (4), and
- (b) which relates to a particular person.

(2) This subsection applies to—

- (a) a person mentioned in section 126(11)(a) to (c);
- (b) a person who provides qualifying welfare services (within the meaning of section 126);
- (c) a person who is or has been a director, member of the committee of 35management, manager, secretary or other similar officer of a person mentioned in paragraph (a) or (b);
- (d) a person who is or has been an employee of a person mentioned in paragraph (a) or (b).

(3) A person guilty of an offence under this section is liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine or both, or
- b) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum or both.

(4) It is not an offence under this section—

- (a) to disclose information in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it;
- (b) to disclose information which has previously been disclosed to the public with lawful authority.

(5) It is a defence for a person (“D”) charged with an offence under this section to prove that at the time of the alleged offence—

- (a) D believed that D was making the disclosure in question with lawful authority and had no reasonable cause to believe otherwise, or
- (b) D believed that the information in question had previously been disclosed to the public with lawful authority and had no reasonable cause to believe otherwise.

(6) A disclosure is made with lawful authority if it is so made for the purposes of section 123 of the Social Security Administration Act 1992.

(7) This section does not affect that section.

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(8) Regulations under section 126(11)(g) may include provision for applying the provisions of this section to—

- (a) a person who is a qualifying person within the meaning of section 126 by virtue of the regulations, or
- (b) a person associated with such a qualifying person by reason of the person's office or employment or otherwise.

(9) In relation to an offence under this section committed in England and Wales before the commencement of section 154(1) of the Criminal Justice Act 2003 (increase in maximum term that may be imposed on summary conviction of offence triable either way) the reference in subsection (3)(b) to 12 months must be taken to be a reference to 6 months.

128. Sections 125 to 127: supplementary

(1) In sections 125 and 126—

“benefit” includes any allowance, payment, credit or loan;

~~“income-based jobseeker's allowance” has the same meaning as in the Jobseekers Act 1995;~~

~~“income-related employment and support allowance” means an income-related allowance under Part 1 of the Welfare Reform Act 2007;~~

“local authority” means—

- (a) a county or district council in England;
- (b) an eligible parish council (within the meaning of Chapter 1 of Part 1 of the Localism Act 2011);
- (c) a London borough council;
- (d) the Common Council of the City of London in its capacity as a local authority;
- (e) the Council of the Isles of Scilly;
- (f) a county or county borough council in Wales;
- (g) council constituted under section 2 of the Local Government etc. (Scotland) Act 1994;

“prescribed” means prescribed in regulations made by the Secretary of State.

(2) Any power to make regulations under sections 125 and 126 includes power—

- (a) to make different provision for different purposes, cases and areas;
- (b) to make such incidental, supplemental, consequential, transitional or saving provision as the Secretary of State thinks necessary or expedient.

(3) Regulations under sections 125 and 126 must be made by statutory instrument.

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(4) A statutory instrument containing regulations under section 125 or 126 is subject to annulment in pursuance of a resolution of either House of Parliament.

(5) Until the coming into force of provision for identifying eligible parish councils within the meaning of Chapter 1 of Part 1 of the Localism Act 2011, the reference in subsection (1) to an eligible parish council within the meaning of that Chapter is to be read as a reference to an eligible parish council within the meaning of Part 1 of the Local Government Act 2000.

(6) The following are repealed—

(a) sections 42 and 43 of the Welfare Reform Act 2007;

(b) section 69(2)(a) of that Act.

ANNEX B - Draft Regulations

STATUTORY INSTRUMENTS

2012 No.

SOCIAL SECURITY

Social Security (Information-sharing in relation to Welfare Services etc.) Regulations 2012

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	***

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 125(2) and (7), 126(1), (3) and 128 (1) and (2) of the Welfare Reform Act 2011⁽²⁾.

In respect of provisions in these Regulations relating to housing benefit, the Secretary of State has consulted with such organisations appearing to him to be the representative of the authorities concerned⁽³⁾.

Citation and commencement

1. These Regulations may be cited as the Social Security (Information-sharing in relation to Welfare Services etc.) Regulations 2012 and come into force on...

Interpretation

2. In these Regulations—

“the 2011 Act” means the Welfare Reform Act 2011;

“attendance allowance” means an allowance under section 64 of the Contributions and Benefits Act;

“the Contributions and Benefits Act” means the Social Security Contributions and Benefits Act 1992⁽⁴⁾;

⁽²⁾ 2011 c...Section 128(1) is an interpretation provision and is cited for the meaning of the word “prescribed”.

⁽³⁾ See section 176(1) of the Social Security Administration Act 1992 (c.5). Section 176(1)(a) is amended by paragraph 23 of Schedule 9 to the Local Government Finance Act 1992(c.14).

⁽⁴⁾ 1992 c.4.

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“council tax benefit” has the same meaning as in section 131 of the Contributions and Benefits Act⁽⁵⁾;

“a deferred payment agreement” has the meaning given in section 55(3) of the Health and Social Care Act 2001⁽⁶⁾ or section 6(2) of the Community Care and Health (Scotland) Act 2002⁽⁷⁾ as the case may require;

“disability adaptation grant” means a payment made to assist with adaptations to the house of a disabled person under Part 2 of the Housing (Scotland) Act 2006⁽⁸⁾, where these adaptations are required to make the house suitable for the accommodation, welfare or employment of that person;

“disability living allowance” means an allowance under section 71 of the Contributions and Benefits Act⁽⁹⁾;

“disabled facilities grant” means a grant paid under Chapter 1 of Part 1 of the Housing Grants, Construction and Regeneration Act 1996⁽¹⁰⁾;

“disabled person’s badge” has the meaning given in

- (a) regulation 2(1) of the Disabled Persons (Badges for Motor Vehicles) (England) Regulations 2000⁽¹¹⁾;
- (b) regulation 2(1) of the Disabled Persons (Badges for Motor Vehicles) (Wales) Regulations 2000⁽¹²⁾; and
- (c) regulation 2(1) of the Disabled Persons (Badges for Motor Vehicles) (Scotland) Regulations 2000⁽¹³⁾,

as the case may require;

“discretionary housing payment” means a payment made pursuant to regulation 2(1) of the Discretionary Financial Assistance Regulations 2001⁽¹⁴⁾”

“domiciliary care” is care or assistance of any description provided to an adult person by reason of their age, health or any disability, whether provided continuously or not and whether or not provided at a place where they live, but excludes care or assistance provided to a person in residential care;

“excluded tenancy” means a tenancy of a type falling within any of paragraphs 4 to 11 of Schedule 2 to the Housing Benefit Regulations (excluded tenancies) or paragraphs 4 to 11 of Schedule 2 to the Housing Benefit (State Pension Credit) Regulations (excluded tenancies), as the case may require;

⁽⁵⁾ Section 131 has been substituted by paragraph 4 of Schedule 9 to the Local Government Finance Act 1992 (c.14).

⁽⁶⁾ 2001 c. 15.

⁽⁷⁾ 2002 asp.5

⁽⁸⁾ 2006 asp 1.

⁽⁹⁾ Section 71 is amended by section 67(1) of the Welfare Reform and Pensions Act 1999 (c.30).

⁽¹⁰⁾ 1996 c.53 as amended by the Housing Act 2004 (c.34).

⁽¹¹⁾ S.I. 2000/682 as amended by S.I. 2000/1507.

⁽¹²⁾ S.I. 2000/1786.

⁽¹³⁾ S.S.I. 2000/59 as amended by S.S.I. 2000/170.

⁽¹⁴⁾ S.I. 2001/1167.

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“exempt accommodation” has the meaning given in paragraph 4(10) of Schedule 3 to the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006⁽¹⁵⁾ (transitional and savings provision);

“hostel” has the meaning given regulation 2(1) of the Housing Benefit Regulations or regulation 2(1) of the Housing Benefit (State Pension Credit) Regulations, as the case may require;

“housing benefit” has the meaning given in section 130(1) of the Contributions and Benefits Act;

“housing benefit claimant” means a person who has made a claim for or is in receipt of housing benefit;

“the Housing Benefit Regulations” means the Housing Benefit Regulations 2006⁽¹⁶⁾;

“the Housing Benefit (State Pension Credit) Regulations” means the Housing Benefit (Persons who have attained the qualifying age for state pension credit) Regulations 2006⁽¹⁷⁾;

“housing support services” means services of a type falling within the Schedule to the Housing (Scotland) Act 2001 (Housing Support Services) Regulations 2002⁽¹⁸⁾;

“incapacity benefit” means a benefit under section 30A of the Contributions and Benefits Act⁽¹⁹⁾;

“income-based jobseeker’s allowance” has the meaning given in section 1(4) of the Jobseekers Act 1995;

“income-related employment and support allowance” means employment and support allowance payable in accordance with section 1(2)(b) of the Welfare Reform Act 2007;

“income support” has the same meaning as section 124 of the Contributions and Benefits Act⁽²⁰⁾;

“landlord” includes a person to whom rent is payable by the person entitled to a rent allowance for the purposes of regulation 95 of the Housing Benefit Regulations (circumstances in which payment is to be made to a landlord) or regulation 76 of the Housing Benefit (State Pension Credit) Regulations (circumstances in which payment is to be made to a landlord), as the case may require;

“local housing allowance” means an allowance determined in accordance with paragraph 2 of Schedule 3B to the Rent Officers Order;

“non-statutory assistance” means assistance provided by a local authority in England, for the purpose of enabling people aged 18 or over to overcome barriers to participation in society in the form of the funding, planning, monitoring or delivering housing related support services which assist such people to live more independently within their home or community but does not include the grant of a tenancy or the provision of accommodation;

“registered social landlord” means a landlord falling within regulation 13C(5)(a) of the Housing Benefit (State Pension Credit) Regulations;

⁽¹⁵⁾ S.I. 2006/217. Paragraph 4 was substituted by S.I. 2007/2870.

⁽¹⁶⁾ S.I. 2006/213.

⁽¹⁷⁾ S.I. 2006/214 as amended by S.I. 2007/2869, 2008/586 and 2010/671.

⁽¹⁸⁾ S.S.I. 2002/444.

⁽¹⁹⁾ Section 30A is inserted by section 1(1) of the Social Security (Incapacity for Work) Act 1994 (c.18) and amended by section 64 of the Welfare Reform and Pensions Act 1999 (c. 30).

⁽²⁰⁾ Section 124 is amended by the Jobseekers Act 1995 (c.18), Welfare Reform and Pensions Act 1999 (c.30), State Pension Credit Act 2002 (c.16), Civil Partnership Act 2004 (c.33), Welfare Reform Act 2007 (c.5), Welfare Reform Act 2009 (c.24)

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“rent” has the same meaning as it has in the Housing Benefit Regulations or the Housing Benefit (State Pension Credit) Regulations as the case may require;

“Rent Officers Order” means the Rent Officers (Housing Benefit Functions) Order 1997⁽²¹⁾ or the Rent Officers (Housing Benefit Functions) (Scotland) Order 1997⁽²²⁾, as the case may be’

“residential care” means—

(a) in England and Wales the provision of accommodation together with nursing and personal care in a care home, as defined in section 3 of the Care Standards Act 2000⁽²³⁾;

(b) in Scotland, the provision of accommodation together with nursing, personal care or personal support by a care home service as defined in paragraph 2 of schedule 12 to the Public Services Reform (Scotland) Act 2010⁽²⁴⁾;

“resident” means a recipient of residential care;

“state pension credit” has the same meaning as section 1 of the State Pension Credit Act 2002⁽²⁵⁾;

“supporting people programme in Wales” means a programme of assistance provided by a local authority in Wales, for the purpose of enabling people aged 16 or over to overcome barriers to participation in society in the form of the funding, planning, monitoring or delivering housing related support services which assist such people to live more independently within their home or community but does not include the grant of a tenancy or the provision of accommodation.

Prescribed information under section 125: provision of overnight care etc.

3.—(1) The information prescribed under section 125(2)(c) of the 2011 Act (information held by a local authority) is—

- (a) whether a resident is meeting the costs of their residential care service in full and if so the date this commenced and the period over which the cost is intended to be met;
- (b) whether the local authority is funding the cost of a resident’s residential care in full or in part, and if so—
 - (i) the date from which the funding commenced and the period intended to be covered by it;
 - (ii) the date when the funding stopped or is intended to stop;
 - (iii) the enactment under which the funding is to be provided;
 - (iv) whether there exists any agreement enabling the local authority to recover the cost of the funding on the sale of the resident’s home and if so, when the repayment is intended to commence; and
 - (v) whether the local authority has entered into a deferred payment agreement with the resident.

⁽²¹⁾ S.I. 1997/1984. Schedule 3B is inserted by article 4 of the Rent Officers (Housing Benefit Functions) Amendment Order 2007 (S.I. 2007/2871) and is amended by S.I. 2008/3156; S.I. 2009/2459; and S.I. 2010/2836.

⁽²²⁾ S.I. 1997/1995. Schedule 3B is inserted by article 13 of the Rent Officers (Housing Benefit Functions) Amendment Order 2007 (S.I. 2007/2871) and is amended by S.I. 2008/3156; 2009/2459; and 2010/2836.

⁽²³⁾ 2000 c.14. Section 3 is amended by paragraph 4 of Schedule 5 to the Health and Social Care Act 2008 (c.14).

⁽²⁴⁾ 2010 asp.8.

⁽²⁵⁾ 2002 c.16.

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Prescribed benefits for the purposes of section 125

- 4.—(1) The benefits prescribed under section 125(7)(d) of the 2011 Act are—
- (a) attendance allowance;
 - (b) disability living allowance;
 - (c) income-based jobseeker's allowance;
 - (d) income-related employment and support allowance;
 - (e) income support; and
 - (f) state pension credit.

Supply of relevant information by the Secretary of State under section 126(1) of the 2011 Act

5.—(1) The purposes prescribed under section 126(1) of the 2011 Act (purposes for which the Secretary of State or a person providing services to the Secretary of State may supply relevant information to a qualifying person) are—

- (a) determining a person's eligibility to receive a welfare service listed in paragraph (2);
 - (b) determining the amount of any money to be paid, to a claimant in the provision of such a welfare service, to a person applying for or receiving that service; or
 - (c) determining whether a person applying for or receiving such a welfare service is liable to contribute towards the cost of that service and if so the amount of that contribution.
- (2) The welfare services referred to in paragraph (1) are—
- (a) the payment of a disability adaptation grant;
 - (b) the payment of a disabled facilities grant;
 - (c) the provision of a disabled person's badge;
 - (d) the making of a discretionary housing payment;
 - (e) the provision of domiciliary care;
 - (f) the provision of housing support services;
 - (g) the provision of non-statutory assistance;
 - (h) the provision of the supporting people programme Wales; or
 - (i) residential care.

Holding purposes relating to welfare services and housing benefit

6.—(1) The purposes prescribed under section 126(3) of the 2011 Act as purposes for which relevant information is held by a qualifying person are any of the following—

- (a) determining a person's eligibility or continued eligibility to receive a welfare service listed in regulation 5(2);
- (b) determining the amount of any money to be paid in the provision of such a welfare service to a person applying for or receiving that service;
- (c) determining whether a person applying for or receiving such a welfare service is liable to contribute towards the cost of that service and if so the amount of that contribution;
- (d) in relation to any of a local authority's functions under—
 - (i) part 7 of the Housing Act 1996⁽²⁶⁾; or
 - (ii) part 2 of the Housing (Scotland) Act 1987⁽²⁷⁾,

⁽²⁶⁾ 1996 c.52.

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as the case may require;

- (e) determining whether a person is in receipt of housing benefit;
- (f) determining the amount of housing benefit payable by reference to the local housing allowance;
- (g) determining whether a person is in receipt of council tax benefit;
- (h) determining whether a housing benefit claimant is likely to have difficulty in managing their financial affairs;
- (i) determining the probability that a housing benefit claimant will pay their rent;
- (j) determining whether the landlord—
 - (i) was or is to provide qualifying welfare services[to that person], but
 - (ii) has not done so or is unlikely to do so;
- (k) determining whether—
 - (i) the landlord of a housing benefit claimant is a registered social landlord,
 - (ii) a housing benefit claimant occupies as their home a dwelling which is exempt accommodation,
 - (iii) the tenancy of a housing benefit claimant is an excluded tenancy,
 - (iv) a housing benefit claimant occupies a houseboat, caravan or mobile home as their home, or
 - (v) a housing benefit claimant resides in a hostel.

Using purposes relating to welfare services and housing benefit

7.—(1) Subject to paragraph (3), paragraph (2) lists the purposes prescribed under section 126(3) of the 2011 Act as purposes for which relevant information may be used by—

- (a) a qualifying person in relation to whom regulation 6 applies; or
- (b) another qualifying person to whom the relevant information has been supplied under section 126(3)(b) of that Act.

(2) The purposes are any purposes connected with—

- (a) determining in relation to the welfare services referred to in regulation 5(2), the matters referred to in regulation 5(1);
- (b) discharging any of its functions under Part 7 of the Housing Act 1996 or Part 2 of the Housing (Scotland) Act 1987, as the case may be;
- (c) applying in relation to housing benefit any of the following regulations—
 - (i) regulation 13C(5) of the Housing Benefit Regulations⁽²⁸⁾;
 - (ii) regulation 96(3) and (3A)(b)(i) or (ii) of the Housing Benefit Regulations⁽²⁹⁾, if a relevant authority is considering making direct payments in accordance with regulation 96(3A)(b)(i) or (ii);
 - (iii) regulation 13C(5) of the Housing Benefit (State Pension Credit) Regulations⁽³⁰⁾;
 - (iv) regulation 77(3) and (3A)(b) (i) or (ii) of the Housing Benefit (State Pension Credit) Regulations, if a relevant authority is considering making direct payments in accordance with regulation 77(3A)(b)(i) or (ii);

⁽²⁷⁾ 1987 c.26.

⁽²⁸⁾ Regulation 13C was inserted by S.I. 2007/2868.

⁽²⁹⁾ In regulation 96, paragraph (3) was amended and paragraph (3A) was inserted by S.I. 2007/2868.

⁽³⁰⁾ Regulation 13C was inserted by S.I. 2007/2869

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(d) determining whether a qualifying person holds relevant information related to any holding purpose prescribed in regulation 6, connected with identifying a housing benefit claimant.

(3) Paragraph (1)(b) does not permit excepted information to be supplied for an excepted purpose within the meaning of section 126(7) or (9) of the 2011 Act.

Revocation

8. The Social Security (Use of Information for Housing Benefit and Welfare Services Purposes) Regulations 2008⁽³¹⁾ are revoked.

⁽³¹⁾ S.I. 2008/2112.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations deal with the sharing of data between the Secretary of State for Work and Pensions, local authorities and authorities that administer housing benefit, including their service providers and persons exercising functions on their behalf.

Regulation 3 prescribes additional information that local authorities may supply to the Secretary of State in relation to the provision of a person's residential care for purposes relating to the payment of a relevant benefit when a person is admitted into residential care. Regulation 4 prescribes benefits that are a 'relevant benefit' for the purpose of section 125 of Welfare Reform Act 2011 (c.?). These are in addition to those listed in section 125(7).

Regulation 5 sets out the prescribed purposes for which relevant information may be supplied by the Secretary of State to a qualifying person [local authority]. These are purposes in relation to the payment of a disability adaptation grant; the payment of a disabled facilities grant; the provision of a disabled persons badge; the making of a discretionary housing payment; the provision of domiciliary care; the provision of housing support services; the provision of non statutory assistance; the provision of the supporting people programme in Wales; or residential care.

Regulation 6 sets out the prescribed purposes for which a qualifying person holds relevant information. These purposes are purposes relating to the welfare services mentioned in regulation 5. These purposes also include any purposes connected with considering whether a claimant is likely to have difficulty in managing their financial affairs, considering the probability that the claimant will pay their rent, or considering whether a landlord has provided or is likely to provide a qualifying welfare service they have undertaken to provide. Also prescribed are purposes connected with identifying whether certain accommodation is excluded from the provisions relating to local housing allowance in the Housing Benefit Regulations 2006 (S.I. 2006/213) and the Housing Benefit (persons who have attained the qualifying age for state pension credit) Regulations 2006 (S.I. 2006/214) (collectively "the Housing Benefit Regulations"). In addition the local authorities' homelessness functions under part 7 of the Housing Act 1996 (and in the case of Scottish local authorities, part 2 of the Housing (Scotland) Act 1987) are also a prescribed purpose.

Regulation 7 sets out the prescribed purposes for which information may be used for the purposes of section 126(3). These purposes are purposes relating to welfare services, including homelessness functions. These purposes are also purposes relating to housing benefit, identifying housing benefit claimants and the application of provisions in the Housing Benefit Regulations.

Regulation 8 revokes the Social Security (Use of Information for Housing Benefit and Welfare Services Purposes) Regulations 2008.