



Memorandum of Understanding (Umbrella)

between

The Home Office UK Border Agency

and

The Department for Work and Pensions

**In Respect of the Exchange
of Information Assets**

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1. Introduction

- 1.1. This Memorandum of Understanding (MoU) sets out the high level agreement between the Department for Work and Pensions (DWP) and the United Kingdom Border Agency (UK Border Agency) that governs the exchange of information assets needed to better deliver their respective businesses. This MoU describes the high level principles governing the exchange of information. The specific, process level information exchange procedures covered by this MoU are detailed individually in the annexes.
- 1.2. Information will only be exchanged where it is lawful to do so. The relevant legal bases are detailed within this agreement.
- 1.3. This MoU is not a contract nor is it legally binding. It does not in itself create lawful means for the exchange of information; it simply documents the processes and procedures agreed between the departments.
- 1.4. This MoU relates to the exchange of information assets between DWP and UK Border Agency and does not replace or supersede information exchange specific ('process level') agreements that support inter-departmental understandings, which are detailed in the annexes.
- 1.5. All new information exchange specific ('process level') agreements will be recorded at annex 2 of this MoU. The specific agreement must reference this umbrella MoU as the basis for the exchange and as a minimum include:
 - purpose for exchange,
 - (physical) method of exchange,
 - benefit (to both parties) of the exchange;
 - primary business owner(s) in both departments
 - length of exercise, if long term a review date of 6 months minimum from commencement must be included
 - specific legislation, and
 - the level of assurance or approval given for the exchange to take place

2. Legal

- 2.1. Both Departments are legally obliged to handle personal information according to the requirements of the Data Protection Act 1998 (DPA) the European Convention on Human Rights (ECHR) and the Human Rights Act 1998 (HRA).
- 2.2. As well as meeting the requirements of the DPA, both DWP and UK Border Agency are bound by legislative obligations of confidence, with the unlawful disclosure of information by officers constituting an offence. For DWP staff the criminal sanction for unauthorised disclosure is detailed at section 123 of the Social Security Administration Act (1992). For UK Border Agency staff (in respect of personal "Customs Revenue" and "General Customs" Information only) the criminal sanction for unauthorised disclosure is detailed at section

18 of the Borders, Citizenship and Immigration Act 2009. Immigration information is protected by provisions set out in the DPA.

- 2.3. Information can only be exchanged where there is a legal basis. Annex 1 lists the legislation that permits the exchange of information between DWP and UK Border Agency. No information should be exchanged that is not covered by relevant legislation and complies with the overarching principles of the DPA, ECHR and HRA.
- 2.4. In the absence of a statutory (data sharing) gateway UK Border Agency will rely on its common law powers to share information where it is appropriate. DWP will only share information using its common law powers where this is on a case by case basis and in the public interest, or where the data subject has given informed consent.
- 2.5. The process level agreements, listed in annex 2, include details of the legal basis that makes it lawful to disclose specific information and any restrictions on the use of that information (i.e. whether it can only be used for specific purposes, restrictions on onward disclosure etc.).
- 2.6. DWP and UK Border Agency may share information outside the stated legislation for commercial purposes providing that the roles fall within the definition prescribed by the Information Commissioners Office (ICO) regarding data controller, data processor etc.

3. Freedom Of Information

- 3.1. Both departments are subject to the requirements of the Freedom of Information Act (FoIA) 2000 and shall assist and co-operate with each other to enable each department to comply with their information disclosure obligations.
- 3.2. In the event of a FoIA Request being received which relates to an activity utilising the other department's information, the respective department will notify the other to allow it the opportunity to make representations on the potential impact of disclosure.

4. Information Handling

- 4.1. Both Departments are data controllers, and subject to the Data Protection Principles set out in the DPA. Additionally as part of Her Majesty's Government, both DWP and UK Border Agency must process personal data in compliance with both the mandatory requirements set out in [Information Assurance Standard 6](#) and the [Security Policy Framework](#) issued by HM Cabinet Office, when handling, transferring, storing, accessing or destroying information assets.
- 4.2. Each department will expect the other to have taken every reasonable measure to comply with the above standards and may conduct a risk assessment of the exchange against these requirements.

- 4.3. The exporting department will ensure that data integrity meets their department's standards, unless more rigorous or higher standards are required and agreed at the information exchange specific MoU stage.
- 4.4. DWP and UK Border Agency must ensure effective measures are in place to manage potential or actual incidents as per Cabinet Office guidance, as defined in its [Checklist for Managing Potential Loss of Data or Information](#).
- 4.5. Without limiting the receiving department's legal obligations under Data Protection legislation or otherwise, the department in receipt of information will ensure that they:
- Only use the information for purposes that are legal under the legal basis on which they received it;
 - Even where not legally required to do so, will, as a courtesy, notify the other department if they are going to use the information for any purpose other than that for which they received it (in the event there is an urgent need to share they will be informed as soon as possible afterwards);
 - Store data received securely;
 - Notify the other department if they are going to onwardly disclose that information; (in the event there is an urgent need to share they will be informed as soon as possible afterwards);
 - Ensure that only people who have a genuine business need to see that data will have access to it;
 - Report any information losses, wrongful disclosures or breaches of security relating to information originating in the other department to the designated contacts immediately (within 24 hours of becoming aware). This includes both advising, and consulting with, the other department on the appropriate steps to take, e.g. notification of the ICO's or dissemination of any information to the data subjects;
 - Only hold information while there is a business need to keep it and destroy it in line with Government guidelines;
 - Regularly review the assessment of risks to information and the effectiveness of measures taken to mitigate risks.

5. Purpose of information sharing

- 5.1 Information received by one department for their own purpose(s) can be shared with another and used by that other for their purpose(s) outwith the original purpose for which that information was obtained as long as the information is shared lawfully and appropriately under the terms of this MoU (and any subsequent agreements) and has regard for any inherent legal restrictions that may apply e.g. section 122B of the Social Security Administration Act.

- 5.2 Information is shared (in accordance with the relevant legislation) between departments for a number of reasons including:
- To allow one or other, or both of the departments to carry out their stated function including assessing an applicant's right to obtain a service from that department
 - To prevent and/ or detect fraud or other criminal activity against either department
 - In the interest of protecting/ securing national security
 - To assist in the assessment or collection of any tax or duty
- 5.3 Aside from new information exchange specific ('process level') agreements as described at 1.5 above there will continue to be a regular flow of information between departments in terms of case-by-case requests made between departments for our respective purposes, including crime prevention and detection. The process for these exchanges is detailed at Annex 6 of this MoU.

6 Method of information sharing

- 6.1 There are many ways information can and will be (physically) shared between departments. However, all must be subject to relevant senior approval prior to sharing, and the method of sharing must conform to respective departmental protocols governing the secure transfer of information. Each information agreement formed subsequent to this MoU and under the terms of this MoU must include information about the method by which information will be shared between departments.
- 6.2 In the main information will be supplied by one department on request from the other in the approved format and by the agreed method e.g. via formal template request over the gsi network. However, this MoU and associated legislation allows for information to be provided from one department to the other, without formal request or prior notice, in the event that the department holding the information is satisfied that the transfer of information is necessary and appropriate for any stated functions of the other department. For example if the UKBA holds information that was gathered for an immigration purpose but it judges it is necessary "*...for use in the prevention, detection, investigation or prosecution of offences relating to social security...*" then that information can be supplied to (without request from) DWP.
- 6.3 The method of transfer must be in accordance with the standards and benchmarks relating to the security of that transfer and in accordance with Departmental and Cabinet Office and other HMG guidance.

7. Monitoring and Review Arrangements

- 7.1. This agreement will be reviewed at least annually. Any changes needed in the interim may be agreed in writing and appended to this document for inclusion at the following review.
- 7.2. Reviews outside of the schedule can be called by representatives of either department.
- 7.3. Annex 3 outlines the contacts for document control, the version history of this MoU and the review dates for it.

8. Issues, Disputes and Resolution

- 8.1. Any issues regarding departmental-level, ongoing delivery aspects of the information supply, such as data integrity or quality, should be addressed through “business as usual” channels as detailed in annex 4.
- 8.2. Where a problem arises it should be reported immediately, in writing to the designated contacts (listed in annex 4). The contacts will endeavour to resolve the problem within 2 working days.
- 8.3. Where it is not possible to resolve the issue within 2 working days or the issue is of such severity that public customers may be negatively affected by delays to their payments, the issue will be escalated to the senior management team for each partner. They will be notified with an explanation of why the dispute has not been resolved so that they can take appropriate action for resolution or plan contingency arrangements.
- 8.4. Where the “business as usual” channels fail to reach agreement, the departments will attempt to negotiate a settlement in the spirit of joint resolution within 20 working days of a formal notification being received. Contacts detailed in annex 4.
- 8.5. Specific strands of activity that may affect this MoU should be discussed at a “business as usual” level to consider the possible impact on the MoU; once the potential changes have been identified then a formal change notification should be sent to the ‘MoU Change Control’ contact detailed at annex 4.
- 8.6. External changes affecting the operational delivery responsibilities of the departments will also necessitate the reviewing and potential amendment of this agreement.

9. Costs

- 9.1 No charges will be made by either party in relation directly to this MoU. There may, however, be costs involved in specific information exchanges in relation to IT issues; these will be detailed in the respective process level agreement.

10. Signatures

SIGNED BY:

For, and on behalf of,
Department for Work and Pensions



David Frazer

(DWP)

For, and on behalf of,
UK Border Agency



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Brendan Crean

(UK Border Agency)

Date: 07/02/2012

Date: 7th February 2012

For, and on behalf of,
Department for Social Development (Northern Ireland) ("DSDNI")



ANNE MCCLEARY

(DSDNI)

Date: 7th February 2012

Annex 1 – Legal Basis for the Sharing of Information

11. Data can be exchanged between DWP and UK Border Agency using the following specific legislation, regulations, guidance and agreements or the N. Ireland equivalents:-

UK Border Agency to DWP

The legal bases permitting disclosure of information from UK Border Agency to DWP are:

- Section 122B of the Social Security Administration Act 1992 (this was inserted by section 2 of the Social Security Administration (Fraud) Act 1997)

Additionally

- Immigration Information can be shared in the public interest using Common law powers
- “General Customs Information” can be shared using Section 16 of the Borders, Citizenship and Immigration Act 2009
- “Customs Revenue Information” can be shared using Section 16 of the Borders, Citizenship and Immigration Act 2009 where the Commissioners of HM Revenue and Customs have given us permission to disclose the information

DWP to UK Border Agency

The legal bases permitting disclosure of information from DWP to UK Border Agency are:

- Section 20 Immigration & Asylum Act 1999 (includes amendments included in section 131 of the NIA 2002) (by virtue of secondary legislation (SI 2077/2008)
- Section 110 of the Finance Act 1997 (for the purposes of UK Border Agency’s customs functions)
- Section 55 of the Borders, Citizenship and Immigration Act 2009¹
- Common Law Powers on a case by case basis only, or with the informed consent of the data subject

11.1 The above should not be used in isolation, but with regard to the following:-

- Data Protection Act 1998
- Human Rights Act 1998
- Finance Act 1997

¹ Section 55 requires the Home Office to make arrangements so that the UK Border Agency and its private contractors shall, when carrying out their functions, have regard to: “...the need to safeguard and promote the welfare of children who are in the United Kingdom”

- Social Security Administration Act 1992 (as amended by subsequent legislation) Data Matching Code of Practice.
- Employment Act 2002
- Section 3 Social Security Act 1998. The range of information covered was amended by Paragraph 1 Schedule 6 of the Employment Act 2002 to include employment and training as well as covering social security, child support and war pensions.
- Pension Act 2004

11.2 Additional applicable legislation:

- Borders, Citizenship and Immigration Act 2009
- Police and Criminal Evidence Act 1984 together with its Codes of Practice (England and Wales only)
- Regulation of Investigatory Powers Act 2000
- Criminal Procedures Investigation Act 1996 together with its Code of Practice (England and Wales only)
- Social Security Fraud Act 2001 (S.3(1))