

THE DIGITAL SWITCHOVER (DISCLOSURE OF INFORMATION) BILL

**MEMORANDUM TO THE
DELEGATED POWERS AND REGULATORY REFORM COMMITTEE**

Introduction

1. This Memorandum is provided by the Department for Culture, Media and Sport to assist the Delegated Powers and Regulatory Reform Committee in its consideration of the Digital Switchover (Disclosure of Information) Bill. It briefly describes the Bill's provisions; identifies the powers to make delegated legislation that it contains; explains the purpose of the proposed powers and why the matter is to be dealt with in delegated legislation; and explains the procedure proposed for each power and why it has been chosen. Some policy background has been provided where it is thought likely to be of assistance to the Committee.

Brief description of the Bill

2. "Digital switchover" is the process by which analogue television broadcasting signals will be phased out in favour of digital signals. The process will allow many more television channels to be carried using less radio spectrum than is currently used, expanding choice for consumers. Digital switchover will commence in late 2007 in Whitehaven, followed by the rest of the Borders region in 2008 and proceed ITV region by ITV region until 2012, by which time all analogue transmissions will have ceased.

3. People who do not yet have equipment suitable for receiving digital television transmissions, whether by satellite, cable or digital terrestrial television ("DTT" or more colloquially "Freeview") will need to take steps to acquire it. A Digital Switchover Help Scheme will be established under the overall management of the BBC or a company controlled by the BBC or the Crown (or the BBC and the Crown together): the exact structure has not yet been finally determined. Under the scheme, a household will be entitled to be provided (on payment of a small fee or free of charge, depending on means) with suitable equipment, help with setting it up and any work necessary to improve their TV aerial, if the household includes a person aged 75 or over or with a severe disability, i.e., they have an award of disability living allowance or attendance allowance, or an equivalent disability allowance under industrial injuries or war pensions schemes, or are registered blind or partially-sighted.

4. The present Bill is designed to support such a Scheme. Evidence gained from small-scale trials and from consultations with charities and other experts indicates that the Scheme will best serve the needs of the target population if those administering it take active steps to communicate directly with people who appear to be entitled to help. Using information held by the Department for Work and Pensions ("DWP"), its Northern Ireland equivalent (the Department for Social Development in Northern Ireland) and the Veterans' Administration within the Ministry of Defence (for war pensions), the administrator of the Scheme will identify people in the eligible categories and write to them, inviting them to apply for help. This should maximise take-up and (hence) help to vulnerable people, whilst minimising form-filling for recipients, helping to reduce the costs of administering the scheme.

5. The disclosure of such information is, however, constrained by a number of legal controls, and in particular the Social Security Administration Act 1992, section 123. That provision makes it an offence for a social security employee to disclose social security information without “lawful authority”.

6. The Bill creates legal authority for the disclosure of social security information: clause 1(1) and (2). Social security information of a kind prescribed under clause 2 may be disclosed to a “relevant person” for use in connection with “switchover help functions”, namely identifying persons who may be eligible for help, contacting them and establishing their actual entitlement: clause 1(4). A “relevant person” includes the BBC, certain companies controlled by the BBC or the Crown, and any person contracting with the BBC, the Secretary of State or such a company to provide services or carry out functions in connection with switchover help functions: clause 1(3). It is an offence for a person who has received information by virtue of this power to disclose it without lawful authority: clause 3.

Clause 2: power to specify the information that can be disclosed

7. Clause 2 provides power for the Secretary of State to prescribe by order the precise kinds of social security and war pensions information that can be supplied under clause 1. It is envisaged that the orders will be made by the Secretary of State for Culture, Media and Sport.

- “Social security information” is information ***of a description specified by order*** which is held by (or on behalf of) the Secretary of State or the Department for Social Development in Northern Ireland and obtained as a result of, or for the purposes of, the exercise of functions in relation to social security.
- “War pensions information” is information ***of a description specified by order*** which is held by (or on behalf of) the Secretary of State and obtained as a result of, or for the purposes of, the exercise of functions in relation to war pensions (see below).

8. “*Social security*” would, as in other statutes, encompass a range of benefits including state retirement pensions, income support, pension credit, income-based jobseeker’s allowance, disability living allowance and attendance allowance. Child support is not included..

9. “*War pension*” refers to a pension or other benefit for or in respect of a person who has died or been disabled in consequence of service as a member of the armed forces, and certain other pensions and benefits. See section 25 of the Social Security Act 1989.

10. Thus, the Bill will not permit access to all social security and war pensions information, but only those descriptions of such information that have been prescribed by order under subsection (2) or (3). The precise details have not been finalised, but it is envisaged that this power will be used to specify for this purpose only the following information about an identifiable person, namely–

- their name, and any alias by which they may be known, marital status (if known) address and date of birth;
- their National Insurance number;
- whether they are eligible for any of the benefits that will establish entitlement to help and (if so) those in respect of which they have an award of benefit;
- the fact that they have ceased to receive such benefits, where that is the case;
- details of any partner (including details of date of birth and National Insurance number) and whether they receive pension credit, income support or income-based jobseeker's allowance (to check upon what level of support the household is entitled to);
- if the qualifying person for disability living allowance is a child, whether the responsible adult or adults is receiving pension credit, income support or income-based jobseeker's allowance;
- whether they live in a residential care or nursing home (so helping to ensure that the right kinds of help are available in residential care and nursing home settings);
- details of any person appointed to act on their behalf (to allow such people to be contacted to alert them to the availability of help);
- the fact that they have died, where that is the case.

11. The order is to be made by statutory instrument and will be subject to negative resolution procedure: see subsections (4) and (5).

Justification for the power in clause 2

12. It is important that the Bill should allow disclosure only to the minimum extent necessary to operate the Scheme effectively. Otherwise, the new powers could be characterised as a disproportionate interference with individuals' privacy.

13. The Government considers that it is appropriate for this information to be specified by order rather than setting out these categories on the face of the legislation, because of the need for flexibility in the future. In particular, it is possible that the name or structure of the benefits relevant to the Help Scheme will change, in which case it would be necessary to change the description of the information that can be disclosed. Also, the Scheme will operate over a period of five years or slightly longer, and it is quite possible that, during that time, experience will show that if other, or different, information was available to the Scheme's administrators, the help could be given more effectively or at a lower cost. Finally, the Scheme itself might be altered in the light of experience or a change in policy, necessitating access to other or different information (although no such changes are currently contemplated).

14. In exercising her power, the Secretary of State must, of course, ensure that the order complies with the European Convention on Human Rights, especially article 8 (right to respect for private etc. life). In particular, she must ensure that the power does not give access to information to a degree that may be disproportionate to the objectives of the Scheme. The range of information set out above is considered to satisfy that test. Likewise, the order does not compel the disclosure of the information and the Secretary of State for Work and Pensions must ensure that when exercising the discretion to disclose information of the kind specified in the order, that disclosure satisfies the Data Protection Act 1998 and Human Rights Act 1998. If DWP discloses information unnecessarily, the individual concerned may have a legal remedy in respect of the disclosure.

15. The Government considers that the negative resolution procedure is the appropriate level of control for an order of this nature. It is appropriate that an order affecting the disclosure of information be subject to Parliamentary scrutiny, but on the other hand, the order will only supply detail within a framework that has been debated by Parliament during the passage of the Bill, and will not raise new issues of principle that would call for an affirmative resolution procedure to be specified.

DEPARTMENT FOR CULTURE, MEDIA AND SPORT

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