

Other legislation available to disclose/obtain personal information

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Introduction

Whilst the [Social Security Administration Act 1992](#) is the legal basis for the majority of data sharing the department carries out, the following is a summary of some of the other statutory gateways that are relevant.

Access to Justice Act 1999 & Section 125C in the Magistrates' Courts Act 1980

DWP have granted the courts limited access to DCI/CIS on the basis of the above legislation and inter-departmental agreement to enable them to obtain basic customer details in order to locate fine defaulters. Therefore there is no need for the court to approach DWP for customer information under this legislation for these purposes. If a Magistrates' Court does approach any area of DWP with a request as above they should be told to contact their 'Super User' within their own office.

Audit Commission powers

The Audit Commission for Local Authorities and National Health Service in England and Wales is required to audit the accounts of LAs, NHS, Police and Fire Authorities. It does not have the power to audit DWP; this is the responsibility of the National Audit Office. DWP cannot therefore usually disclose any DWP information to the Audit Commission.

Child Support

Schedule 6 of the Child Maintenance and Other Payments Act 2008 allows the Department for Work and Pensions and the Child Maintenance and Enforcement Commission to share information. DWP can supply the Child Maintenance and Enforcement Commission with information for use for the purposes of functions relating to child support. The Child Maintenance and Enforcement Commission can supply the Department for Work and Pensions information for use for the purposes of functions relating to social security, war pensions, employment or training, private pensions policy or retirement planning. See also the [Social Security Act 1998](#).

Child Trust Fund Act 2004

Section 17(4) of this Act allows DWP to pass information to [Her Majesty's Revenue and Customs](#) that is needed for any purposes connected with child trust funds.

Crime and Disorder Act 1998 (CDA)

The Crime and Disorder Act 1998 (CDA) established partnerships between:

- the police
 - local authorities
 - probation service
 - health authorities
 - the voluntary sector
 - local residents
- and
- businesses

(note: **not DWP**)

The CDA obliges these authorities to develop and implement strategies to reduce crime and disorder in each district and unitary local authority in England & Wales.

The CDA is not just about personal information - DWP ought to help (and do) where we can, for example in providing aggregated/anonymised information to inform audits of local crime and disorder problems. In all disclosure/confidentiality issues, DWP works within relevant legal parameters, our own policy on confidentiality and common law requirements. DWP will always

assist police forces where we are enabled to do so (see guidance regarding [disclosures to the police](#)); the CDA does not change this.

Section 115 of the Act authorises any person to provide information to the police or local/health/probation authorities subject to the Act, which is necessary or expedient for the purposes of the Act. The Information Commissioner has confirmed that section 115 **does not impose a duty to disclose** and that any disclosure under these provisions must have regard to common law and statutory restrictions on disclosure including, but not restricted to, the DPA.

It is not appropriate for DWP staff to enter into any protocols under the CDA or to sit on any panels set up under the Act.

One example of the protocols under CDA is The multi Agency Public Protection Panels (MAPPA). Jobcentre Plus has produced [guidance](#) on when Jobcentre districts will co-operate.

Data Protection Act 1998

The exemptions within the DPA allow for information to be disclosed:

Section 29 exempts personal data from the non-disclosure requirements of the Act if non-disclosure would be likely to severely prejudice any of the following matters:

- the prevention or detection of crime
- the apprehension or prosecution of offenders
- the assessment or collection of any tax or duty or of any imposition of a similar nature

The circumstances of each case must be assessed before disclosure. Therefore this section is not of use for data-matching or bulk data transfers (where a separate statutory power is needed or the consent of each individual must be obtained). This exemption cannot be used for internal investigations against a member of staff, unless it relates to a criminal offence. The exemption that applies is Schedule 5, paragraph 7 – "Management planning/forecasting". The exemption does not apply once the investigation is completed and all documents should normally be disclosed.

S29 (3) is used for example to help the Police prevent or detect crime. DWP have a Memorandum of Understanding with the Police which provides details of when we will give them information. [More details can be found in the Memorandum.](#)

S.35 of the Data Protection Act 1998 permits the disclosure of information in any case where the disclosure is required by or under any enactment (e.g. DWP legislation or another Government Departments), by any rule of law or by the order of a court.

S55 provides a criminal offence for any unlawful obtaining or disclosure of personal information.

The Data Protection (Processing of Sensitive Personal Data) (Elected Representatives) Order 2002- Statutory Instrument 2002 -No 2905. The first data protection principle prohibits the processing of sensitive personal data (*i.e. the racial or ethnic origin of the data subject; political opinions; religious beliefs or other beliefs of a similar nature; whether they are a member of a trade union; their physical or mental health or condition; their sexual life; the commission or alleged commission by them of any offence; or any proceedings for any offence committed or alleged to have been committed by them, the disposal of such proceedings or the sentence of any court in such proceedings*) unless one of the conditions in Schedule 3 of DPA 98 is met. Paragraph 10 of Schedule

3 sets out that the Lord Chancellor may specify, by order, the circumstances under which sensitive data may be processed. [Requests from MPs/Other Elected Representatives](#).

Click on the link for further information about [Data Protection Act](#) or the [Data Protection Principles](#).

Education Act 2005

Section 110 allows the Department for Education and Science, now the Department for Children, Schools and Families (DCFS), access to DWP records to confirm that an individual is in receipt of a benefit which passports them to free school meals. Section 111 makes it an offence for this information to be used for any other purpose.

Finance Act 1997

Section 110 permits DWP to disclose confidential information held for the purposes of DWP functions to the Customs and Excise and Inland Revenue for, now Her Majesty's Revenue and Customs (HMRC):

- use in the prevention, detection, investigation or prosecution of criminal and civil offences relating to Revenue matters; the assessment of Revenue penalties;
- checking the accuracy of information for purposes connected with matters under the care and management of the Revenue and for amending or supplementing such information.
- use in legal proceedings relating to the above.

This is similar to section 122 of the Social Security Administration Act 1992 but in the reverse direction.

See our [HMRC page](#) for further information.

Immigration and Asylum Act 1999

Sections 20 and 21 provides a power for information to be transferred for "immigration purposes": (a) the administration of immigration control under the Immigration Acts; (b) the prevention, detection, investigation or prosecution of criminal offences under those Acts; (c) the imposition of penalties or charges under Part II; (d) the provision of support for asylum-seekers and their dependants under Part VI; (e) such other purposes as may be specified. To date no order has been made that would permit DWP to disclose information under this legislation. **It is important to remember that until such regulations are made DWP can only disclose information under s29 (3) of the Data Protection Act 1998.**

Pensions Act 1995

OPRA may pass "restricted" information to various bodies (including the Secretary of State) for limited purposes. The bodies and purposes are listed at section 107. This list may be amended by order. Section 108 permits further disclosure to the DWP or DHSS (NI) in the interests of members of occupational pension schemes or in the public interest. In addition, section 108 provides other disclosures. Section 114 permits the disclosure of information to the PCB by the Inland Revenue and bodies (listed at 114(7)) for limited purposes.

Proceeds of Crime Act 2002

Under the Proceeds of Crime Act 2002, the Asset Recovery Agency may ask for information because they are trying to establish the legitimate income of a convicted person. This will be because they need to prove that income is mainly derived from criminal activity (e.g. income from drugs). These requests are handled by the Financial Investigation Unit.

Social Security Act 1998

Section 3 of the Social Security Act 1998 allows data sharing between DWP agencies and for different DWP purposes, and between DWP and Northern Ireland.

Paragraph 1 Schedule 6 of the Employment Act 2002 amends section 3 of the Social Security Act 1998 by broadening the range of information covered by the Act, which already covered social security, child support, and war pensions, to also include employment and training.

Transfer of War Pensions to Ministry of Defence (Service Personnel and Veterans Agency)

Following the transfer of war pensions to the Ministry of Defence (MOD) (Service Personnel and Veterans Agency (SPVA), the provision will also enable the supply of information to and from MOD (SPVA) and DWP to enable the supply of social security, child support and employment and training information to MOD for use for war pensions purposes and the supply of war pensions information from MOD (SPVA) to DWP for social security, child support or employment and training purposes. The provision also allows the data pooling of information relating to any of these functions, i.e. social security, child support, war pensions and employment and training.

Transfer of Child Support Agency to Child Maintenance and Enforcement Commission

Following the creation of the Child Maintenance and Enforcement Commission (CMEC), Schedule 6 of the Child Maintenance and Other Payments Act 2008 allows the Department for Work and Pensions and the Child Maintenance and Enforcement Commission to share information. However, DWP can continue to pool the information it holds in relation to its remaining child support functions (mainly relating to appeals) under Section 3 of the Social Security Act 1998. For further information see [Child Support](#).

Tax Credits Act 2002

Section 59, and Schedule 5, allow for exchanges of information within HMRC for the purposes of considering claims to the new tax credits, child benefit or guardian's allowance or for other functions exercised by HMRC. They also provide for exchanges of information relating to tax credits, child benefit and guardian's allowance between HMRC and other authorities administering certain benefits, for the purposes of new tax credits, child benefit and guardian's allowance, and to assist other Departments and the devolved administrations in the exercise of their functions (for example, social security or child support functions in the case of DWP).

See our [HMRC page](#) for further information.

Television Licences (Disclosure of Information) Act 2000

This short Act provides for the provision of personal information to the BBC and its contractors for the purposes of providing concessionary TV licences to certain groups of people. It also introduces a criminal offence of unauthorised disclosure applicable to directors etc as well as individuals