**THE FOLLOWING TEXT WAS SUBMITTED THROUGH THE SCOTTISH GOVERNMENT’S ONLINE PORTAL ON 23 DECEMBER 2020**

The consultation page can be found here: <https://consult.gov.scot/digital-directorate/digital-strategy-for-scotland/>

The consultation paper itself is available here: <https://www.gov.scot/binaries/content/documents/govscot/publications/consultation-paper/2020/09/renewing-scotlands-full-potential-digital-world/documents/renewing-scotlands-full-potential-digital-world-updating-digital-strategy-scotland-discussion-document/renewing-scotlands-full-potential-digital-world-updating-digital-strategy-scotland-discussion-document/govscot%3Adocument/renewing-scotlands-full-potential-digital-world-updating-digital-strategy-scotland-discussion-document.pdf>

**Questions on collaborative approach**

**Read the consultation paper.**

**This discussion document has been co-produced with COSLA. We wish to build on this collaborative and partnership approach to digital with other organisations and sectors across Scotland to maximise the impact of the strategy. Thinking about this:**

**1.Do you think there are opportunities to realise this collaborative approach?**

**Yes No**

**Please explain why:**

We believe that collaboration is not only possible but essential. If the Digital Strategy is to have maximum impact, it must bring together all relevant sectors and organisations to ensure a joined-up approach.

Importantly, collaboration brings the opportunity for shared learning: collective efforts towards creation of an expanding, dynamic and outward-facing digital Scotland will strengthen Scotland’s international reputation and ensure it is an attractive place to set up digital businesses and engage in digital issues. Ensuring strong standards, including ethical standards, will benefit Scotland’s citizens and also boost the reputation of Scotland and Scottish companies on the global stage, enhancing our trade and investment opportunities. It is therefore in everyone’s interests to work together to ensure a coordinated and collaborative approach.

The case study example on page 19 refers to the digital transformation of Registers of Scotland. This is a process into which the Law Society of Scotland provided input and support and the successful outcome illustrates the benefits of a collaborative approach. We also note that a consultation has now been launched concerning digital submission, which we will be responding to in due course.

Delivery of the necessary infrastructure upgrades is the first step towards ensuring the maximum benefits from Scotland’s digital future. This will involve the infrastructure providers, as well as Scottish and local governments. It would make sense to establish an ongoing dialogue based around quarterly meetings for COSLA, Scottish Government and the infrastructure providers.

One outstanding issue in relation to Registers of Scotland is that digital networks are unable to secure bulk access to data from Registers of Scotland in the same what that they can in England and Wales. This makes it more time consuming, complex and expensive to plan and deploy communications networks in Scotland.

We also note that collaboration may go beyond Scottish organisations and include other UK and international partners.

This will be important to ensure that the strategy operates alongside other initiatives to ensure the greatest possible overall benefit to end users - customers/ citizens and businesses). For example, many of the potential actions *from Chapter 5: Services Working for All* are being looked at by other agencies and government departments across the UK: unnecessary fragmentation risks exclusion and missed opportunities. A specific example is conversations about digital identity where the UK government is already working with stakeholders to develop digital identification. Fragmentation and the need for citizens to have multiple digital IDs might end up being exclusionary and will also impact on service providers with the need to cater for different IDs resulting in potential inefficiencies. The Scottish Government should look for opportunities to collaborate in this space.

Another area is tackling digital exclusion and vulnerability. The fintech sector, which has a disproportionately large presence in Scotland, has a role to play here and again there are initiatives underway, including the work being led by the FCA on Open Finance and the BEIS/DCMS Smart Data review. Ensuring a consistent approach is likely to be simpler for those at danger of exclusion in addition to offering consistency and efficiencies for businesses in relevant sectors.

There may also be an opportunity for shared learning as we collectively navigate the digital environment. For example, we note that the CMA is proposing a new regulatory regime for digital platforms and the government supporting proposals to establish a Digital Markets Unit in the CMA building on extensive research by the regulator. Understanding the wider context in which Scottish consumers and businesses operate is important to ensuring that the Digital Scotland Strategy succeeds across the numerous important areas it is intended to cover.

**2. Of the opportunities which you have identified, which do you think are the priority ones?**

Ensuring full network coverage and access for all citizens and businesses is essential to creating a Digital Scotland: we cannot obtain the benefits unless the necessary communications infrastructure is in place.

Unlike the rest of the UK Scotland has no formal target for the completion of the upgrade of the country’s networks to full fibre connectivity. Without targets to focus on, timescales inevitably lengthen. It would make sense to formally adopt Infrastructure Commission for Scotland’s target of 2027 as the date for nationwide full fibre rollout completion. This clear target will drive policy-makers, industry and the regulator to speed up full fibre rollout in all parts of the country, and ensure that Scotland does not fall behind other nations in the full fibre race. While the R100 programme was originally designed to deliver superfast broadband using hybrid copper/fibre technology, such is the pace of technological advance that this is no longer sufficient to deliver the economic, environmental and social objectives of the Scottish Government and the focus should now shift to delivering nationwide connectivity.

In addition, it is important to enable straightforward access to publicly available property data, which helps to facilitate efficient rollout of communications networks. In particular, the lack of easy access to information about property owners and factors poses a significant barrier. Easy access to bulk information contained in counterparts to the Registers of Scotland and the Property Factors Register is possible in other parts of the UK but in Scotland, a separate application has to be made for every individual property. This makes accessing this essential data significantly more time-consuming and slows down rollout of digital networks.

**We are particularly interested in your responses to the narrative and actions set out in Sections 4 ‘No one left behind’ to Sections 9 ‘An Ethical Digital Nation’:Top of Form**



3. Is the vision that we have set out in the supporting narrative in each of these sections the right one?

|  | Yes  | No  |
| --- | --- | --- |
| No One Left Behind  | Yes  | No  |
| Services Working for All  | Yes  | No  |
| Transforming Government  | Yes  | No  |
| A Digital and Data Economy  | Yes  | No  |
| A Vibrant Tech Sector  | Yes  | No  |
| An Ethical Digital Nation  | Yes  | No  |

If you have ticked ‘no’ or you think we could improve the vision please explain why:

**Chapter 4: No one left behind -** Overall we agree with the text. However, we consider that across developed economies it is probably more accurate to say that “Fast resilient connections are essential for business”, rather than they “provide a competitive advantage”. A speedy and reliable internet connection is relied upon in commercial centres: remote communities should not be at a disadvantage in this regard.

There has been increased use of digital services across a range of matters as a result of the Coronavirus pandemic, including access to justice, access to vital public services including education, and access to private services, including online grocery shopping and banking (<https://yourviews.parliament.scot/ehrc/impact-covid-19-pandemic-equalities-human-rights/consultation/view_respondent?uuId=586496863>). The increased transition to digital services has been a necessary response by the justice system and other aspects of both public and private services to the current crisis. We have previously commented on the increasing use of digital platforms for ‘compliance’ and other businesses activities.( <https://www.lawscot.org.uk/media/359579/rur-comp-digital-connectivity-in-scotland-inquiry-final.pdf>)

We note that digital connectivity can be particularly challenging for rural communities. For example, Ofcom’s Connected Nations 2019 Scotland report (<https://www.ofcom.org.uk/data/assets/pdffile/0028/186409/connected-nations-2019-scotland-report.pdf>) highlighted that it is estimated “that around 12,300 premises in Scotland cannot access either a decent fixed broadband service or get good 4G coverage indoors (from any operator).” It appears that improvements in this regard are being made, for example, Ofcom’s report notes that “indoor 4G coverage from all four operators is available to 79% of premises in Scotland, up from 75% in 2018 and 57% in 2017”, however, it is clear that there remain areas where basic levels of connectivity are not available.

The increased transition to digital services is likely to have greater impacts on certain groups, including those living and/or working in rural areas, and we consider it important that the effects of these changes are monitored, to ensure that outcomes for individuals are not reduced as a result.

We also note that while online services businesses may be able to compete on a level playing field, physical trade – both in terms of incoming supplies and outgoing products – requires digital access to be integrated with physical delivery systems, which do not penalise those in remote locations. We consider there is scope for a collaborative approach and innovative systems to help solve these logistical problems and ensure that the opportunities provided by digital connectivity can be fully realised by rural communities.

**Chapter 5: Services working for all -** We note the strategy’s assertion that “Digital and data skills are vital to us all, and the internet is fast becoming a basic essential in our lives. We need to ensure everyone has these skills and access.” See further our comments in relation to ensuring that no-one is left behind in response to Q4 below.

**Chapter 7: A data and digital economy** *-* The data and digital economy section should position the connectivity between the Scottish economy and other parts of the global economy. Ensuring that Scotland engages with international developments and learns from other jurisdictions in driving a thriving data and digital economy is important to our individuals and businesses in an increasingly digitised world. See further comments below.

**Chapter 8: A Vibrant Tech Sector** - The Logan Review talks about increasing the number of computing science students. I think it’s equally important to increase the tech skills taught on other courses such as law as we need graduates who understand both tech and another subject to bridge the knowledge gaps in organisations.

**Chapter 9: An ethical digital nation** - we welcome the recognition of the importance of safeguarding digital rights. Whether under this heading or the opening chapter on ensuring that nobody is left behind, we consider that the importance of empowering individuals to exercise their digital rights – in particular, understanding their rights to data protection and privacy – should be specifically included. This should include advising individuals on how to protect themselves and their data but also ensuring that they have sufficient information, understanding and confidence to benefit from digital participation and ensure that they are able to properly assess the relevant risks.

4. Do you think that the potential actions set out in each section will deliver the vision set out in the supporting narrative?

|  | Yes  | No  |
| --- | --- | --- |
| No One Left Behind  | Yes  | No  |
| Services Working for All  | Yes  | No  |
| Transforming Government  | Yes  | No  |
| A Digital and Data Economy  | Yes  | No  |
| A Vibrant Tech Sector  | Yes  | No  |
| An Ethical Digital Nation  | Yes  | No  |

**If you have ticked ‘no’ or you think we could improve any of the actions please explain why:**

**Chapter 4: No one left behind**-In ensuring that nobody is left behind the Vision refers to “Digital inclusion that tackles inequality and promotes wellbeing”. The focus here seems to be on hardware, access and skills/training but we are concerned that access and training alone may not be sufficient to ensure inclusion. This approach will leave behind those who would struggle to engage with and use digital technology regardless of availability, education and assistance. We note in this regard the Iriss report on *Digital inclusion, exclusion and participation (*[https://www.iriss.org.uk/resources/esss-outlines/digital-inclusion-exclusion-and-participation](https://protect-eu.mimecast.com/s/wbsyCzmlAIzXL2h4-7q5?domain=iriss.org.uk)).

We are concerned that the ability to participate fully in a digital society may be a particular issue for older citizens. The report highlights a survey from Citizens Advice Scotland in 2018, which found that of respondents aged between 65 and 79 years:

* “Only 25% used the internet often
* 46% never used the internet
* 18% have difficulty using a computer
* 16% cannot use one at all”

It also highlights the lack of digital access people with disabilities, referencing a number of studies which shows that they “are are less likely to use the internet or have access at home than people without.” Similarly, an ONS study from 2018 found that 20% of disabled adults had never accessed the internet (<https://www.ons.gov.uk/businessindustryandtrade/itandinternetindustry/bulletins/internetusers/2018#main-points>). In short, whilst digital delivery may improve access, including for some disabled people, it is essential that electronic formats and digital platforms are fully accessible and that suitable alternative formats are made available to ensure that disabled people do not face barriers to engagement. These considerations should be reflected with a more nuanced approach in the vision, which recognises the importance of designing facilities in an inclusive way and ensuring assistance and support where access and skills training alone will not provide an effective solution.

We consider that “an education system that builds digital skills” should include a reference to life-long learning and availability of educational resources.

**Chapter 5: Services working for all** - Action to “*Adopt common digital and data standards*” - We would be interested in further information as to how Scottish Government will facilitate creation and adoption of common digital and data standards. This has been identified as a priority for developing efficiencies in legal tech and is likely to be of increasing importance to legal service providers as the sector evolves. We also note the importance of ensuring that standards used in Scotland – in both the legal profession and more generally – are more widely applicable to ensure interoperability with UK and international partners. This is vital if the objectives outlined in Chapters 7 and 8 are to be achieved.

**Chapter 7: A data and digital economy** - Ongoing law reform in relevant areas can support this goal and ensure that Scottish commercial law is fit for purpose. We consider that the Scottish Government has missed an opportunity to recognise the importance of up-to-date commercial legal systems in boosting opportunities for digital businesses.

A leading example in this area is the Moveable Transactions Bill, which we have previously identified as a critical piece of legal infrastructure and an area in which Scotland lags behind other jurisdictions, notably England and Wales. It is required to enable small and growing businesses in Scotland to thrive and stay here and to ensure that Scotland is an attractive investment destination in the future for relevant businesses coming from abroad. At the moment it can be extremely cumbersome for Scottish-based businesses to use their intellectual property, plant, equipment and stock, debts owed by their customers, bank account balances and shares as collateral to fund their businesses. Our members report that this means that some considering starting or growing businesses in Scotland or considering coming here to do so decide instead to do so in England or move there or make sure they use English contracts, bank accounts and other assets or English companies - as it is much more straightforward under English law to use those assets to support funding for their businesses. This applies across all sectors, including in particular data, technology and gaming.

Another potential issue is digital execution of documentation, which is becoming an increasingly sought-after mechanism in commercial transactions. It is vitally important to ensure that Scotland is consistent with rUK and international norms in this area. Lawyers will support their clients in complying with the requisite laws but there is also a role for government in ensuring that businesses are aware that legal formalities underpin these commercial systems.

Such initiatives demonstrate that Scotland is a modern and dynamic jurisdiction for businesses to establish and will support Scottish businesses in participating in international trade and securing overseas investment.

**Chapter 9: An Ethical Digital Nation** - We also note that technology can be harnessed to address non-technological issues which contribute to the objective of an ethical nation, which safeguards individual rights and wellbeing. For example, we note that the International Bar Association recently published a report on *Innovation-Led Cultural Change: Can Technology Effectively Address Workplace Harassment?,* which highlights the potential for technology to provide solutions encouraging those who experience workplace harassment to report it. This also demonstrates the role of international collaboration to address shared issues through technological solutions.

**~~5. Are any of the potential actions more important than others?~~**

 **~~Yes No~~**

**~~Please explain why:~~**

**~~Questions on parameters~~**

**~~Read the consultation paper.~~**

**~~The public sector sometimes has to work with parameters, some of which may be the financial, statutory or legal obligations; some or which may be about the wider economic conditions and other factors such as skills shortages. Thinking about these, and any other parameters:~~**

**6.How realistic do you think it will be to deliver these potential actions?**

**Please explain why:**

See response to question 7 below.

**7.Is there anything else you wish to comment on that has not been covered elsewhere?**

***The role of the justice system: an essential pillar in the Digital Strategy***

The consultation refers to living in a digital world and how the way we work, do business, entertain, deliver services, shop and keep in touch with our family and friends, as well as the work of government are all changing as a result. However, we note that the strategy does not refer to the justice system. We consider that the role of the justice system should be reflected in the vision as Government is responsible for the public funding of the justice system, both civil and criminal. This includes all the partners which include Scottish Courts and Tribunal Service, Police Scotland, Scottish Prison Service, Crown Office and Procurator Fiscal Service and the Scottish Legal Aid Board.

*Coronavirus and the justice system*

When the Coronavirus pandemic triggered a nationwide lockdown, court business stopped. Starting up that business has taken time and the justice system is still not running at the capacity it was prior to the pandemic- see SCTS November statistics (<https://www.scotcourts.gov.uk/about-the-scottish-court-service/scs-news/2020/12/15/information-on-criminal-case-throughput-for-november>):

* With the introduction of remote jury centres, High Court evidence led trials are 17% higher than the average monthly pre-COVID level showing that the normal capacity for 16 trials per day has been successfully restored. Since July, increases in Preliminary and Continued Preliminary hearings have been scheduled to enable resolution or to allow trial diets to be assigned that were unable to progress during the peak of the pandemic.
* Remote jury centres are being extended across Scotland to re-start sheriff court jury trials, with Lothian and Borders and Glasgow and Strathkelvin having commenced at the beginning of December. The other Sheriffdoms will follow in the early part of 2021.
* Evidence led summary trials in the Sheriff Courts are 85% of the average monthly pre-COVID levels.

The impact of the COVID-19 on the justice system continues to be significant, affecting both civil and criminal parts of the profession. The COVID-19 pandemic presents a unique and unprecedented challenge for preserving people’s rights, and ultimately to the rule of law. The consultation refers to the potential opportunities and challenges and the accelerated pace of digital transformation: this holds true for the justice system, which must be recognized as an essential service in our society.

*Equalities and Human Rights*

Although COVID-19 presents certain opportunities, it also brings significant risks. As noted above, the COVID-19 pandemic has presented a unique and unprecedented challenge for preserving people’s rights, and ultimately the rule of law. Policy decisions have been made quickly to respond to the changing emergency in order to address the public health requirements. That has meant the impact of COVID-19 continues to be deeply significant for some of the most vulnerable in society at some of the most challenging times in their lives. The Consultation refers to “reinvent[ing] our public services to make them more personal, accountable, adaptable, efficient, sustainable and worthy of public trust;” We welcome and support this important objective, which we believe is particularly relevant in the context of the justice system.

In particular, it is important to note that accused facing a criminal trial are entitled to a fair trial as a fundamental human right. They may also be vulnerable individuals and it is important that the protections essential to ensuring fair treatment within the justice system are not jeopardised in any situation: a global crisis is no exception.

Those involved in court hearings need to understand the proceedings, instruct their solicitor and give evidence if required. The use of digital solutions, such as remote hearings, may work well and can improve efficiency for straightforward cases and in civil cases but there are concerns regarding their suitability for all cases. One size does not fit all. “The vulnerable”, however defined but certainly including those with “protected characteristics” under the Equality Act 2010, must be properly catered for.

Remote hearings can present issues with the use of technology as well as difficulties arising from what may be perceived as an “artificial, impersonal hearing”. The “absence of the physical presence of their legal representative resulting in lack of reassurance, inability to pick up on distress, seek brief adjournments to explain matters arising, etc” can have a negative impact on those facing trial. (See research undertaken by the Law Society of England and Wales underpins the issues. <https://www.lawsociety.org.uk/en/topics/research/law-under-lockdown-the-impact-of-covid-19-measures-on-access-to-justice-and-vulnerable-people>. )

*Going forward*

There may well be improvements to process but care will be needed to assess and evaluate these measures. Efficiencies can equate to cost-cutting, which is a concern for lawyers in the justice system, whose work has been significantly impacted by the pandemic: some business cannot be progressed work is also now being done differently. Investment in technology and systems are required to participate in digital access to justice and here too, the education and training which the consultation recognises as essential, will form an important part of ensuring digitisation presents solutions, rather than inadvertently causing further problems. Ensuring that those within the justice system have the requisite skills and confidence to utilise digital solutions also requires appropriate investment.

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