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Convener
Education Children and Young People Committee

Via email: ecyp.committee@parliament.scot

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Dear Convener,

Personal data sharing - GDPR legislation

I am writing in response to your letter dated 10 March 2025 in which you request information on personal data sharing more widely within the education sector and what is permissible under GDPR legislation.

Scotland is fortunate to have some of the best public sector data in the world. We want to realise the potential of data to improve services, increase efficiency and deliver better outcomes. Data sharing has the potential to improve how public authorities work together to improve public service delivery, and so deliver the First Minister's key priorities set out in the Programme for Government. That is true across all of the education sector, whether to achieve widening access objectives or to tackle child poverty.

My response begins by setting out the general approach to data sharing which must be followed. I then outline examples of existing data sharing practice across the education sector, including information about the relevant legal gateways, followed by areas where work is ongoing to share new data to support policy objectives.

GDPR legislation and Scottish Government approach to data sharing

When considering data sharing, it is necessary to establish a legal gateway or power which enables the Scottish Government or any other public body to share or process personal information. Only once a legal gateway has been identified can proposed data sharing be considered.

A wide range of personal information is already shared across the education sector, underpinned by a number of pieces of legislation. Some of the examples listed below include:

- Digital Economy Act 2017
- Education and Skills Act 2008
- Post-16 Education (Scotland) Act 2013
- Small Business, Enterprise and Employment Act 2015
- Social Security (Scotland) Act 2018

As well as establishing a legal gateway, it is necessary to ensure compliance with data protection legislation. In the UK, data protection is governed by the UK General Data Protection Regulation (UK GDPR) and the Data Protection Act 2018. All organisations across the public and education sectors which are responsible for using personal data have to follow data protection principles. This includes ensuring any data sharing is necessary, proportionate and is in line with purpose limitation principles, i.e. that personal information is not used in a way that is incompatible with the purposes for which it was originally obtained. A lawful basis for processing or sharing personal data must be identified.

For any new or proposed data sharing arrangement, each organisation must complete a data protection impact assessment (DPIA) to systematically analyse, identify and minimise the data protection risks of a project or policy. These risks are assessed on a case-by-case basis. A DPIA will typically identify both the lawful basis and legal gateway for processing any personal information.

The Scottish Government's Education Analytical Services, which is part of the Scottish Government's Learning Directorate, has legal powers to request data with regards children and young people educated in, and the workforce of, Scotland's schools that schools, local authorities, awarding bodies (such as the Scottish Qualifications Authority) and other public bodies (such as Skills Development Scotland) hold for their own purposes.

The following legislation allows for these data shares to occur:

- [Local Government \(Scotland\) Act 1973](#)
- [The Education \(Scotland\) Act 1980](#)
- [The Jordanhill School Grant Regulations 1988](#)
- [The Special Schools \(Scotland\) Grant Regulations 1990](#)
- [Education \(Scotland\) Act 1996](#)
- [Standards in Scotland's Schools etc. Act 2000](#)
- [Local Government in Scotland Act 2003](#)
- [Children and Young People \(Scotland\) Act 2014](#)
- [National Health Service \(Scotland\) Act 1978](#)
- [Scottish Schools \(Parental Involvement\) Act 2006](#)

Existing data sharing across the education sector

Funded early learning and childcare

Prior to June 2023, Scottish local authorities did not have access to data on households within their area with a child eligible for funded early learning and childcare (ELC) at age two, and Scottish Government did not have access to accurate data on the size and distribution of the eligible two-year-old population across Scotland.

The Scottish Government now shares data with local authorities three times a year to allow them to contact eligible families. This is currently name and address information for the parents of children aged 18 to 35 months who are in receipt of certain qualifying benefits (increasingly Universal Credit). The relevant qualifying benefits account for around 80% of the eligible population. No child-level data is shared. We are working with DWP to receive email addresses to make contacting households easier and cheaper for local authorities.

Scottish Government can also use the data to provide improved estimates of the eligible population at a local authority and national level. This has helped us publish more accurate uptake rates annually since December 2023, informing where support is best targeted to maximise uptake further.

To provide access to this data for Scottish local authorities and Scottish Government, my officials worked over a number of years on the data sharing project to:

- Establish a legal gateway to allow DWP and HMRC to share data on households in receipt of certain 'qualifying benefits' for the purpose of local authorities contacting eligible families.;
- Establish appropriate data governance arrangements: with DWP and HMRC to ensure the right data is shared at the right time, and; with Scottish local authorities to ensure the data is handled within the limitations of the legal gateway; and
- Establish an appropriate mechanism for the data to be shared securely.

The legal gateway was created under UK-wide powers in the [Digital Economy Act 2017](#) by [an amendment to the Digital Government \(Disclosure of Information\) Regulations 2018](#), to add 'the Scottish early learning and childcare objective'. These Regulations had to pass through both houses in the UK Parliament, and Scottish Government officials were dependent on counterparts in UK Government to draft the Regulations and support their passage through the UK Parliament. The amendment came in to force on 27 October 2022.

My officials then worked with DWP and HMRC, and Scottish local authorities, to establish the business requirements of the data share to ensure local authorities had access to the right data in a way and at a time that would be helpful to them. We worked with the Improvement Service to establish a digital platform – Datapipeline.scot – to share the data securely. We shared the first data lists with Scottish local authorities in June 2023.

16+ Participation Portal

The 16+ Participation Portal is a secure online portal which allows a range of partners including Skills Development Scotland (SDS) to input to and access a combined database of information on individuals as outlined in the legislation requirements.

The portal holds information on 16 to 24-year-olds that can be shared securely between partners, including Local Authorities, Colleges, the Scottish Funding Council, the Student Awards Agency for Scotland and the Department for Work and Pensions.

The details held in a central area include expected school leaving dates, where young people intend to go after school, whether this be into a job, Modern Apprenticeship, college

or university, and information on those who are receiving career services and welfare benefits.

Section 20 of the Post-16 Education (Scotland) Act 2013 and an order made under it (the Young People's Involvement in Education and Training (Provision of Information) (Scotland) Order 2014) provide a legal gateway for the 16+ Participation Portal. There are different purposes for different stakeholders, e.g. Scottish Government can only access limited data for the production of statistics.

Longitudinal Education Outcomes (LEO) – Example usage of the Education and Skills Act 2008 for statistical purposes

The LEO is underpinned by a longstanding data sharing arrangement between Scottish Government, DWP, DfE, HMRC, and Welsh Government – which links education data to tax data to allow for the assessment of outcomes such as earnings and employment. The UK GDPR requires organisations to identify and evidence which lawful basis they are relying on to share and process personal data (including that of children / young adults) and special category data. For LEO, Article 6 (1) (e) and Article 9(2)(j) UK GDPR provide the lawful basis for processing data (including that of children / young adults) that is necessary for the performance of a task carried out in the public interest, scientific or historical research purposes or statistical purposes – and complies with the associated condition set out in Part 1 of Schedule 1 of the DPA 2018 Section 4: "Research etc".

The legal gateway used for this is the Education and Skills Act 2008. Sections 87 and 88 of the Education and Skills Act 2008 permit certain information to be used, or disclosed so that it can be used, in connection with the exercise of an "assessment function" of the Secretary of State or a devolved authority. These assessment functions are defined in Section 87(4) as:

- Evaluating the effectiveness of training or education;
- Assessing policy in relation to the provision of training or education; and
- Assessing policy in relation to social security or employment as it affects the provision of or participation in training or education.

The only information which may be used or disclosed under these provisions is information which:

- Is about an individual and is:
 - Held by the Secretary of State for the purposes of any function relating to Social Security (Section 87(2(b)));
 - Held by the Secretary of State or a devolved authority and which relates to any training or course of education undertaken by the individual (Section 87(3)); or,
- Relates to income tax or tax credits to a person for use in connection with the exercise of an assessment function of the Secretary of State or a devolved authority (Section 88(1)).

Additionally, Section 78 of the Small Business, Enterprise and Employment (SBEE) Act, Assessments of Effectiveness, amended the relevant provisions of the Education and Skills Act 2008 to expand the gateway (at Sections 87 and 88 of that Act) which now enables tax-related data held by HMRC and social security data held by DWP to be shared and linked to school pupil information, further education and higher education student information.

These pieces of legislation provide the legal gateway for data to be shared and linked to create the LEO data, which Scottish Government analyse and publish statistical outputs on: [Colleges, universities and young people in training: statistics - gov.scot](https://www.gov.scot/publications/statistics/colleges-universities-and-young-people-in-training/2024-09-10/pages/1-100.aspx).

Ongoing data sharing projects

Student mental health

The [Student Mental Health Action Plan](#), published in September 2024, recognised the lack of consistency with regard to how information about a young person, transitioning from school, could be shared directly with colleges and universities. It also noted that there was insufficient guidance for young people and their families on preparing for this transition.

Recommendation Seven of the 2022 Thriving Learners research, undertaken by the Mental Health Foundation, was used, amongst others, to inform the Action Plan, in relation to colleges' suggestion that "local authorities and schools" should "work together to develop a standardisation of minimum data-sharing expectations between schools and colleges around mental health and wellbeing supports of students." (page 76). UCAS also actively promote the benefits of declaring a mental health condition at the application stage.

This has led to Action Four of the Action Plan, which sets out that the Scottish Government will work with institutions, Universities and Colleges Admissions Service (UCAS), CoSLA, and prospective students to explore what information institutions require, to inform continuity of support for newly-enrolled students, and how students and their families can be supported to request and share this information with colleges and universities.

School-aged education

Scottish Ministers have previously agreed with COSLA to consider how the expansion of Free School Meals programme to those in receipt of Scottish Child Payment in Primaries 6 and 7 could be supported by a data share which would allow local authorities to access data held by Social Security Scotland.

The proposed data share will benefit the additional 25,000 pupils via this vital provision by allowing local authorities to more quickly identify those eligible for this next phase. I would expect this change would not only streamline the process for families but reduce any administrative burden for local authorities.

My officials have worked closely with Social Security Scotland on the development of this data share and an affirmative SSI was laid in Scottish Parliament on 10 March. The legal gateway was section 85 of the Social Security (Scotland) Act 2018 and the Social Security Information-sharing (Scotland) Regulations 2021 made under that section (which this affirmative SSI is amending).

I will discuss the SSI with the Education Committee on 2 April and my hope is that after consideration, the changes would commence on 19 May. This would allow local authorities to access the data as part of their annual Free School Meal eligibility processes.

Conclusion

I want to be clear that I am supportive of data sharing across the education sector. I understand the impact that making best use of our public data can have on public service delivery and, crucially, on the lives of our children, young people and learners.

It is also essential, however, to ensure that personal information about citizens – including that of children and young people – is handled securely and in line with legal and data protection considerations. That is why it is a requirement to identify a legal gateway and lawful basis for processing data and why robust and thorough analysis must be undertaken before individuals' personal data is shared.

I hope this letter answers your questions and I thank the committee for the opportunity to discuss such an important issue.

Yours sincerely,

JENNY GILRUTH MSP