

# Digital Economy Act 2017 Consultation: Codes of Practice and Regulations for Part 5 of the Act

## Page 1: Privacy Policy Statement

Do you wish to continue completing this response form?

Yes

Do you wish your name to be published in the government evaluation of responses? (If 'no', the response will be treated as confidential).

Yes

## Page 2: Responding to the consultation - Your details

Name:

Professor Peter W. F. Smith

Postal and/or email address - personal or business

[REDACTED]

Is this a personal response or an official response on behalf of your organisation?

Official response

Organisation name (if an official response):

Administrative Data Research Network (ADRN)

Position (if an official response):

ADRN Director

If you ticked "Official response", please respond accordingly -Type of responding organisation:

University or other higher education institution

Type of representative group or interest group

*No Response*

## Page 4: Public Service Delivery, Debt and Fraud

Q1. Overall, do you find this Code of Practice clear and easy to understand?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q2. Does the Code explain clearly the process for sharing information under these powers?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q3. Is there anything which you think is missing from the Code or which requires greater detail?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q4. The Code includes a set of principles for sharing information under the Public Service Delivery, Debt and Fraud powers, together with certain requirements to ensure that information shared under these powers is handled in a way that is transparent and fair. Are these the right principles for information sharing in the context of public service delivery, debt and fraud?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q5. Are the requirements for transparency under this Code appropriate and proportionate given the range of interests of those who use the powers and those who are interested in how they are used?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

## **Page 5: Civil Registration**

Q6. Overall, do you find this Code of Practice clear and easy to understand?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q7. Does the Code explain clearly the process for sharing information under these powers?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q8. Is there anything which you think is missing from the Code or which requires greater detail?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q9. The Code includes a set of principles for sharing information under these powers, together with certain requirements to ensure that information shared under these powers is handled in a way that is transparent and fair. Do you agree that these are the right principles for sharing information in the context of civil registration?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

## Page 6: Research Code of Practice and Accreditation Criteria

Q10. Overall, do you find this Code of Practice and accreditation criteria clear and easy to understand?

Yes

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

However, there is a lot of interchangeable terminology, e.g., data owner, holder, supplier etc. Perhaps it would be more helpful to use strict definitions, e.g., Data Controller, Data Processor etc.

Section 2.3 lists what is meant by processing data. While it might be covered as a 'related procedures', 'curation' could be added to the list to cover the creation of metadata, quality reports etc.

Section 5.1 mentions the DPA, whereas the GDPR are not mentioned until Section 14.1, perhaps they should also be explicitly mentioned in Section 5.1.

It is confusing that the items listed as serving the public interest in Sections 6.1 and 33.1 are different. Furthermore, while it might be argued that improving research methodology is covered by 'to improve the quality, coverage or presentation of existing research', one of the best ways to improve the quality of research is to improve methodology and therefore methodological research should be explicitly included as research that is in the public interest.

Section 30.1: clarification as to what is meant by peer reviewers is required. It is unlikely to be feasible to facilitate access to the data for reviewers of journal articles in the time scale (within two months) required to complete the reviews, particularly for those not based in the UK. However, access to data to undertake a reproducibility study is highly desirable.

Q11. Do the Code and accreditation criteria explain clearly the principles by which information may be shared under these powers?

Yes

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

However:

Section 4.1 states that the 'Authority may choose to publish details on data requests ...'. In the interest of transparency it should publish these details.

Section 5.2: the phrase 'highest ethical standards' is rather vague and further clarification would be useful. The issue of consent should be added to those to be considered.

Section 7.1: who will decide if the 'burdens and costs are proportionate', since this seems difficult to measure? Furthermore, it is not clear how and who will decide whether 'cost recovery charges are proportionate'. Cost recovery charging models should be made publicly available.

Q12. Is there anything which you think is missing from the Code or accreditation criteria or which requires greater detail?

Yes

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

Section 15.1 refers to 'a security control framework' and providing 'evidence of meeting the current security controls'. The framework and controls need to be published along with the procedures for providing the evidence. Currently, the procedures for providing such evidence are unclear and vary by data owner.

Section 16.1 refers to 'the necessary skills and experience' and 'security clearance appropriate to the nature of the data they are handling'. Further guidance on what these entail is required.

Section 26.1 states that the 'Authority may choose to provide training', but does not indicate how such training might be provided should the Authority not provide any. Details of how other providers will be accredited are required.

Section 34.1 states that 'outcomes of the research must be made open and accessibly available'. Therefore, it would be useful if the Code referred to the 5 star scale of openness:  
[http://guidance.data.gov.uk/five\\_stars\\_of\\_openness.html](http://guidance.data.gov.uk/five_stars_of_openness.html).

Information on who will manage the process, appeals and audits; and when and how the implementation will be evaluated is required, especially if it becomes clear that part of the Code may not be working as intended in practice.

## Page 7: Statistics Statement of Principles and Code of Practice on changes to data systems

Q13. Overall, do you find the Statement of Principles and Code of Practice clear and easy to understand?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q14. Do the Statement of Principles and Code explain clearly the principles by which the UK Statistics Authority will operate under these powers about access to information it has been given in the Act?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q15. Is there anything which you think is missing from the Statement of Principles or Code or which requires greater detail?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

## Page 8: The Digital Government (Disclosure of Information) Regulations 2017

Q16. Do you agree that the specified objective for multiple disadvantages has been described clearly and in the right level of detail?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q17. Do you agree that the specified objective for television retuning has been described clearly and in the right level of detail?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q18. Do you agree that the specified objective for fuel poverty has been described clearly and in the right level of detail?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q19. Do you agree that the specified objective for water poverty has been described clearly and in the right level of detail?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q20. Are the lists of the specified persons able to share information under each specified objective appropriately targeted?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

## Page 9: Further Information

How did you find out about this consultation?

Gov.uk website

May we contact you for further information?

Yes



**BANK OF ENGLAND**

Better Use of Data Team  
7th Floor, The White Chapel Building  
Whitechapel High Street  
London  
E1 8QS

**Oliver Burrows**  
Chief Data Officer and Head of Data and Statistics  
Division  
Data and Statistics Division



Dear Sir/Madam

Digital Economy Act: Consultation on statistics data access draft codes

I am taking this opportunity to respond on behalf of the Bank of England to the Digital Economy Act consultation on the data access statement of principles and code of practice document.

1 The Bank of England is affected by the data-sharing provisions of the Digital Economy Act in three broad ways:

- as a user of economic statistics, with an interest in improvements in the provision of these data that may result from the Statistics Authority's (UKSA / ONS) use of its new powers;
- in its responsibilities for monetary and financial stability, and as a financial regulator with access to sensitive data on regulated entities through a variety of mechanisms including legislative powers and operational dealings, and thereby subject to new Section 45B of the Statistics and Registration Service Act;
- as a maintainer of data systems, e.g. as used in the production of monetary and financial statistics, so that the Bank will have to have regard to the Authority's code on data system changes provided under Section 45G.

Statistics Statement of Principles

2 As a user of economic statistics, the Bank welcomes the potential for improvements in the provision of economic data that may result from the effective use of new data-sharing powers provided under the Act. In this regard, the Bank is supportive of the general approach set out in the draft Statement of Statistical Principles, but does not have any specific comments to offer.

3 The situation is more complicated with respect to the Bank's responsibilities as a financial regulator. The Bank holds highly sensitive data on regulated entities, and on the financial system as a whole, at both granular and aggregate levels of detail. This includes data that are, or in certain circumstances may become, highly financially sensitive, and some of which is highly restricted even within the Bank. Assessing whether a data access request that is in scope of 45B can be responsibly complied with will be a judgement that the Bank must make with regard to its statutory objectives and responsibilities. Such judgments may not always be capable of codification in advance: particular circumstances may arise or change over time in ways that will be difficult to envisage. Note that, depending on their source, not all such data will be protected from disclosure by the specific conditions of Section 45B (e.g. data subject to EU legislative restrictions on disclosure).

4 The 'comply or explain' provisions of new section 45B, and the provision under which the Authority may opt to lay the correspondence before Parliament in the event that a public authority has

declined a data access request, can be understood as an accommodation to the potentially competing considerations involved in the making of potentially sensitive data access requests, and the assessment of these by a public authority such as the Bank.

5 The Bank broadly welcomes the approach taken in Statistics Statement of Principles.

6 Under 'transparency', the Bank welcomes paragraph 5.3 which allows that: *'in some exceptional cases [a high level] of transparency may be inappropriate'*, and provides a commitment that the Authority *'will take into account the data supplier's advice before deciding whether to (or the extent to which we will) publish details of data access requests and responses'*, and extends this to the laying of documentation before Parliament. Although the draft suggests a small number of examples of such exceptional circumstances, the Bank would interpret these to be an illustrative rather than an exhaustive listing, and would anticipate that issues of financial markets sensitivity would be accommodated in this commitment.

7 The commitment described in para 5.3 should address the risk that in a hypothetical instance when the Bank has declined to provide requested data for reasons of financial stability, disclosure of this fact and the reason may in itself have a damaging consequence.

8 The Bank welcomes the commitment to a collaborative approach that is explained under the 'Collaboration' principle, at para 9.1, including:

*This will allow us to tailor data access arrangements to the specific needs, resources, interests and cultures of data suppliers, as well as the particular sensitivities and risks associated with different types and sources of data. A collaborative approach will also enable us to understand the way the data are constructed and therefore any caveats concerning their quality, interpretation and use.*

This is sensible, and provides comfort to the Bank that any data sensitivity concerns and its data-specific knowledge will be taken account of in routine dealings with the Authority. The expectation that the statutory mechanisms of 45B will be used as a last resort is welcome.

#### Code of Practice on data changes

9 Finally, the extensiveness of the Bank's data systems means that the Bank is also affected by the Code of Practice on changes to data systems. We note the pragmatic way in which this Code is drafted, with the obligations being essentially those of informing and consulting with the Authority ahead of planned changes that may affect the continuity or quality of data access arrangements. The Bank would expect that compliance with these responsibilities ought to be straightforward with respect to those of its datasets that already form the basis of data supply agreements with the Authority, i.e. primarily the Bank's statistical datasets.

10 However, the drafting of Section 45G and of this Code leave open the interpretation that they are potentially applicable to a wide range of data systems whether or not they are currently subject to data access arrangements. Given the Bank's extensive and constantly developing data system capabilities, we doubt whether this broader reading of the requirements would be practicable. We should also point out that in some cases, eg regulatory data collections specified by the European authorities, the Bank may not have control over the data format and, therefore, inter alia, data definitions and data quality. As these concerns might also apply to other public authorities, we might suggest that the Code should offer more guidance on the realistic extent of its scope.

Yours faithfully

Oliver Burrows  
Chief Data Officer and Head of Data and Statistics Division

# Digital Economy Act 2017 Consultation: Codes of Practice and Regulations for Part 5 of the Act

## Page 1: Privacy Policy Statement

Do you wish to continue completing this response form?

Yes

Do you wish your name to be published in the government evaluation of responses? (If 'no', the response will be treated as confidential).

Yes

## Page 2: Responding to the consultation - Your details

Name:

Sian Roxborough

Postal and/or email address - personal or business

Council Solicitor[Head of Legal Services],  
Blackburn with Darwen Council,  
H Floor Tower Block,  
King William Street,  
Blackburn  
BB1 7DY

Is this a personal response or an official response on behalf of your organisation?

Official response

Organisation name (if an official response):

Blackburn With Darwen Council

Position (if an official response):

Proper Officer

If you ticked "Official response", please respond accordingly -Type of responding organisation:

Local authority

Type of representative group or interest group

*No Response*

## Page 4: Public Service Delivery, Debt and Fraud

Q1. Overall, do you find this Code of Practice clear and easy to understand?

Yes

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q2. Does the Code explain clearly the process for sharing information under these powers?

Yes

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q3. Is there anything which you think is missing from the Code or which requires greater detail?

No

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q4. The Code includes a set of principles for sharing information under the Public Service Delivery, Debt and Fraud powers, together with certain requirements to ensure that information shared under these powers is handled in a way that is transparent and fair. Are these the right principles for information sharing in the context of public service delivery, debt and fraud?

Yes

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q5. Are the requirements for transparency under this Code appropriate and proportionate given the range of interests of those who use the powers and those who are interested in how they are used?

Yes

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

## Page 5: Civil Registration

Q6. Overall, do you find this Code of Practice clear and easy to understand?

Yes

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q7. Does the Code explain clearly the process for sharing information under these powers?

Yes

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q8. Is there anything which you think is missing from the Code or which requires greater detail?

No

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q9. The Code includes a set of principles for sharing information under these powers, together with certain requirements to ensure that information shared under these powers is handled in a way that is transparent and fair. Do you agree that these are the right principles for sharing information in the context of civil registration?

Yes

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

## Page 6: Research Code of Practice and Accreditation Criteria

Q10. Overall, do you find this Code of Practice and accreditation criteria clear and easy to understand?

Yes

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q11. Do the Code and accreditation criteria explain clearly the principles by which information may be shared under these powers?

Yes

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q12. Is there anything which you think is missing from the Code or accreditation criteria or which requires greater detail?

No

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

## **Page 7: Statistics Statement of Principles and Code of Practice on changes to data systems**

Q13. Overall, do you find the Statement of Principles and Code of Practice clear and easy to understand?

Yes

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q14. Do the Statement of Principles and Code explain clearly the principles by which the UK Statistics Authority will operate under these powers about access to information it has been given in the Act?

Yes

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q15. Is there anything which you think is missing from the Statement of Principles or Code or which requires greater detail?

No

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

## **Page 8: The Digital Government (Disclosure of Information) Regulations 2017**

Q16. Do you agree that the specified objective for multiple disadvantages has been described clearly and in the right level of detail?

Yes

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q17. Do you agree that the specified objective for television retuning has been described clearly and in the right level of detail?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q18. Do you agree that the specified objective for fuel poverty has been described clearly and in the right level of detail?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q19. Do you agree that the specified objective for water poverty has been described clearly and in the right level of detail?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q20. Are the lists of the specified persons able to share information under each specified objective appropriately targeted?

Yes

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

## Page 9: Further Information

How did you find out about this consultation?

**Other (please specify):**  
GRO

May we contact you for further information?

No

## Government consultation: The Digital Government (Disclosure of Information) Regulations 2017

Q16. Do you agree that the specified objective for multiple disadvantages has been described clearly and in the right level of detail?

No

Q20. Are the lists of the specified persons able to share information under each specified objective appropriately targeted?

No

### BMA (British Medical Association) response

We previously expressed serious concerns about the broad scope of the Digital Economy Bill (now Act) when it was being scrutinised in Parliament.<sup>1</sup> Our fundamental concern was that the Act set aside the common law duty of confidentiality (see part 5, chapter 1, section 40 (7) of the Act). The common law sets a higher standard for sharing confidential information than the Data Protection Act; for example, the common law requires patient consent for sharing information (other than in exceptional circumstances).

Despite initial assurances from the Government that it was not the intention to include health information within the new information-sharing powers, there was an admission towards the end of the Bill's scrutiny in parliament that "*As drafted, it would be possible for health bodies to be added*".

The Government made a commitment that it would not make any such changes without ensuring that there was "*a public consultation on the issue and the views of the National Data Guardian and appropriate representative health bodies such as the GMC and BMA have been sought*". It is our understanding that the current draft regulations will bring identifiable health information within the Act's new powers to share personal information across organisational boundaries, without consent.

Our understanding is that even though health bodies have not been explicitly added to the list of 'specified bodies' through these regulations, the definition of the public bodies which will have these new powers is so broad (see section (28) in Schedule 4 of the Act) that the new objective to share personal data amongst public authorities to target 'ill-health' (via the regulations) means the powers could now be applied to health bodies, such as GP practices and hospital trusts. For example, a GP practice would be permitted to share confidential health information, without consent, with the police or the council (listed as 'specified persons' under Schedule 4 to the Act) about a victim of domestic violence, if the individual was also suffering from 'ill-health'.<sup>2</sup>

<sup>1</sup> Read the BMA's briefing ahead of the House of Lords' Report Stage of the Digital Economy Bill (now Act): [www.bma.org.uk/-/media/files/pdfs/collective%20voice/influence/uk%20governments/bma-briefing-digital-economy-bill.pdf?la=en](http://www.bma.org.uk/-/media/files/pdfs/collective%20voice/influence/uk%20governments/bma-briefing-digital-economy-bill.pdf?la=en)

<sup>2</sup> This would meet the draft regulations' requirement to satisfy two or more of the factors included in the 'multiple disadvantages objective' – e.g. domestic violence and ill-health, as listed in the draft regulations at paragraph (3).



Our view remains that wide-ranging powers to share confidential health information without consent would undermine the confidential nature of the health service and the ability for autonomous adults to control the sharing of their confidential information. This principle must apply equally to those members of society who are disadvantaged or who are least able to advocate for themselves. These groups of patients, whose records may contain highly sensitive or distressing information, must not have their information subject to lower standards of confidentiality protections than the wider population. If people lose trust in the confidentiality of the healthcare system, they may become understandably more reluctant to access and make use of services when they need to do so.

It is difficult to envisage why consent could not be sought in most situations envisaged by the regulations, and we believe that consent for sharing should be obtained in all but the most exceptional circumstances.

We had understood that the Government's commitment, in Parliament,<sup>3</sup> to consult the BMA and others if such proposals were brought forward was an effort to ensure transparent and thorough scrutiny of the impact on the principle of confidentiality within the health service. This has been undermined by the lack of clarity and definition on the face of the Act and subsequent regulations – both in relation to the definition of 'ill-health' as a multiple disadvantage, and in terms of the scope of section 28 in the parent Act. As a result, we believe that the impact these two pieces of legislation could have on the confidentiality of medical data has been obscured by a lack of clarity and open debate.

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<sup>3</sup> Lord Keen (Lords' Spokesperson for the Ministry of Justice) speaking at the House of Lords' Report Stage of the Digital Economy Bill (now Act) (20 March 2017): <https://hansard.parliament.uk/Lords/2017-03-20/debates/C4F30769-C3D1-493F-BE23-0A488EF6ACF8/DigitalEconomyBill#contribution-9310E539-7169-4F97-8FA3-95D3E22B1AB5>





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**Consultation on Digital Economy Act, Part 5: Data Sharing Codes and Regulations**

Centrica response to the Cabinet Office 2017

## About Centrica

Centrica is an energy and services company. Everything we do is focused on satisfying the changing needs of our customers. Our areas of focus are Energy Supply & Services, Connected Home, Distributed Energy & Power, Energy Marketing and Trading.

Through the brand British Gas, we supply energy and services to more than 11m homes and businesses in the UK. Our Connected Home business has developed products such as Hive Active Heating and Boiler IQ. Through its Hive brand, British Gas is focused on delivering and developing connected home products. We now have 500,000 Hive Hub customers and more than 360,000 Hive Active Heating customers across the UK.

We are focused on delivering high levels of customer service, improving customer engagement and loyalty. We aim to be a good corporate citizen; employer of choice and to provide leadership in a dynamic and changing world.

- In 2016 2.1 million vulnerable customer households were helped with support totalling nearly £195 million
- Last year over 650,000 customers received £140 off their British Gas bills through the Warm Home Discount (WHD)
- British Gas has also given £106 million to its independent Energy Trust since 2004, helping over 195,000 people struggling with debt, regardless of whether they are British Gas customers

## Summary

Centrica supports the move to improve the use of data, in both public services and the provision of assistance to households living in fuel poverty. We warmly welcomed Part 5 of the Digital Economy Act 2016 which provides the framework to facilitate this. However, to more effectively meet the policy objective of better supporting the fuel poor who would benefit from additional help, we would urge government to:

- Provide clarity on the data sharing process between government and energy suppliers, and the data sharing process between energy suppliers and third party Energy Company Obligation (ECO) delivery partners. Joint guidance from Government and the Information Commissioner on this final point is important
- Work with energy suppliers to determine what further data could be shared to improve ECO targeting and efficiency (such as BEIS's National Energy Efficiency Database (NEED))
- Allow energy suppliers to use their customers' eligibility flag for further well-targeted assistance, even where this support is not driven by Government. This will ensure the greatest possible benefit for all customers in fuel poverty

## Social and environmental policy costs and the importance of data sharing

- 1) We recognise that providing support to vulnerable customers should be the shared responsibility of energy suppliers and the Government. We take our responsibilities to deliver the WHD and the ECO very seriously, but looking ahead, are concerned about the increasing cost of these obligations and the impact on customer bills.
- 2) We support the Government's ambition to improve the energy efficiency of homes and businesses in Britain, and agree that this is an important way to reduce energy bills, cut carbon emissions and tackle fuel poverty. Since the introduction of the ECO in 2013 we have spent over £1,260m on the programme, installing over 700,000 measures.
- 3) In winter 2015/16, we fully met our WHD obligation, and spent over £13 million more than we were required to by the Government – over 650,000 of our customers benefited from the £140 discount in the year. We were also the only energy supplier to give low-income customers using little or no gas a £95 rebate on their standing charge, helping 23,000 households.
- 4) Any organisation that is obligated to deliver a social policy outcome on behalf of the Government should be aided by any data which can allow them to deliver the outcome in an accurate and cost-effective manner.
- 5) The Low Income High Cost (LIHC) definition of fuel poverty, officially adopted for England in 2014, considers a household to be in fuel poverty if the household's required fuel costs are above the national median, and the household's residual income would be left below the official poverty line, were they to spend that amount.
- 6) Given the complexity of this fuel poverty definition, and the ambitious fuel poverty targets in place, it is vital that data is made available to ensure that energy suppliers can identify those households most in need. Precisely which data are provided, and their accuracy, will enable suppliers to determine what support can be provided, or potentially prioritise those households most in need.

#### **ECO – Potentially an increasing cost for customers**

- 7) Social and environmental policies, such as ECO and the WHD are paid for directly by customers' energy bills. For this reason, it is important to ensure that these policies are good value for money.
- 8) With diminishing remaining technical potential, and an increasing focus on tackling fuel poverty, we are concerned that ECO will become increasingly difficult to deliver in the future, and may cost consumers more. As the remaining volume of cost-effective improvements is exhausted, the cost of subsidies will increase, worsening the regressive distributional impacts on poor households.

- 9) The cost of identifying eligible households, and arranging for their consent to have energy efficiency measures installed, are significant contributors to the cost of ECO and fuel poor households are the most expensive to find.
- 10) The expectation is that ECO3 will become a full fuel poverty obligation with further restrictions on heating measures and a focus on insulation. This is still new ground for the supply chain and the deliverability of such a scheme is a risk. Escalating lead generation costs for insulation measures is a concern. This is due to:
  - a. The technical potential of the eligible group (the need of a suitability for measures) is unproven and may not be sufficient to meet the ambition for the scheme
  - b. Customer demand for insulation measures amongst the low-income groups has historically been low and households have been repeatedly targeted by previous schemes
  - c. Flexible eligibility, where local authorities can nominate eligible households, is still in the pilot stage and have not been proven to work at scale. It is also unclear to what extent this method of identifying households will be limited in the future.
- 11) Anecdotally, we hear from the supply chain that leads on eligible households can sell for hundreds of pounds. This could mean that we spend nearly as much on finding eligible households than on the energy efficiency measure itself. The risk in the future scheme is that this pressure on lead generation escalates out of control.
- 12) Without comprehensive and effective data sharing arrangements, these costs could rise sharply in a new scheme focused on insulating fuel-poor homes. The complexity of the LIHC definition also means that it will be difficult for households to establish themselves whether they are fuel poor.
- 13) For this reason, we warmly welcomed the move to improve the use of data, in both public services and the provision of assistance to households living in fuel poverty. We see this as an important tool to help manage some of the costs associated with ECO and the WHD.
- 14) In relation to the WHD, extending the range of data available will greatly improve the targeting of assistance to current 'Broader Group' households, such as low-income families. These households are eligible for support but there is not currently a data matching arrangement for them. This would reduce administrative costs and the risk of fraud, and would increase the proportion of eligible households in this Group that receive support.
- 15) While welcoming these reforms, it is crucial that any cost savings made because of data sharing are put into the context of the wider costs related to delivering social and environmental policy outcomes, which remain substantial. Data sharing should have a positive impact on the administrative cost of delivering the WHD and see improved targeting of this support. If we can make effective use of this data to help deliver ECO, it should also help manage delivery costs, but this is only one element of the overall cost.

#### **Limitations in the current draft**

(Addressing: Q1. Overall, do you find this Code of Practice clear and easy to understand? Q2. Does the Code explain clearly the process for sharing information under these powers?; Q3. Is there anything which you think is missing from the Code or which requires greater detail? and Q20. Are the lists of the specified persons able to share information under each specified objective appropriately targeted?)

#### Sharing data with ECO delivery partners

16) Based on our current understanding of the data sharing legislation, regulations and Code of Practice, we do not think it will be possible to make use of the ‘eligibility flags’ (drawn from an overlay of datasets held by HMRC, the Department of Work and Pensions, BEIS and the VOA) when implementing ECO. This is because Centrica, and we believe the majority of other energy suppliers, work with delivery partners to identify suitable households and install measures under ECO. The draft Code of Practice, Regulations and the Act are silent as to whether we can share data with our delivery partners. We urge the Department to, as a minimum, publish joint guidance from HM Government and the Information Commissioner that states:

- the legislation in question would enable energy suppliers to share any data with third parties/delivery partners provided that the necessary safeguards and controls are in place to ensure the security of data transfers;
- such sharing of information would be pursuant to a legal obligation or lawful purpose for the purposes of the Data Protection Act.

17) The Government’s Committee on Fuel Poverty recently highlighted the importance of data sharing between all ECO delivery stakeholders to effectively deliver ECO in its annual report, stating:

*“The Data Sharing Legislation needs to include the ability to share the required level of data between the key ECO delivery stakeholders, so as to ensure an efficient and effective delivery of ECO measures, whilst providing an adequate level of data protection.<sup>1</sup>”*

18) As discussed above, we are concerned that without effective data sharing arrangements in place, any future ECO scheme with a greater fuel poverty focus risk having disproportionately expensive administration costs.

19) We understand that the Department for Business, Energy and Industrial Strategy (BEIS) is currently considering other options to aid in the better targeting of ECO towards the fuel poor. We would welcome the development of a postcode level mapping tool for industry-wide use, and are keen to understand what this could mean in practice. We look forward to further discussions with BEIS.

#### **Creating a level playing field**

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<sup>1</sup> Committee on Fuel Poverty Annual report 2017, P61

- 20) Small suppliers currently enjoy a range of exemptions from government social and environmental schemes. These include WHD (suppliers with less than 250,000 domestic accounts) and ECO (suppliers with less than 250,000 domestic accounts exempt).
- 21) We believe it is in customers' interests to remove this threshold. The current threshold for the WHD means that a rising number of eligible customers are potentially unable to claim the WHD. This is a particular problem when there has been rapid growth in the number and market share of small suppliers and the distortive impact will be intensified if retail price regulation is imposed. The participation threshold may also be a barrier to switching.
- 22) The expected reduction in administrative burden delivered by data sharing should be considered by BEIS when it reviews whether to remove, or reduce the threshold below which suppliers are not required to provide WHD to their customers.

### **A regressive cost**

- 23) We are leading the way in driving energy efficiency and helping households in the UK use less energy. We absolutely agree that most of the government's policies in this regard have been right over the last 20 years. The issue is how they are paid for. Ultimately, we believe it's highly regressive for the cost of these policies to be put through people's bills because those who are worse off are disproportionately affected. These policy costs, especially now they are costing billions a year, should be recouped through general taxation.

### **Future proofing**

(Addressing questions: Q2. Does the Code explain clearly the process for sharing information under these powers?; Q3. Is there anything which you think is missing from the Code or which requires greater detail? and Q20. Are the lists of the specified persons able to share information under each specified objective appropriately targeted?)

- 24) We understand that it is intended that energy suppliers seeking to identify those in fuel poverty who are eligible for assistance under the WHD, and potentially ECO, will be provided with an 'eligibility flag' against their customer lists. The data used to identify these 'eligible' customers will be an overlay of housing data from the Valuation Office Agency (VOA) and benefits data from the Department of Work and Pensions (DWP).
- 25) For ECO, such eligibility flags would only be the start of the process of providing support. In most cases, an on-site technical survey will still be required before any energy efficiency improvements can be carried out. To aid in this process we would welcome more information supplied to energy suppliers to improve ECO targeting and efficiency, such as BEIS's National Energy Efficiency Database (NEED). We would welcome the opportunity to work with BEIS to determine what further data could be shared with us to help deliver ECO more effectively.

- 26) It is foreseeable that the social and environmental obligations on energy suppliers, or opportunities, will change in the future. We seek reassurance that the wording of the regulations and Code of Practice will allow energy suppliers and their customers to benefit from data sharing under future schemes which seek to help customers in fuel poverty.
- 27) To ensure the greatest possible benefit for all customers in fuel poverty energy, suppliers should be able to use their customers' eligibility flag for further well-targeted assistance, even where this support is not driven by Government. For example, British Gas offered low-income customers using little or no gas a £95 rebate on their standing charge in 2015. We were the only supplier to do this, and helped 23,000 households. We, and other energy suppliers, also maintain a Priority Services Register (PSR) for customers in a range of vulnerable circumstances to provide them with additional help and support. However, our information on who should benefit from this support is not complete. We understand that these draft regulations and Code of Practice will not allow us to use the eligibility flag to identify customers for this support, and we urge government to revisit this issue.

#### **The next phase of the WHD**

- 28) Wider data sharing arrangements could significantly reduce the overall administrative cost of the WHD, but could increase the overall spend, as a greater proportion of the 'Broader Group' would receive their rebate automatically. This will need to be carefully considered in the context of the scheme's annual spending limit. We are still awaiting the consultation on the next phase (2018/19) but if any changes are made to eligibility for the scheme, this must be effectively communicated by the Government to any households affected.

GDS

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## consultation response - citizens advice

1 message

**Jake Beavan**

2 November 2017 at 16:28

To: data-sharing@digital.cabinet-office.gov.uk

Dear Better Use of Data Team,

Citizens Advice are pleased to respond to the consultation on the Digital Economy Act data sharing codes and regulations. We have taken up the option of an email response as our comments are of a more general nature. Our comments refer mainly to the code and regulations for public service delivery, fraud and debt. This code, particularly its application to fuel poverty, has significant relevance for much of our policy work.

Firstly we would like to state that we fully support the policy intent behind the fuel poverty provisions. Allowing energy suppliers to get a better understanding of which of their customers may be struggling with their energy bills will be really valuable in targeting support where it is most needed.

This function now stands to take on even greater importance given Ofgem's plans for a wider price cap for vulnerable consumers, to be in place by winter 2018-19. The first phase of their price protection (due to come in from February 2018) will just apply to those who receive (as opposed to all eligible) the Warm Home Discount as this information is readily available to suppliers. However it is clear that if this protection is to be extended to a wider group of low income vulnerable consumers, then suppliers will need to be provided with more information about which of their customers fall within this group.

With regards the code itself, it is sufficiently clear for the practitioners it is aimed at. However it would help inspire public trust in the process if, outside of these codes and regulations, there were some more public-facing materials that makes clear to people both the obligations of the data processors and the rights of the individual.

We note that public transparency will be provided through a repository of information sharing agreements on the GDS website. This information must be presented in an accessible way with any background documentation using open machine-readable formats.

Citizens Advice are reassured by the emphasis on strong sanctions for unlawful disclosure of information. We understand that these same sanctions would also apply in the event that data is misused - for a purpose other than the one stated in the agreement - but some further clarity on this point would also be welcome.

We hope that these points of clarity and transparency can be picked up in the process. Citizens Advice's view is that these functions have significant potential to help households who may be turning their heating down or off to save money. We therefore also hope that this process can be brought to a satisfactory conclusion ahead of Winter 2018-19 so that the price cap and any other interventions can relieve the pressure on energy costs for the most vulnerable households during that crucial time.

Regards,

**Jake Beavan**  
**Senior Policy Researcher**  
**Citizens Advice**

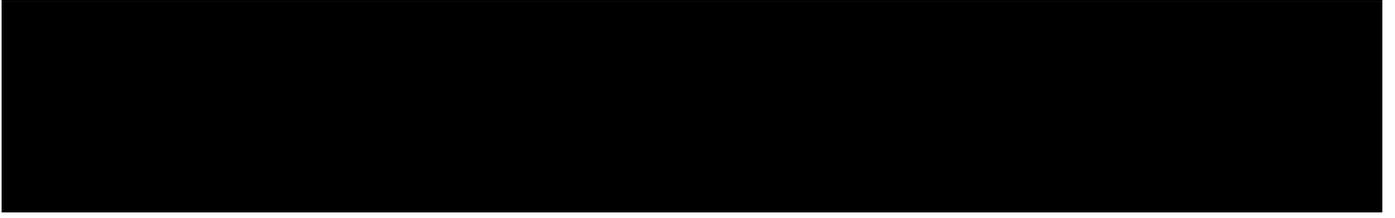
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The Citizens Advice service helps people resolve their legal, money and other problems by providing information and advice, and by influencing policymakers.

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# Digital Economy Act 2017 Consultation: Codes of Practice and Regulations for Part 5 of the Act

## Page 1: Privacy Policy Statement

Do you wish to continue completing this response form?

Yes

Do you wish your name to be published in the government evaluation of responses? (If 'no', the response will be treated as confidential).

Yes

## Page 2: Responding to the consultation - Your details

Name:

Rob Davies

Postal and/or email address - personal or business

[REDACTED]

Is this a personal response or an official response on behalf of your organisation?

Official response

Organisation name (if an official response):

CLOSER (Cohort & Longitudinal Studies Enhancement Resources)

Position (if an official response):

Public Affairs Manager

If you ticked "Official response", please respond accordingly -Type of responding organisation:

University or other higher education institution

Type of representative group or interest group

*No Response*

## Page 4: Public Service Delivery, Debt and Fraud

Q1. Overall, do you find this Code of Practice clear and easy to understand?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q2. Does the Code explain clearly the process for sharing information under these powers?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q3. Is there anything which you think is missing from the Code or which requires greater detail?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q4. The Code includes a set of principles for sharing information under the Public Service Delivery, Debt and Fraud powers, together with certain requirements to ensure that information shared under these powers is handled in a way that is transparent and fair. Are these the right principles for information sharing in the context of public service delivery, debt and fraud?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q5. Are the requirements for transparency under this Code appropriate and proportionate given the range of interests of those who use the powers and those who are interested in how they are used?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

## Page 5: Civil Registration

Q6. Overall, do you find this Code of Practice clear and easy to understand?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q7. Does the Code explain clearly the process for sharing information under these powers?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q8. Is there anything which you think is missing from the Code or which requires greater detail?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q9. The Code includes a set of principles for sharing information under these powers, together with certain requirements to ensure that information shared under these powers is handled in a way that is transparent and fair. Do you agree that these are the right principles for sharing information in the context of civil registration?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

## **Page 6: Research Code of Practice and Accreditation Criteria**

Q10. Overall, do you find this Code of Practice and accreditation criteria clear and easy to understand?

Yes

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

Overall we think they are clear and easy to understand and welcome the explicit mention of the unique nature of longitudinal studies and research in respect of retention periods. Our use and interpretation of previous Code of Practice documents (e.g. ICO anonymization code of practice) has been aided by the inclusion of 'case study' illustrations. We recommend the inclusion of case studies in this Code of Practice and would be happy to help contribute to a case study based on longitudinal studies.

Q11. Do the Code and accreditation criteria explain clearly the principles by which information may be shared under these powers?

Yes

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

The greatest value of longitudinal research resources will only be realised when participants data – drawn from multiple sources – can be linked reliably and analysed together within a secure single research environment. Given the unique nature of longitudinal studies we think that the principles would benefit from an illustrative exemplar involving cohorts using linked records to help ensure clarity. CLOSER would welcome the opportunity to help develop this exemplar.

Q12. Is there anything which you think is missing from the Code or accreditation criteria or which requires greater detail?

Yes

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

We would like to see more detail and clarity on a number of points in the Code and accreditation criteria. These are as follows:

- We recognise that the Act does not provide a legal gateway to access health data. However, our understanding is that it does not preclude the possibility that health data accessed using a suitable legal gateway cannot be brought into the same secure research environment as administrative records accessed via the Act. To jointly analyse linked health and administrative data has tremendous research and policy potential. It was neither the intention of this Act to preclude this potential, nor to enable it. We would value this possibility being made clear within the code of practice.
- Clarity around the potential complication that arises in longitudinal/cohort studies in that staff can be both a processor and researcher and how this should be managed in practice.
- More detail on the levels of and routes to accreditation (illustrative examples and/or case studies, flow charts and tick boxes would be useful to help guide through the process). CLOSER would be happy to

help construct a case study or series of case studies to illustrate the process.

- Clarity over whether ISO27001 accreditation can be considered acceptable security accreditation.
- A clearer definition of what 'significant proportion' (25.1) means in practice, for example does someone with a sociological degree with a module on statistics qualify?
- A section promoting the benefits of data sharing and the requirement that researchers publish their work into the public domain.

## Page 7: Statistics Statement of Principles and Code of Practice on changes to data systems

Q13. Overall, do you find the Statement of Principles and Code of Practice clear and easy to understand?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q14. Do the Statement of Principles and Code explain clearly the principles by which the UK Statistics Authority will operate under these powers about access to information it has been given in the Act?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q15. Is there anything which you think is missing from the Statement of Principles or Code or which requires greater detail?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

## Page 8: The Digital Government (Disclosure of Information) Regulations 2017

Q16. Do you agree that the specified objective for multiple disadvantages has been described clearly and in the right level of detail?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q17. Do you agree that the specified objective for television retuning has been described clearly and in the right level of detail?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q18. Do you agree that the specified objective for fuel poverty has been described clearly and in the right level of detail?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q19. Do you agree that the specified objective for water poverty has been described clearly and in the right level of detail?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q20. Are the lists of the specified persons able to share information under each specified objective appropriately targeted?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

## Page 9: Further Information

How did you find out about this consultation?

**Other (please specify):**  
Contacted directly.

May we contact you for further information?

Yes

# Digital Economy Act 2017 Consultation: Codes of Practice and Regulations for Part 5 of the Act

## Page 1: Privacy Policy Statement

Do you wish to continue completing this response form?

Yes

Do you wish your name to be published in the government evaluation of responses? (If 'no', the response will be treated as confidential).

No

## Page 2: Responding to the consultation - Your details

Name:

[REDACTED]

Postal and/or email address - personal or business

[REDACTED]

Is this a personal response or an official response on behalf of your organisation?

Personal response

Organisation name (if an official response):

*No Response*

Position (if an official response):

*No Response*

If you ticked "Official response", please respond accordingly -Type of responding organisation:

*No Response*

Type of representative group or interest group

**Other (please specify):**  
fuel poverty groups

## Page 4: Public Service Delivery, Debt and Fraud

Q1. Overall, do you find this Code of Practice clear and easy to understand?

No

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

while I welcome the approach to make data sharing for the benefit of debt reduction the process has to be very clear to enable an organization to use the powers effectively. it is a lengthy process and it needs to be clear that the outcomes will be beneficial to commit the resources to complete the process. guidance should be very clear with regards to compliance. how the process will be compliant with ICO and data protection act as well as GDPR and the digital economy act.

Q2. Does the Code explain clearly the process for sharing information under these powers?

No

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

there appears to be an extensive process involved for the use of the powers for data sharing. it doesn't take in to account the added complexity of outsourcing of service which hold the data.

Q3. Is there anything which you think is missing from the Code or which requires greater detail?

Yes

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

how to be compliant with the data protection act, ICO and GDPR. the fear of non-compliance could be a deterrent to using the powers.

Q4. The Code includes a set of principles for sharing information under the Public Service Delivery, Debt and Fraud powers, together with certain requirements to ensure that information shared under these powers is handled in a way that is transparent and fair. Are these the right principles for information sharing in the context of public service delivery, debt and fraud?

No

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

the data sharing lifecycle could be clearer.

Q5. Are the requirements for transparency under this Code appropriate and proportionate given the range of interests of those who use the powers and those who are interested in how they are used?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

## Page 5: Civil Registration

Q6. Overall, do you find this Code of Practice clear and easy to understand?

No

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

the conditions are clear but it is not clear what evidence of these conditions will be required.

Q7. Does the Code explain clearly the process for sharing information under these powers?

No

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

a clear description of the process, what is involved and how to make sure it is a complaint use the power would be beneficial.  
The Act implies that data can be shared with registered electricity and gas providers. this will exclude those organisations who are acting on behalf of a registered provider for the delivery of a funded scheme such as the energy company obligation.  
the conditions refer to the benefit of a persons wellbeing but the powers don't allow for the data sharing with health services such as CCG and NHS.

Q8. Is there anything which you think is missing from the Code or which requires greater detail?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q9. The Code includes a set of principles for sharing information under these powers, together with certain requirements to ensure that information shared under these powers is handled in a way that is transparent and fair. Do you agree that these are the right principles for sharing information in the context of civil registration?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

## Page 6: Research Code of Practice and Accreditation Criteria

Q10. Overall, do you find this Code of Practice and accreditation criteria clear and easy to understand?

No

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q11. Do the Code and accreditation criteria explain clearly the principles by which information may be shared under these powers?

No

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

more detail about the process of compliance would be beneficial

Q12. Is there anything which you think is missing from the Code or accreditation criteria or which requires greater detail?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

## Page 7: Statistics Statement of Principles and Code of Practice on changes to data systems

Q13. Overall, do you find the Statement of Principles and Code of Practice clear and easy to understand?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q14. Do the Statement of Principles and Code explain clearly the principles by which the UK Statistics Authority will operate under these powers about access to information it has been given in the Act?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q15. Is there anything which you think is missing from the Statement of Principles or Code or which requires greater detail?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

## **Page 8: The Digital Government (Disclosure of Information) Regulations 2017**

Q16. Do you agree that the specified objective for multiple disadvantages has been described clearly and in the right level of detail?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q17. Do you agree that the specified objective for television retuning has been described clearly and in the right level of detail?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q18. Do you agree that the specified objective for fuel poverty has been described clearly and in the right level of detail?

No

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

while the approach to tackle fuel poverty is welcomed, the process and the organizations with who the data can be shared need to be revised. the process for compliance should be very clear to enable the use of the powers. key players in fuel poverty are not included such as the NHS and CCG. this would allow for the sharing of data to evaluate the effectiveness or energy efficiency schemes for reducing the impact of cold home on health

Q19. Do you agree that the specified objective for water poverty has been described clearly and in the right level of detail?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q20. Are the lists of the specified persons able to share information under each specified objective appropriately targeted?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

## Page 9: Further Information

How did you find out about this consultation?

**Other (please specify):**  
notification from government department

May we contact you for further information?

Yes



# Digital Economy Act, part 5: data sharing codes and regulations Consultation



## 1 Introduction

- 1.1 The Consumer Council for Water (CCWater) is the statutory consumer organisation representing water and sewerage consumers in England and Wales. We have four regional committees in England and a committee for Wales.
- 1.2 CCWater is happy for our response to be published and attributed to the organisation.

## 2 Our response

- 2.1 Our research indicates that around 3 million households in England and Wales do not consider their water charges to be affordable. Since the introduction of water social tariffs we have been able to help the Industry achieve significant progress in identifying and getting help to those customers who need it. Overall around 400,000 customers are now receiving on-going support with their water bills. We believe that the sharing of data can help companies better identify those customers who might need this support, enabling assistance to be delivered to an even wider group. As such, subject to appropriate privacy safeguards, we are supportive of the implementation of the data sharing powers provided by the Digital Economy Act.
- 2.2 In our recent report [‘Staying Afloat - addressing customer vulnerability in the water sector’](#) we highlighted that the future capacity of social tariffs to deliver help to a larger group of customers will be dependent on access to greater funding. Currently schemes are mostly funded by customers and, as such, limited in scope based on how much they are willing to contribute through bills. We estimate that the schemes currently in place have potential to help around 600,000 customers over time. However this would still leave around 4/5ths of the problem unaddressed. We believe the issue of funding must be tackled if the potential benefits of the Digital Economy Act data sharing provisions are to be fully realised.
- 2.3 Our report also highlighted the potential benefits of a more standardised approach to delivering affordability assistance, so that help is available to all that need it no matter where they live. In particular we highlighted that a social tariff design based upon benefit entitlement and delivering fixed bill caps or discounts might enable companies to make use of data sharing provisions to apply automatic discounts to eligible customers’ bills without need for an application process.
- 2.4 We welcome the opportunity to comment on the Codes of Practice and regulations to implement the information sharing provisions of the Digital Economy Act. We have commented below against the relevant questions raised in the consultation.

2.5 We consider the Code of Practice to be clear and easy to understand. It provides a framework which should enable benefits to be delivered for customers. However the delivery of those benefits will be dependent on effective implementation.

2.6 Co-operation between all relevant stakeholders will be essential in delivering this objective and we would welcome the prompt establishment of a working group to drive this work forward. We would wish to be included in those discussions to ensure customers' views are represented. Following such discussions further guidance may be necessary to ensure a clear understanding across all parties about how processes should be implemented.

2.7 We feel it would be helpful for the Code to include a summary of the Government's policy objectives to encourage the effective implementation by stakeholders in accordance with those objectives. As the provisions of the Act facilitate data sharing, rather than requiring it, it would be helpful to reinforce the message that Government considers the sharing of information for these purposes to be beneficial and therefore it is to be encouraged.

2.8 We believe the specified objective for water poverty is clear and described in the right level of detail.

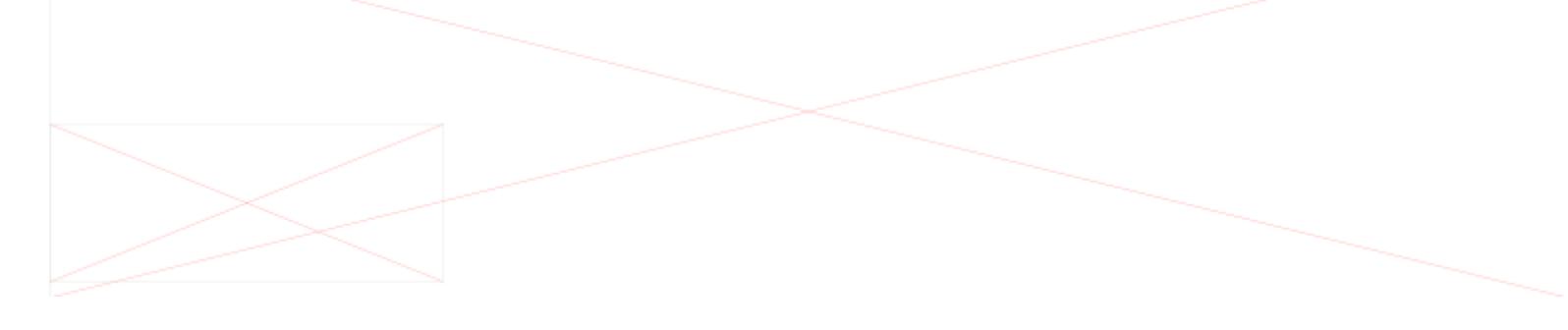
2.9 We consider that the list of specified persons is appropriately targeted.

## Enquiries

Enquiries on this submission should be directed to:

Andrew White  
Senior Policy Manager  
Consumer Council for Water





November 2017

## **Digital Economy Act, part 5: data sharing codes and regulations**

### **About Co-op Energy**

One of the biggest differences between us and other energy suppliers is that we're a co-operative, which means we're owned and run by our members. Most big energy suppliers are owned by shareholders, so any profit they make goes back to their shareholders, rather than customers. When we make a profit it's our members, and our community who see the benefits.

Established in 2010, Co-op Energy is committed to sustainability and we stopped buying electricity from coal in 2016. Our Standard Variable Tariffs is sourced from 100% renewable electricity, and our target it to source at least 75% of all our electricity from renewable sources by 2020.

We secured Fair Tax Accreditation for the 3rd consecutive year and won the Queens Award for Enterprise 2015 in recognition of our ongoing commitment to social responsibility.

### **Summary of our response**

The ability for energy suppliers to have enhanced access to certain data from the Department of Work and Pensions (DWP) and property data from the Valuation Office would enable us to better target our support for vulnerable and fuel poor customers. Improved data access will allow us to deliver government environmental and social policies in a more efficiently, and better target those in most need.

We therefore welcome the updates to the Digital Economy Act data sharing codes and regulations, which will allow Government to share property records from the Valuation Office, and from the DWP. more details on the benefits our customers are

*Community Owned, Community Led, Community Rewarding  
Working together to create a better, fairer world*

Co-operative Energy Limited  
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Registered office: Co-operative House, Warwick Technology Park, Warwick CV34 6DA  
Part of The Midcounties Co-operative Limited



However, we do note it's not yet clear whether enhanced data matching with DWP data, will be enabled in time for Phase 2 of Ofgem's Safeguard Tariff, due to be implemented towards the end of 2018.

Further data matching would also allow **all** energy suppliers to offer targeted support to vulnerable and fuel poor customers, not just those suppliers with over 250,000 customers. This means customers with small suppliers won't miss out from this support. This will additionally benefit competition in the retail energy, by spreading the cost of the industry's support for vulnerable and fuel poor customers across all supplier, not just large suppliers.

We would welcome an extension of the scope of Section 36(3) of the Act to help us better support the fuel poor and treat all customers fairly.

Yours faithfully

Duncan Carter  
Senior Regulatory Manager, Co-op Energy

*Community Owned, Community Led, Community Rewarding  
Working together to create a better, fairer world*



Co-operative Energy Limited  
Registered in England under company no. 6993470  
Registered office: Co-operative House, Warwick Technology Park, Warwick CV34 6DA  
Part of The Midcounties Co-operative Limited



2 November 2017, this document is a response to the Cabinet Office [Consultation on the Digital Economy Act, part 5: data sharing codes and regulations](#). The response is submitted by David Moss, a member of the public, who is happy [for it to be published and for it to be attributed to him](#).

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### Summary:

- The codes of practice proposed for information-sharing fail to distinguish between open data and personal information. As a result the G8 inversion of the settled order whereby the information held by public authorities will be disclosed by default instead of being withheld by default will destroy privacy.
- The objectives for information-sharing are supposed to be set by Whitehall's prescriptions for improving the general wellbeing. Since Whitehall doesn't know what would improve our wellbeing any information-sharing agreement without limit could be sanctioned.
- Information-sharing agreements are supposed to be prohibited if the objective is punitive but, since what is punitive for one set of people may improve the wellbeing of another set of people, that is no constraint.

1. On 24 April 2012 the [Guardian](#) newspaper published an article which claimed that: "Ministers are planning a shakeup of the law on the use of confidential personal data to make it far easier for government and public-sector organisations to share confidential information supplied by the public".

2. Next day [Francis Maude](#), Cabinet Office Minister, said the article "misrepresented statements the Government has made concerning existing data sharing arrangements".

3. Who was right? The *Guardian*? Or Francis-now-Lord Maude?

4. It looks as though the answer is the *Guardian* – here we are 5½ years later and Damian Green, Cabinet Office Minister, has set up a [consultation](#) on the Digital Economy Act, which "introduces new information sharing provisions to support the delivery of better public services".

5. Mr Green promises "new information sharing provisions"? What new information-sharing provisions?

6. Back in March 2012, Lord Maude told the [Information Commissioner's Conference](#) that he wanted to "bust the myths around the complexities of data sharing ... we aim to find effective ways of using and sharing data for the good of everyone ...".

7. Mr Green says the same: "By sharing information between public authorities we can offer better services that are tailored to the needs of people. We can reduce the need for citizens to provide the same information to different public authorities. Furthermore, we can drive more efficiency and be better equipped to identify and offer the right services to the right people at their point of need".

8. How do you offer such tailored services? How do you reduce the need to register with a lot of different public authorities? Answer, by sharing personal information all round central government departments and their agencies and local government. That's what's new.

9. Whereas, until now, each public authority guarded your personal information in their own record-keeping systems – or “silos” as some people call them pejoratively – henceforth your personal information will be made available to any authority in possession of agreed access rights.

10. That inversion of the current settlement was sanctioned in 2013 by the G8's [Open Data Charter](#). According to HMRC's [Sharing and publishing data for public benefit](#): “the UK helped secure the G8's Open Data Charter, which presumes that the data held by Governments will be publicly available unless there is good reason to withhold it” (p.4). Withheld-by-default has become disclosed-by-default.

11. As noted, Lord Maude said that Whitehall aims to share data “for the good of everyone”.

12. As far as he is concerned nothing has changed since 1937 when Douglas Jay wrote in [The Socialist Case](#): “Housewives as a whole cannot be trusted to buy all the right things, where nutrition and health are concerned. This is really no more than an extension of the principle according to which the housewife herself would not trust a child of four to select the week's purchases. For in the case of nutrition and health, just as in the case of education, the gentleman in Whitehall really does know better what is good for people than the people know themselves”.

13. That's the theory but in fact you can give a Whitehall agency all the information about people that there is and they can still make those people's lives worse. Think of the [Child Support Agency](#), which ministered to families already in turmoil and managed nevertheless to increase their misery.

14. Mr Green's consultation comprises four codes of practice on the sharing of information in (a) public service delivery, (b) civil registration, (c) national statistics and (d) research and a fifth document, (e) a statutory instrument for regulating all this information-sharing. Nowhere among them will you discover a detailed worked example of how information-sharing will be “good for everyone”, as Lord Maude put it. The public don't know what they're buying at the cost of their privacy.

15. Mr Green gives no reason to believe that “the gentleman in Whitehall really does know better what is good for people than the people know themselves”, as Mr Jay put it, and therefore no reason to believe that we should now sanction massive information-sharing which has been hitherto prohibited.

16. We don't mind if information about the location of bus stops is made public (to choose the favourite example of the [Open Data Institute](#)) – that's obviously open data. We do mind if our GP records are disclosed. NHS England's care.data scheme planned to do just that, starting in April 2014. The doctors revolted and the patients revolted and [care.data](#) had to be scrapped. The lessons of that failure have not been learned.

17. You might hope that Mr Green would define “personal information” so that we can distinguish it from “open data” but he doesn’t.

18. In Mr Green’s [public service delivery](#) document clause 8 says: “While we consider the terms ‘information’ and ‘data’ to have the same meaning, ‘personal information’ in the Digital Economy Act 2017 has a slightly different meaning to ‘personal data’ in the Data Protection Act 1998. In this Code, personal information is information which relates to and identifies a particular person or body corporate (but which does not relate to the internal administrative arrangements of a person who may disclose or receive information under the Act”.

19. We are none the wiser thanks to clause 8, there is no clear distinction between the two and the door is open for Whitehall to treat our personal information in the same way as open data, just as the *Guardian* suggested.

20. In this new world [clause 45](#) tells us that information-sharing will be sanctioned if its purpose is “the improvement or targeting of a public service provided to individuals or households, or the facilitation of the provision of a benefit (whether or not financial) to individuals or households” or if its purpose is “the improvement of the wellbeing of individuals or households”. If any public authority can prove that their objectives satisfy those conditions then they will be granted access rights to our open data and our personal information without distinction.

21. Give Whitehall the data and they will know how to provide you with a benefit and improve your wellbeing? On the one hand, they may know how to but the codes of practice place public authorities under no duty actually to proceed and improve the general wellbeing. On the other hand, they may not know how to. That is the more likely case.

22. The experience of the Child Support Agency suggests Whitehall do not know how to improve the general wellbeing, however much data they have to hand. They can’t do these utilitarian calculations. You may keep your part of the bargain and hand over your personal information and yet Whitehall may still fail to increase the general wellbeing.

23. It’s not just the Child Support Agency. Take another example. The Government Digital Service (GDS). The very people to whom responses to Mr Green’s consultation have to be sent. The very people supposedly [in charge of data science](#) for Whitehall.

24. In January 2016 GDS published a [blog post](#) about a [modelling tool](#) they had devised which predicts how many people in the UK will be able to open a GOV.UK Verify (RIP) account. GOV.UK Verify (RIP) is GDS’s identity assurance scheme and according to the model over 80% of the UK population would be able to open an account by July 2016. Completion rates are currently running at about [38%](#). Their model doesn’t work.

25. Do GDS or any other ladies or gentlemen in Whitehall have a model for calculating “the wellbeing of individuals or households”? Mr Green doesn’t say that

they do. We need to see this model working before his provisions for information-sharing are adopted.

26. [Clause 48](#) tells us that information-sharing will *not* be sanctioned if its “objective is punitive instead of providing a benefit and improving wellbeing” and gives as examples “identifying individuals operating in the grey economy” and “identifying welfare claimants erroneously receiving welfare benefits”.

27. One official may believe that identifying DWP mistakes is punitive, in which case no information-sharing will be allowed. Another official may believe that it contributes to other people’s wellbeing and is a benefit to other people, in which case information-sharing *will* be allowed.

28. Mr Green’s officials and their predecessors have had five years and more to work out confidence-inspiring codes of practice and regulations for their revolution in information-sharing. They have failed. Presumably they’re not interested.

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(1,573 words)



Dŵr Cymru  
Welsh Water

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Nelson  
Treharris  
Mid Glamorgan  
CF46 6LY

Heol Pentwyn  
Nelson  
Treharris  
Morgannwg Ganol  
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Web site: [www.dwrcymru.com](http://www.dwrcymru.com)

Safle gwe: [www.dwrcymru.com](http://www.dwrcymru.com)

Better Use of Data Team  
Cabinet Office  
7<sup>th</sup> Floor The White Chapel Building  
Whitechapel High Street  
London E1 8QS

2 November 2017

**Sent by email only:** [data-sharing@digital.cabinet-office.gov.uk](mailto:data-sharing@digital.cabinet-office.gov.uk)

Dear Sirs

**Re: Consultation on Draft Codes of Practice and Regulations relating to Part 5 of the Digital Economy Act 2017**

Thank you for the opportunity to respond to the Consultation referenced. Our response to the Consultation is set out below.

Dŵr Cymru Welsh Water is the sixth largest of the ten regulated water and wastewater companies in England and Wales. Our primary responsibility is to deliver safe and reliable drinking water and sanitation to the 3.2 million people we serve across most of Wales, Herefordshire and parts of Deeside. We provide an essential public service and, as custodians of the water industry in our area, we are responsible for protecting the environment and delivering a high quality and reliable service to our customers.

We welcome the proposed new powers to share information as set out in the draft Codes of Practice and Regulations relating to Part 5 of the Digital Economy Act 2017. We are currently reviewing other ways in which we can share information to the benefit of customers in vulnerable circumstances, and these proposed new powers are very welcome.

We are keen to be involved in a pilot of the use of these new powers, and would like to work with the relevant stakeholders to put in place the arrangements to do this (including DWP, Defra, Welsh government, Ofwat and the ICO).

We would welcome clarity of timings for the reforms – in particular, the secondary legislation required to implement the changes.

We would also find it helpful if further clarity could be provided as to how the conditions of additional disclosures (provided for in section 40 of the Digital Economy Act 2017) will be interpreted. For example, will “consent” be defined in accordance with the GDPR and/or the draft Data Protection Bill; and how will “for the purposes of safeguarding vulnerable adults or children” be defined?

As requested in the consultation material, I confirm that we are content for our response to be published and attributed to our organisation.

Yours faithfully

  
**Kate Newton**  
Solicitor



We welcome correspondence  
in Welsh and English.

Rydym yn croesawu gohebiaeth yn  
y Gymraeg neu yn Saesneg.

# Digital Economy Act 2017 Consultation: Codes of Practice and Regulations for Part 5 of the Act

## Page 1: Privacy Policy Statement

Do you wish to continue completing this response form?

Yes

Do you wish your name to be published in the government evaluation of responses? (If 'no', the response will be treated as confidential).

Yes

## Page 2: Responding to the consultation - Your details

Name:

Maria Sigala

Postal and/or email address - personal or business

[REDACTED]

Is this a personal response or an official response on behalf of your organisation?

Official response

Organisation name (if an official response):

Economic and Social Research Council and Nuffield Foundation

Position (if an official response):

Senior Policy Manager

If you ticked "Official response", please respond accordingly -Type of responding organisation:

Wider public sector (e.g. health bodies, schools, and emergency services)

Type of representative group or interest group

**Other (please specify):**  
Research Funders

## Page 4: Public Service Delivery, Debt and Fraud

Q1. Overall, do you find this Code of Practice clear and easy to understand?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q2. Does the Code explain clearly the process for sharing information under these powers?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q3. Is there anything which you think is missing from the Code or which requires greater detail?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q4. The Code includes a set of principles for sharing information under the Public Service Delivery, Debt and Fraud powers, together with certain requirements to ensure that information shared under these powers is handled in a way that is transparent and fair. Are these the right principles for information sharing in the context of public service delivery, debt and fraud?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q5. Are the requirements for transparency under this Code appropriate and proportionate given the range of interests of those who use the powers and those who are interested in how they are used?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

## Page 5: Civil Registration

Q6. Overall, do you find this Code of Practice clear and easy to understand?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q7. Does the Code explain clearly the process for sharing information under these powers?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q8. Is there anything which you think is missing from the Code or which requires greater detail?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q9. The Code includes a set of principles for sharing information under these powers, together with certain requirements to ensure that information shared under these powers is handled in a way that is transparent and fair. Do you agree that these are the right principles for sharing information in the context of civil registration?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

## **Page 6: Research Code of Practice and Accreditation Criteria**

Q10. Overall, do you find this Code of Practice and accreditation criteria clear and easy to understand?

Yes

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

Yes overall but would further benefit if:

1. Para 1.3 set a terminology of the three key groups of people to be used consistently throughout, eg Data Controllers
2. Para 2.3, third sentence: "Curation" to be added to the list of key procedures that define the concept of "processing data".
3. Para 6.1 and 33.1: Definitions of public interest should be consistent to avoid confusion . These should further include methodological research, given that identifying and developing a good methodology benefits the quality of research in the public interest.
4. Para 30.1: Clarification is needed on who is considered to be a peer reviewer

Also to note that:

1. Para 9.1: We welcome the recognition of Longitudinal Studies as data processors with a clear research rationale for applying to the Authority to retain data beyond the standard limited period. But in cases such as for longitudinal studies, where staff could be processors or researchers depending on the function, more guidance to shed clarity on the roles of processors and researchers and the remit and responsibilities of each would help.
2. We expect that in preparation of guidance prior to implementation, the Authority will consult again with key stakeholders and will look further into existing frameworks in order to ensure alignment where possible, avoid processes becoming too onerous for data sharing, avoid conflicts with regulatory frameworks for sharing health and social care data, and introduce more clarity on how future practice will differ from current one.

Q11. Do the Code and accreditation criteria explain clearly the principles by which information may be shared under these powers?

Yes

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

Yes, mostly but would benefit from further clarification on the following points:

Para 4.1: For transparency, the Authority should publish details on data requests and public authorities should supply information on their cost recovery charges.

Para 7.1: It states that data suppliers are required to ensure that any cost recovery charges are proportionate to work undertaken especially for releasing data for specified research projects. We would like to see the Authority taking a strong role to ensure that the cost recovery model is implemented in a fair, accountable and transparent manner. More clarity is needed on how and who will decide and monitor the proportionality of the cost recovery model.

Para 34.1: It states that the public authority should be acknowledged to allow others to verify the research; if this is a possibility, then the maintenance of data files from every research project must be expressly permitted.

Also to note that:

Para 7.1: Proportionality is particularly important. If the accreditation is too complex or restrictive it could lead to inconsistent application and erode public trust in the safe and secure use of data for research purposes.

Para 30.1: It explains that accredited researchers can only use data for the purpose of an accredited research project, but monitoring compliance may be a resource intensive exercise for processors. Some flexibility may be required if a researcher identifies a new research area through examination of the data to which they have legal access, but is beyond the original research question.

Q12. Is there anything which you think is missing from the Code or accreditation criteria or which requires greater detail?

Yes

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

Para 15.1: It states that "processors seeking accreditation must provide evidence of meeting the current security controls" but more clarity is need on what these security controls and cross government standards for the secure holding of sensitive data currently are.

Para 16.1: Further guidance is needed for processors, particularly new ones in the market and/or those outside government on the "necessary skills and experience" required and appropriate "security clearance" for the nature of the data they are handling.

Para 26.1: It requires that researchers must agree to undertake compulsory training and states that the Authority may choose to provide training. Clarity is needed on how other providers will be accredited should the Authority not choose to provide such training.

Para 23.1, 30.1, and 39.1: It is stated that the Authority will provide further guidance on the procedures and processes for processors, researchers and research projects, but more clarity is needed around the time frame for publication, and whether this further guidance will form part of the Codes of Practice.

Overall, Paras 5.2, 13.1, 15.1, 16.1, 22.1 and 30.1: All need additional detailed guidance.

More clarity is needed on how appeals and audits will be managed following implementation and how such implementation will be evaluated. Finally, further guidance should include some examples about the processes (e.g., flow charts and tick boxes)

## Page 7: Statistics Statement of Principles and Code of Practice on changes to data systems

Q13. Overall, do you find the Statement of Principles and Code of Practice clear and easy to understand?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q14. Do the Statement of Principles and Code explain clearly the principles by which the UK Statistics Authority will operate under these powers about access to information it has been given in the Act?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q15. Is there anything which you think is missing from the Statement of Principles or Code or which requires greater detail?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

## **Page 8: The Digital Government (Disclosure of Information) Regulations 2017**

Q16. Do you agree that the specified objective for multiple disadvantages has been described clearly and in the right level of detail?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q17. Do you agree that the specified objective for television retuning has been described clearly and in the right level of detail?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q18. Do you agree that the specified objective for fuel poverty has been described clearly and in the right level of detail?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q19. Do you agree that the specified objective for water poverty has been described clearly and in the right level of detail?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q20. Are the lists of the specified persons able to share information under each specified objective appropriately targeted?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

## Page 9: Further Information

How did you find out about this consultation?

**Other (please specify):**

We were part of the original group of stakeholders that engaged with the Cabinet Office during the Open Policy Making Process that led to this part of the Act and was alerted to this via this route and also via the UKSA which until recently ran the Board of the ESRC-funded ADRN.

May we contact you for further information?

Yes

Better Use of Data team  
7th Floor, The White Chapel Building  
Whitechapel High Street  
London E1 8QS

2<sup>nd</sup> November 2017

Sent by email to: [data-sharing@digital.cabinet-office.gov.uk](mailto:data-sharing@digital.cabinet-office.gov.uk)

Dear Better Use of Data team,

### **Digital Economy Act Code of Practice Consultation**

Energy UK is the main trade association for the energy industry, with over 90 members; representing energy generators and suppliers of all sizes. Our members supply gas and electricity and provide network services to both the domestic and non-domestic market. Energy UK members own over 90% of energy generation capacity in the UK market and supply 26 million homes and 5 million businesses, contributing over £25 billion to the UK economy each year. The industry employs 619,000 people across the length and breadth of the UK, not just in the South East, contributing £83bn to the economy and paying over £6bn annually in tax.

Energy UK's retail members are: Bristol Energy, British Gas, Co-Operative Energy, DONG Energy, Ecotricity, EDF Energy, Engie, E.ON, ESB Energy, Extra Energy, Flow Energy, Good Energy, Haven Power, npower, Octopus Energy, Opus Energy, OVO Energy, ScottishPower, Smartest Energy, Spark Energy, SSE, Utilita and Utility Warehouse.

Energy UK strongly believes in promoting competitive energy markets that produce good outcomes for consumers. In this context, we are committed to working with Government, regulators, consumer groups and our members to develop reforms which enhance consumer trust and effective engagement. At the same time, Energy UK believes in a stable and predictable regulatory regime that fosters innovation, market entry and growth, bringing benefits to consumers and helping provide the certainty that is needed to encourage investment and enhance the competitiveness of the UK economy.

These high-level principles underpin Energy UK's response to BEIS' consultation. This is a high-level industry view; Energy UK's members may hold different views on particular issues. We would be happy to discuss any of the points made in further detail with BEIS or any other interested party if this is considered to be beneficial.

Energy UK and our members broadly welcome the Digital Economy Act and the Government's commitment to facilitating greater information sharing between Government and wider stakeholders and we appreciate the opportunity to respond to this consultation on the different Codes of Practice.

The powers contained within the Digital Economy Act have the potential to make a real difference in helping to alleviate fuel poverty as well as to improve targeting for both the Warm Home Discount (WHD) and the Energy Companies Obligation (ECO) which we very much welcome.

However, Energy UK and our members are concerned about the lack of clarity offered by the two documents relevant to energy suppliers: Information Sharing Code of Practice: Public Service Delivery, Debt and Fraud and the Digital Government (Disclosure of Information) Regulations 2017.

The documents in question are not presented in a way that our members have found accessible. It is also unclear from the documents which stakeholders they are directed at (i.e. public bodies or other

stakeholders such as energy suppliers). This has limited our ability to provide meaningful comments on both documents.

We would, however, note that the Information Sharing Code of Practice: Public Service Delivery, Debt and Fraud does not appear to set out the rules for what the process would be for sharing information with third parties (i.e. how energy suppliers might go about sharing information with their supply chain/installers).

Of key importance is that the information sharing powers could also be used for wider issues such as Ofgem's proposals for a vulnerable customer safeguard tariff and therefore how the powers can be used, the detail of what they can be applied to and how, must be clearly explained and communicated.

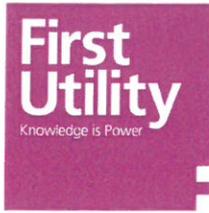
These issues will be significant to customers, therefore the documents and relating powers should provide further clarity not only for third parties but for customers also. Customers understandably take the use of their data, and how and what it is used for very seriously and this should be recognised and acknowledged in the relevant documents communicating the details and processes appropriately.

Energy UK would also like to note that in 2016, powers over supplier obligations were devolved to Scotland. These powers affect both WHD and ECO. With this in mind, further clarity will be needed on what the implications might be for the devolved nations should the Scottish Government decide to make use of its new powers in these areas.

We hope you find our comments helpful. If you have any questions, we would welcome the opportunity to discuss any of the points made further and you can contact me directly on [REDACTED] or at [REDACTED]

Yours sincerely,

Cecilie Ingversen  
Policy Executive



Better Use of Data team  
7<sup>th</sup> Floor, The White Chapel Building  
Whitechapel High Street  
London  
E1 8QS

By email to: [data-sharing@digital.cabinet-office.gov.uk](mailto:data-sharing@digital.cabinet-office.gov.uk)

31 October 2017

Dear Sir / Madam

## **CONSULTATION RESPONSE: DIGITAL ECONOMY ACT REGULATIONS**

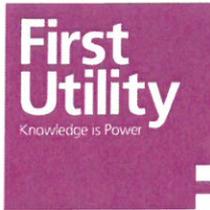
First Utility is Britain's largest independent energy supplier, with some 825,000 domestic customers.

Energy is an essential service - families cannot and should not manage without affordable heat and power. Ofgem's latest data shows that those on the lowest incomes spend three times as much of their household budget than those with high incomes. That is an alarming statistic and one which requires a much more joined up approach from Government to tackle. We therefore welcome the opportunity to respond to this consultation, in order to facilitate the data-matching needed to bring down bills for households struggling with fuel poverty.

At present, suppliers have access to neither benefits data from the Department for Work and Pensions (with the exception of Pension Credit); or property data from the Valuation Office. This makes it difficult and costly to identify which customers are vulnerable in order to apply the £140 Warm Home Discount (**WHD**); and to determine whether the homes they live in need energy efficiency upgrades, in order to deliver the Energy Company Obligation (**ECO**).

First Utility therefore welcome the fact that section 36(3) of the Digital Economy Act will enable the remedy of these flaws, by allowing Government to share - on a targeted basis - property records from the Valuation Office and a wider set of benefits data from the Department for Work and Pensions with energy suppliers. This will enable those suppliers already delivering these schemes for their customers to not only deliver the schemes more effectively but for more suppliers to participate altogether.

Currently, 34 dual-fuel suppliers with less than 250,000 customer accounts (125,000 dual fuel customers) are exempt from supporting such schemes due to concerns about excessive search costs - leaving their 1.25 million customers unable to access important fuel poverty initiatives. As Citizen's Advice argues powerfully, "*small suppliers are picking up customers at unprecedented speed*" and there is now a "*a clear risk to consumers of switching and losing the Warm Home Discount, which could lead to their*



*losing faith in the market...this pitfall, which a high number of low income households are exposed to, undermines DECC's work to emphasise the benefits of switching and therefore is important to address."* We note Ofgem's latest State of the Market Assessment showed that nearly 50% of consumers who are unemployed or under-employed have never switched supplier - and are paying up to £300 more as a result.

Once these regulations are passed, we believe that it is incumbent on Government to ensure all suppliers offer both the WHD and ECO.

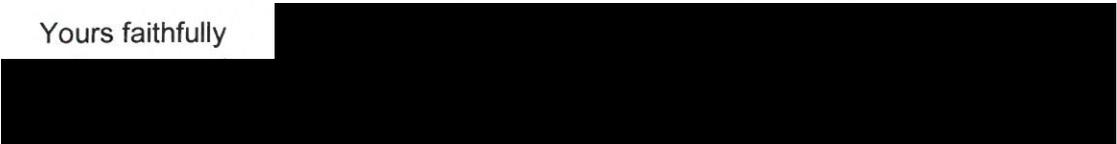
Whilst we welcome these provisions coming into effect, we are, however, concerned that as currently provided, the relevant section in the Act will not allow data matching beyond the schemes and measures specifically listed.

We further note that Ofgem's plans to offer a Safeguard Tariff for millions of vulnerable households will be put at risk without the sharing of benefits data. For Year 1 of the scheme, Ofgem plans to cap prices for the 1 million WHD customers on Standard Variable Tariffs. However, up to 2 million more vulnerable customers could benefit if suppliers and Ofgem was able to use Government benefits data to properly identify eligible households.

This is problematic as benefits data is also essential to support suppliers in better identifying and supporting those in fuel poverty in a whole host of other ways, such as ensuring they are placed on the Priority Services Register; that they are supported in choosing the right services and tariffs for their needs and that any debt repayment plans are considered early and imposed fairly - all of which are required by virtue of supplier licence conditions.

In order to ensure Ofgem and energy suppliers alike can deliver their statutory obligations to protect the vulnerable, Government should urgently consider bringing forward new regulations to expand the scope of Section 36(3) of the Act to include data matching for the purpose of delivery of all relevant Licence Conditions, i.e. those related to treating customers fairly and identifying and supporting those in fuel poverty.

Yours faithfully

  
**Natasha Hobday**  
Group Director of Policy and Regulation

1 November 2017

Better Use of Data team  
7th Floor, The White Chapel Building  
Whitechapel High Street  
London E1 8QS



Dear colleague

### **Digital Economy Act, part 5: data sharing codes and regulations**

I am writing on behalf of the General Medical Council (GMC) in response to the consultation on the *Digital Economy Act*, part 5: data sharing codes and regulations.

#### **About the GMC**

The General Medical Council is an independent organisation that helps to protect patients and improve medical education and practice across the UK.

- We decide which doctors are qualified to work here and we oversee UK medical education and training.
- We set the standards that doctors need to follow, and make sure that they continue to meet these standards throughout their careers.
- We take action to prevent a doctor from putting the safety of patients, or the public's confidence in doctors, at risk

#### **Comments on the consultation**

The draft regulations appear to permit healthcare organisations (under the broad definition set by Schedule 4 (28) of the Act) to share information with other 'specified persons' (as listed in Schedule 4 to the Act) without consent if the purpose for doing so meets two or more factors included in the 'multiple disadvantages objective' (listed in the draft regulations at paragraph (3) – such as 'ill-health', 'homelessness', 'disability', 'unemployment' or 'domestic violence'.

**We are concerned that the regulations as currently drafted would permit the bulk disclosure of confidential health information, in a wide range of circumstances, without regard to the necessity or proportionality of**

**disclosures, the implications for individual patients, or consideration of the wider public interest in having a confidential medical service. This could be very damaging for confidence in doctors and health services generally.**

We are particularly unhappy about the lack of clarity and transparency in the regulations. The list of bodies in the Act is so broadly defined that, as we understand it, health bodies (GP practices, hospitals, etc.) do not have to be explicitly added to this list for health data to be included in the data sharing powers if two or more of the objectives for sharing information are met. It is however necessary to scrutinise the regulations closely to realise that health bodies could in fact be covered by these powers

We are also concerned that the conditions for bringing health bodies within the scope of the regulations have not been met. During the House of Lords debate on the then Digital Economy Bill, Lord Keen gave an assurance that no decision would be taken on adding health bodies to the Schedule until *'first, the Government publish their response to the Caldicott review and any recommendations have been embedded and assessed; secondly, there has been a public consultation on the issue and the views of the National Data Guardian and appropriate representative health bodies such as the GMC and BMA have been sought; and, thirdly, there has been a debate in both Houses pursuant to the affirmative procedure required to add bodies to the schedule.'* The first and third of these conditions do not yet appear to have been met.

While we recognise that the government did not wish to specifically exclude health bodies from the Act (which would have been our preferred outcome) we remain of the view that proposals for their inclusion should be considered in an open and transparent way, having regard to the potential impact on individual patients' trust in doctors and in the wider health service.

### **The importance of patient confidentiality**

As the independent regulator for all doctors practising in the UK, we set the standards that licensed doctors have to follow. Our guidance *Confidentiality: good practice in handling patient information* (a new edition of which was published on 25 January 2017) emphasises the importance of trust in the doctor-patient relationship.

Confidentiality is not an end in itself – it underpins trust, without which patients may withhold information from their doctors, or even choose not to access health services at all. If patients no longer feel comfortable sharing sensitive information with their doctors it not only undermines doctors' ability to provide safe and effective care but also poses significant risks to public health.

The common law of confidentiality and other restrictions on the disclosure of sensitive personal information provide important protections in preventing

confidential medical information being shared inappropriately. These include specific protection for highly sensitive information, such as that relating to sexually transmitted diseases, or gender history.

While the *Digital Economy Act* upholds the requirements of the *Data Protection Act 1998* (which provides particular protections for sensitive personal health data), it sets aside the common law duty of confidentiality and other specific restrictions on the release of data for the purposes of the Act. The end result of this could be the bulk sharing of individuals' confidential medical information, in a wide range of unspecified circumstances. We are concerned that this poses a significant threat to trust in doctors and the wider health service.

We are content for this response to be attributed to the GMC and published.

Yours faithfully

Alison Whiting  
Policy Officer



# Digital Economy Act 2017 Consultation: Codes of Practice and Regulations for Part 5 of the Act

## Page 1: Privacy Policy Statement

Do you wish to continue completing this response form?

Yes

Do you wish your name to be published in the government evaluation of responses? (If 'no', the response will be treated as confidential).

Yes

## Page 2: Responding to the consultation - Your details

Name:

Sally Bye

Postal and/or email address - personal or business

[REDACTED]

Is this a personal response or an official response on behalf of your organisation?

Official response

Organisation name (if an official response):

Gloucestershire Registration Service

Position (if an official response):

Head of Registration and Coroners Service

If you ticked "Official response", please respond accordingly -Type of responding organisation:

Local authority

Type of representative group or interest group

**Other (please specify):**  
Registration service

## Page 4: Public Service Delivery, Debt and Fraud

Q1. Overall, do you find this Code of Practice clear and easy to understand?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q2. Does the Code explain clearly the process for sharing information under these powers?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q3. Is there anything which you think is missing from the Code or which requires greater detail?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q4. The Code includes a set of principles for sharing information under the Public Service Delivery, Debt and Fraud powers, together with certain requirements to ensure that information shared under these powers is handled in a way that is transparent and fair. Are these the right principles for information sharing in the context of public service delivery, debt and fraud?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q5. Are the requirements for transparency under this Code appropriate and proportionate given the range of interests of those who use the powers and those who are interested in how they are used?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

## Page 5: Civil Registration

Q6. Overall, do you find this Code of Practice clear and easy to understand?

Yes

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

Whilst it is clear to read and you have explained that it should be read in conjunction with other relevant legislation, it would be helpful if some areas could be more explicit as there are several other codes to refer to and registration has separate guidance on what data can be shared and with whom

the following needs more clarity:

1. who is the data owner and data controller at various stages of collection and inputting of data and also in relation to historic records
2. if the electronic record was to become the legal record rather than the registers, would that change the data owner and controller
3. you have set out who the public authorities are, however it is not completely clear who these include e.g. are the police included?
4. there is inconsistent use of terminology e.g. registration officials, nominated registration officials, data protection officers
5. there is only one example of other relevant legislation that should be referred to alongside this code. it would be helpful to have them all listed.

Q7. Does the Code explain clearly the process for sharing information under these powers?

Yes

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

However there is no mention of the new General Data Protection Regulations coming in in 2018. In section 5.3 the power to allow disclosure is with the Registrar General. Could this lead to a potential conflict of interest in relation to commercial opportunities for sharing data. Will the local registration service be able to challenge the RG  
It might be helpful to develop a flow chart setting out the process for dealing with a request showing the various people and legislative or good practise codes to refer to

Q8. Is there anything which you think is missing from the Code or which requires greater detail?

Yes

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

Please could you explain the following:

1. the role of data protection officers in this document and how this will function operationally. Under the GDPR this is a new statutory post and the code doesn't explain the role in context with registration data I would like clarity on what is GRO data and what is local registration service data. e.g. when an informant provides information for a registration, does it remain the local registration service data or when it is input onto RON does it become the GRO data  
it would be helpful to have some details about certain aspects e.g. gaining written approvals for releasing information - should this be kept and for how long?  
there is no mention of any powers to charge for providing data (apart from a mention in 7.1) In some instances this will place a burden on registration and therefore charges on a cost recovery basis will be necessary

will there be a mechanism whereby data sharing can be refused on the grounds that it is too expensive in staff resource or lack of ICT functionality. Is this what is alluded to in 56?  
can it be more explicit about whether retrospective data can be shared. i.e. where data was collected prior to this code being in place.

Q9. The Code includes a set of principles for sharing information under these powers, together with certain requirements to ensure that information shared under these powers is handled in a way that is transparent and fair. Do you agree that these are the right principles for sharing information in the context of civil registration?

Yes

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

In 6.4 it says that it is good practise to have a data sharing agreement in place. Clarity on whether this is required for a one off instance would be helpful  
Will there be a mechanism for submitting agreements to the GDS?

## Page 6: Research Code of Practice and Accreditation Criteria

Q10. Overall, do you find this Code of Practice and accreditation criteria clear and easy to understand?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q11. Do the Code and accreditation criteria explain clearly the principles by which information may be shared under these powers?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q12. Is there anything which you think is missing from the Code or accreditation criteria or which requires greater detail?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

## **Page 7: Statistics Statement of Principles and Code of Practice on changes to data systems**

Q13. Overall, do you find the Statement of Principles and Code of Practice clear and easy to understand?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q14. Do the Statement of Principles and Code explain clearly the principles by which the UK Statistics Authority will operate under these powers about access to information it has been given in the Act?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q15. Is there anything which you think is missing from the Statement of Principles or Code or which requires greater detail?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

## **Page 8: The Digital Government (Disclosure of Information) Regulations 2017**

Q16. Do you agree that the specified objective for multiple disadvantages has been described clearly and in the right level of detail?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q17. Do you agree that the specified objective for television retuning has been described clearly and in the right level of detail?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q18. Do you agree that the specified objective for fuel poverty has been described clearly and in the right level of detail?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q19. Do you agree that the specified objective for water poverty has been described clearly and in the right level of detail?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q20. Are the lists of the specified persons able to share information under each specified objective appropriately targeted?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

## Page 9: Further Information

How did you find out about this consultation?

**Other (please specify):**  
the Registration Service network / GRO / National Panel for Registration

May we contact you for further information?

Yes

## **The Information Commissioner's response to the government's<sup>1</sup> consultation on the Digital Economy Act, Part 5: data sharing codes and regulations**

1. The Information Commissioner has responsibility in the United Kingdom for promoting and enforcing the Data Protection Act 1998 (DPA) and the Freedom of Information Act 2000 (FOIA), the Environmental Information Regulations (EIR) and the Privacy and Electronic Communications Regulations 2003 (PECR). The Data Protection Bill currently making its way through Parliament envisages the Commissioner undertaking a similar regulatory supervisory role in respect of processing of personal data covered by the EU General Data Protection Regulation (GDPR), for activities not covered by EU law, law enforcement processing and the processing by the intelligence services.
2. The Commissioner also provides a complaint handling function for the Re-use of Public Sector Information Regulations and the INSPIRE Regulations; and is the UK supervisory body for the Electronic and Identification and Trust Services for Electronic Transactions (EIDAS) Regulations.
3. The Commissioner is independent from government and upholds information rights in the public interest, promoting openness by public bodies and data privacy for individuals. The Commissioner does this by providing guidance to individuals and organisations, solving problems where she can, and taking appropriate action where the law is broken.

### **Overview**

4. The Commissioner welcomes the opportunity to respond to the government's consultation on the codes of practice and draft secondary legislation which are required under the powers of Part 5 of the Digital Economy Act 2017 (DEA) to support data sharing and delivery of better public services.
5. The Commissioner recognises the potential benefits of justified and proportionate data sharing and how it can help improve the delivery of public services and policy decision making. But as she made clear in her evidence to Parliament during the passage of the DEA, with data being shared ever more

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<sup>1</sup> UK Statistics Authority, Government Digital Service, Cabinet Office, HM Passport Office and the Rt Hon Damian Green MP.

widely and big data analytics being used in complex and unexpected ways, there is a clear need for data sharing to be accompanied by robust safeguards. The codes of practice and scrutiny of draft regulations play an important role in ensuring that these safeguards are sufficient and align with data protection obligations.

6. It is vital that transparency and safeguarding measures are placed at the forefront of data sharing practice in order to ensure that personal data is appropriately protected, and that public trust and confidence in government is maintained. This can be achieved in part through the provision of clear and up-to-date guidance for practitioners so that they are aware of their legal obligations under the DEA and other relevant legislation, and how these can be complied with in practice.
7. The Commissioner is pleased to have had the opportunity to provide comments and recommendations throughout the development of these codes. She can see that many of these have been reflected in the current version of the codes, which has helped result in clearer and more consistent guidance for practitioners.
8. The Commissioner is pleased to note the inclusion of references to data protection legislation and ICO guidance. In particular, she welcomes the references to the ICO's statutory data sharing code of practice and the requirement that data sharing carried out under part 5 of the DEA have regard to this code. Providing advice on data protection safeguards alongside guidance on the processes and safeguards governing the use of powers in the DEA has resulted in a more coherent set of advice to practitioners.
9. In addition to the Cabinet Office discussion events for stakeholders held in October 2017, this consultation exercise provides the opportunity for practitioners and others who will need to have regard to the requirements of the codes to comment on their content. The Commissioner has had the opportunity to respond previously to various queries on the drafting aspects of the codes, and therefore the main focus of this response is on key issues rather than detailed drafting points or responses to the questions aimed at practitioners on the clarity and detail of the codes.

## **European Data Protection Reform**

10. The Commissioner welcomes the statement in the codes that all data sharing carried out under the DEA must also comply with the requirements of the Data Protection Act (DPA). However, whilst the DPA forms part of the UK's current data protection regime, the General Data Protection Regulation (GDPR) will apply from 25 May 2018. In addition to this the Data Protection Bill, introduced to the House of Lords on 13 September 2017, will complement GDPR by introducing Member State derogations permitted by GDPR. It will also provide a legal framework for personal data processing in the context of law enforcement, intelligence services and other areas not covered by GDPR.

11. Among other changes, the GDPR and accompanying legislation will set higher standards for breach reporting, audit requirements and data sharing agreements. The sensitive personal data category will no longer exist, although it will broadly align with the GDPR special category of personal data. It will be vital that practitioners, some of whom will not be data protection experts, are aware of these new requirements and obligations.
12. It is noted that the GDPR is mentioned in the codes, but this is done inconsistently and with varying degrees of prominence. It is suggested that consideration be given to how the codes can account for these forthcoming changes to ensure that practitioners are aware of the new legal framework and comply with it. Additionally, it will be worthwhile to ensure that any footnote references to the ICO's guidance be renewed as these will be updated to bring them in line with the GDPR and Bill when enacted.
13. It should also be noted that data sharing under the DEA will not always fall under the competence of the GDPR. Certain types of processing may fall under law enforcement processing or what the Data Protection Bill refers to as 'other general processing' provisions. It is therefore recommended that the codes reflect this where appropriate.

### **Transparency and Accountability**

14. The requirement for transparency and accountability will have greater prominence when the provisions of the GDPR become applicable in May 2018, and the Commissioner has previously highlighted this as necessary in a progressive rights regime as a means of building public trust.
15. The Commissioner is pleased that the codes signal the role of privacy notices as a means of helping ensure the fairness and transparency required in order to comply with the first data protection principle under the DPA. The additional 'accountability' provisions under GDPR require data controllers to be more forthcoming about their purposes for processing, in addition to bolstering data subject rights such as the right of access and the right to be informed.
16. The GDPR has more detailed provisions on what a data controller is required to provide in a privacy notice, and there are additional requirements in many situations where data controllers do not acquire personal data directly from the data subject. The Commissioner feels that whilst the codes are clear on technical and information security measures, emphasis also needs to be placed on awareness of data subjects' rights, which are given added emphasis under GDPR.
17. The Commissioner welcomes the inclusion of the requirement for a public register of data sharing under the DEA, and believes that this

requirement should go some way towards increasing public awareness. However, the Commissioner also suggests that government considers explaining the broadening of government data sharing under part 5 of the DEA more proactively. She considers that this will have a beneficial impact on public trust and expectations of what government is doing with data.

18. The Commissioner is pleased that Privacy Impact Assessments (PIAs) and the ICO's PIA code of practice are embedded within the practical requirements of the codes. PIAs are an effective way of implementing a privacy-by-design approach to data sharing. Additionally, the requirement to carry out Data Protection Impact Assessments (DPIAs) – as PIAs will now be known under the GDPR regime - has greater prominence under the GDPR's higher required standards for accountability.
19. The Commissioner welcomes the requirements for a review of each pilot carried out under the fraud and debt elements of the Public Service Delivery code. She suggested during the passage of the DEA through Parliament that government considers the benefits of a broader review requirement beyond those planned for fraud and debt. This would provide further assurance to the public and determine whether the required levels of proportionality and necessity have been achieved in practice. The review process could be of particular benefit in relation to the Civil Registration code data sharing provisions.
20. It should be noted that it is the Commissioner's intention to review data sharing carried out under the DEA and report back to government within three years.

### **Clarity for Practitioners**

21. The Commissioner welcomes the improvements that have already been made to the codes, and wishes to stress how important it is that they are presented in a way that makes them easy to understand and act upon.
22. The codes would benefit from the inclusion of examples or scenarios to illustrate and explain more clearly the data protection principles and data sharing considerations. A good example of this can be found in the ICO's Anonymisation code of practice<sup>2</sup> which makes use of examples, case studies and flow charts to illustrate complex requirements.

### **Public Service Delivery Code of Practice**

23. The Commissioner welcomes the inclusion of PIAs as a data sharing lifecycle stage in section 1.2 (principles for data sharing), as these are an

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<sup>2</sup> <https://ico.org.uk/media/for-organisations/documents/1061/anonymisation-code.pdf>

effective way of minimising privacy risk and implementing a privacy-by-design approach to data sharing. However, PIAs are referred to in this section as something that is completed at the start of the lifecycle. Similarly, section 2.3 (Step 2) includes the bullet point 'conduct a privacy assessment'. It is only in paragraph 102 that the PIA process is referred to as one which should be reviewed at critical milestones and updated as necessary.

24. It is recommended that the code be amended so that it more clearly presents the impact assessment as something that should be carried out at key points during the data sharing process, and should be amended to reflect key changes such as change in scope or circumstances.
25. The Commissioner is pleased to see that paragraph 30 of the code makes reference to the requirement that in addition to the conditions set out in the DEA, an initial consideration in deciding whether to include persons in a proposed information share is whether the sharing is necessary to achieve the desired objective.
26. This reflects the ICO's data sharing code of practice which states that a key factor in deciding whether to share personal data is considering if the objective could be achieved without sharing personal data. This consideration is particularly important in the context of addressing the potential risks of sharing the data. Whilst the inclusion of this consideration in the code is welcomed, it is suggested that it be given more prominence under section 1.2 (principles for data sharing).
27. The Commissioner is pleased that paragraph 39 provides clarity in terms of the requirement for all parties to have effective measures in place for managing data breaches. However, it should be noted that the data protection legislation makes it a clear responsibility of the data controller to inform the ICO of a breach where the relevant thresholds are met.
28. Paragraph 92 relates to the requirement that the responsibility for submitting information about an information sharing agreement to Government Digital Service rests with the recipients of the data. Whilst the Commissioner notes the requirement that the information to be entered on the register has prior clearance by the data provider, data protection legislation requires that primary responsibility rests with the organisation making the disclosure.

## **Civil Registration Data Sharing Code of Practice**

29. The Commissioner welcomes the requirement that under 'principle 5: decisions to disclose information must always be made at the right level' (part 2 of the code), the Registrar General must provide written agreement prior to any large amounts of information being released. However, it is recommended that the definition of 'large amounts' and

identification of this requirement as a safeguard (as referred to in paragraph 30), be given prominence in this section.

30. The Commissioner also suggests that further consideration be given to how the application process (outlined in section 7.1) can indicate the projected demand and whether a request may be likely to engage the cumulative definition of a large amount of personal data (as referred to in footnote 10), and if disclosures of this type can be more clearly defined.
31. As set out in the comments on the Public Service Delivery code, above, it is recommended that consideration of whether a more privacy friendly solution is available should be built into the application process under paragraph 7. This consideration will support decision-making about the necessity of the disclosure.
32. Paragraph 39 states that the GDPR requires public authorities to keep records of their data sharing agreements. It should be noted that while the Cabinet Office initiative for a register of data sharing agreements is a welcome enabler of transparency, this is not a strict requirement under article 30 of GDPR.
33. GDPR requires controllers and processors (over a certain size) to maintain records of processing. These should contain a description of the categories of data subjects and the categories of personal data processed as well as the categories of recipients of such data. These records are to be made available to the ICO on request, and are not envisaged to go into excessive detail on specific disclosures or data sharing agreements.
34. Paragraph 60 refers to 'data protection issues', which from the context appears to include personal data breaches. Articles 33 and 34 of GDPR refer to notification of data breaches to the ICO and potentially to data subjects themselves. This obligation is engaged subject to breaches being of sufficient severity to be likely to result in risk to the rights and freedoms of data subjects. Where such mandatory reporting is required, the Registrar General may want to consider whether a supplementary requirement to notify them may be appropriate in such circumstances.

## **Research Code of Practice and Accreditation Criteria**

35. The Commissioner recognises that this code and the Statistics code are based on an existing accreditation framework, and as such processes are already in place and their efficacy has been demonstrated.
36. She welcomes paragraph 1.5 which states that the UK Statistics Authority (UKSA) has had regard to the DPA 98 and GDPR (in addition to the relevant ICO codes of practice), and is also pleased that paragraph 5.1 makes clear that practitioners must also comply with data protection legislation.

37. It is noted that the code makes reference to the National Data Advisory Committee and requires practitioners to have regard to ethical standards. The Commissioner welcomes these additional considerations, acknowledging that beyond the data protection legislation and the letter of the law, there is a need to be aware of the importance of public attitudes and how best to communicate this to the public in order to give those working in the field of research the confidence to innovate.
38. The Commissioner is pleased that paragraph 7.1 requires that researchers consider whether suitable, less burdensome alternatives to the proposed data sharing exist and, as highlighted above, suggests that this be made a key consideration prior to all data sharing.
39. The Commissioner has previously stated her commitment to the creation of an additional offence for the re-identification of anonymised personal information, and is pleased to see this offence now in the Data Protection Bill. The Commissioner feels that such an offence will make it clear to data users that the misuse of personal data is taken seriously. The Commissioner recommends that if the provisions in the bill regarding the re-identification of personal data are passed that this new offence be given prominence in the code.

### **Statistics Statement of Principles and Code of Practice on changes to data systems**

40. The Commissioner recognises that the Statistics Statement of Principles and code of practice is different to the other codes in that it covers the legal requirement for organisations to provide the UKSA and the Office for National Statistics (ONS) with access to data.
41. The Commissioner welcomes the reference to the data protection legislation and ICO's codes in paragraph 1.3, and is pleased to see in paragraph 6.1 that data access arrangements will meet all legal obligations arising from the DPA. Again, she feels it would be helpful if the code made reference to the fact that the provisions of the GDPR will become applicable in May 2018 and will, alongside other legislation, replace the existing DPA.
42. The Commissioner's main concern is that the UKSA and the ONS take data protection considerations into account when making decisions on data access. She is pleased that paragraph 6.2 states that regard will be given to best practice on PIAs.

### **Draft regulations**

43. The Commissioner welcomes that she will be consulted on future amendments to regulations, as required by section 44(4) of the DEA. She is pleased that that future changes will receive full parliamentary scrutiny as required under the affirmative resolution procedure.

**Elizabeth Denham  
Information Commissioner  
2 November 2017**

# Consultation on the Digital Economy Act, Part 5: Data Sharing Codes and Regulations

## A Response from Indesser

### Public Service Delivery, Fraud and Debt

We are seeking views on whether the Code of Practice is clear and easy to understand, and provides sufficient explanation of how information is shared under this power

Q1. Overall, do you find this Code of Practice clear and easy to understand?

- [yes](#)
- [no](#)
- [not applicable](#)

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

[N/A](#)

Q2. Does the Code explain clearly the process for sharing information under these powers?

- [yes](#)
- [no](#)
- [not applicable](#)

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

[The alignment with the Information Commissioner's data sharing code of practice is important as otherwise there could have been confusion over what can and cannot be done. Similarly, stressing the continued need for compliance with other relevant legal requirements - including the Data Protection Act 1998 \(and the General Data Protection Regulation when it comes into effect\) - reinforces the need for best practice in all data sharing initiatives.](#)

Q3. Is there anything which you think is missing from the Code or which requires greater detail?

- [yes](#)
- [no](#)
- [not applicable](#)

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

[An important consideration in any information sharing initiative is that of data matching. Accurate data matching is essential if the use of shared information is to be fair, focussed, proportionate and in line with all relevant legislation. Each new information sharing proposal should consider, at the outset, how the shared data will be matched, both to the citizen's details and to any other data used. Matching routines that are appropriate to each specific data source should then be deployed. These should ensure that the results are directly relevant to the citizen and that all relevant](#)

data is retrieved. For example, these may be sophisticated data matching routines that allow for differences in the spelling of key fields (such as the citizen's name and address), or else direct character to character matching.

Another means of ensuring that information is only shared where necessary is to stagger its use. For example, rather than accessing a shared data source for all citizens being assessed, if a decision on a specific citizen can be made without it - e.g. because of other adverse data relating to them - then this should be done. The additional shared data source should only be accessed where it could make a significant decision to the outcome. Such processing might be worth referring to in the Code where sharing 'the minimum amount of personal information' is referenced (e.g. paragraph 37).

The Code includes a set of principles for sharing information under the Public Service Delivery, Debt and Fraud powers, together with certain requirements to ensure that information shared under these powers is handled in a way that is transparent and fair.

Q4. Are these the right principles for information sharing in the context of public service delivery, debt and fraud?

- yes
- no
- not applicable

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

At a time when data breaches are regularly in the news, the statement (in paragraph 12) that 'It is of vital importance that data is handled in a way that inspires the trust and confidence of citizens' is welcome and cannot be overstated.

In regard to specific Principles:

- Principle 2 states that 'Information about information sharing agreements...is made available to citizens in a searchable list.'. It may be useful to also provide such information on application forms and websites that citizens use to apply for a benefit or service.
- Principle 3 states that 'Steps should be taken to minimise the amount of data shared'. Whilst the thinking behind this is understood, and explained later in the document - i.e. that the data shared should only be what is necessary to the purpose - this one statement might be used by some as an excuse to not share ANY data. Could this statement be re-phrased ?
- Principle 5 states that '...where appropriate citizens can view, correct and delete data held about them.'. The ability to correct or delete incorrect data is obviously essential; however, citizens need to be made aware of the potentially negative impact on them if they insist on deleting data that would otherwise have been used for their benefit.

Q5. Are the requirements for transparency under this Code appropriate and proportionate given the range of interests of those who use the powers and those who are interested in how they are used?

- yes

- no
- not applicable

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

Whilst the ‘requirements for transparency under this Code’ are ‘appropriate and proportionate’ it is particularly important that citizens understand not only what data is being shared but also ‘the potential benefits to be derived from the data sharing’ (as per paragraph 91). If citizens can see that data sharing leads to an improvement in benefit / service provision through, for example, using it to make more informed and focused decisions that avoid a ‘one size fits all’ approach, or that it results in a reduction in debt and / or fraud, then they are more likely to support it.

Similarly, at the conclusion of a data sharing arrangement the results should be published, wherever possible, rather than publishing just ‘being considered’. This degree of transparency will improve confidence and enable lessons to be learnt about what works, and what does not. It will (hopefully) also provide the evidence necessary to justify the extension of the new data sharing powers after the initial 3 year period.

Further transparency might be provided, where appropriate, by enabling citizens to be informed when their shared data is accessed. This would give them confidence that their data was being used appropriately, and in their best interest. It would also notify them of any unauthorised, inappropriate or fraudulent access. Such notification is used in other data sharing initiatives such as those operated by the Credit Reference Agencies.

## Civil Registration

We are seeking views on whether the Code of Practice is clear and easy to understand, and provides sufficient explanation of how information is shared under this power.

Q6. Overall, do you find this Code of Practice clear and easy to understand?

- yes
- no
- **not applicable**

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

Q7. Does the Code explain clearly the process for sharing information under these powers?

- yes
- no
- **not applicable**

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

Q8. Is there anything which you think is missing from the Code or which requires greater detail?

- yes
- no
- **not applicable**

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

The Code includes a set of principles for sharing information under these powers, together with certain requirements to ensure that information shared under these powers is handled in a way that is transparent and fair.

Q9. Do you agree that these are the right principles for information sharing in the context of civil registration?

- yes
- no
- **not applicable**

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

## Research Code of Practice and Accreditation Criteria

We are seeking views on whether the Code of Practice is clear and easy to understand, and provides sufficient explanation of how information is shared under this power.

Q10. Overall, do you find this Code of Practice and accreditation criteria clear and easy to understand?

- yes
- no
- not applicable

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

Q11. Do the Code and accreditation criteria explain clearly the principles by which information may be shared under these powers?

- yes
- no
- not applicable

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

Q12. Is there anything which you think is missing from the Code or accreditation criteria or which requires greater detail?

- yes
- no
- not applicable

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

## Statistics Statement of Principles and Code of Practice on changes to data systems

We are seeking views on whether the Statement of Principles and Code of Practice are clear and easy to understand, and provide sufficient explanation of how information is shared under this power.

Q13. Overall, do you find the Statement of Principles and Code of Practice clear and easy to understand?

- yes
- no
- not applicable

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

Q14. Do the Statement of Principles and Code explain clearly the principles by which the UK Statistics Authority will operate under these powers about access to information it has been given in the Act?

- yes
- no
- not applicable

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

Q15. Is there anything which you think is missing from the Statement of Principles or Code or which requires greater detail?

- yes
- no
- not applicable

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

## The Digital Government (Disclosure of Information) Regulations 2017

We are seeking views on whether the four specified objectives are described clearly and in the right level of detail and on whether the persons permitted to share information for each objective are appropriately targeted.

Q16. Do you agree that the specified objective for multiple disadvantages has been described clearly and in the right level of detail?

- yes
- no
- not applicable

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

Q17. Do you agree that the specified objective for television retuning has been described clearly and in the right level of detail?

- yes
- no
- not applicable

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

Q18. Do you agree that the specified objective for fuel poverty has been described clearly and in the right level of detail?

- yes
- no
- not applicable

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

Q19. Do you agree that the specified objective for water poverty has been described clearly and in the right level of detail?

- yes
- no
- not applicable

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

Q20. Are the lists of the specified persons able to share information under each specified objective appropriately targeted?

- yes
- no
- not applicable

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

No	Section
Q1	<p><b>Public Service Delivery, Fraud and Debt</b> - We are seeking views on whether the Code of Practice is clear and easy to understand, and provides sufficient explanation of how information is shared under this power</p>
Q2	
Q3	
Q4	<p><b>Public Service Delivery, Fraud and Debt</b> - The Code includes a set of principles for sharing information under the Public Service Delivery, Debt and Fraud powers, together with certain requirements to ensure that information shared under these powers is handled in a way that is transparent and fair.</p>
Q5	
Q6	<p><b>Civil Registration</b> - We are seeking views on whether the Code of Practice is clear and easy to understand, and provides sufficient explanation of how information is shared under this power.</p>
Q7	
Q8	
Q9	<p><b>Civil Registration</b> - The Code includes a set of principles for sharing information under these powers, together with certain requirements to ensure that information shared under these powers is handled in a way that is transparent and fair.</p>
Q10	<p><b>Research Code of Practice and Accreditation Criteria</b> - We are seeking views on whether the Code of Practice is clear and easy to understand, and provides sufficient explanation of how information is shared under this power.</p>
Q11	
Q12	
Q13	<p><b>Statistics Statement of Principles and Code of Practice on changes to data systems</b> - We are seeking views on whether the Statement of Principles and Code of Practice are clear and easy to understand, and provide sufficient explanation of how information is shared under this power.</p>
Q14	
Q15	

Q16	<b>The Digital Government (Disclosure of Information) Regulations 2017</b> - We are seeking views on whether the four specified objectives are described clearly and in the right level of detail and on whether the persons permitted to share information for each objective are appropriately targeted.
Q17	
Q18	
Q19	
Q20	

Question	Response (Yes/No/N)
Overall, do you find this Code of Practice clear and easy to understand?	Yes
Does the Code explain clearly the process for sharing information under these powers?	Yes
Is there anything which you think is missing from the Code or which requires greater detail?	No
Are these the right principles for information sharing in the context of public service delivery, debt and fraud?	Yes
Are the requirements for transparency under this Code appropriate and proportionate given the range of interests of those who use the powers and those who are interested in how they are used?	Yes
Overall, do you find this Code of Practice clear and easy to understand?	
Does the Code explain clearly the process for sharing information under these powers?	
Is there anything which you think is missing from the Code or which requires greater detail?	
Do you agree that these are the right principles for information sharing in the context of civil registration?	
Overall, do you find this Code of Practice and accreditation criteria clear and easy to understand?	
Do the Code and accreditation criteria explain clearly the principles by which information may be shared under these powers?	
Is there anything which you think is missing from the Code or accreditation criteria or which requires greater detail?	
Overall, do you find the Statement of Principles and Code of Practice clear and easy to understand?	
Do the Statement of Principles and Code explain clearly the principles by which the UK Statistics Authority will operate under these powers about access to information it has been given in the Act?	
Is there anything which you think is missing from the Statement of Principles or Code or which requires greater detail?	

Do you agree that the specified objective for multiple disadvantages has been described clearly and in the right level of detail?	No
Do you agree that the specified objective for television retuning has been described clearly and in the right level of detail?	Yes
Do you agree that the specified objective for fuel poverty has been described clearly and in the right level of detail?	Yes
Do you agree that the specified objective for water poverty has been described clearly and in the right level of detail?	Yes
Are the lists of the specified persons able to share information under each specified objective appropriately targeted?	Yes

**Link to code**

[Link](#)

[Link](#)

[Link](#)

[Link](#)

[Link](#)

**Summary**

Overall, though the Code succinctly explains the powers for sharing and the processes for Information Governance staff. operational staff found the code not to be clear enough, the code requirements look quite onerous eg registering all data sharing agreements with the cabinet office.

The specified objectives look limited and probably doesn't cover the range of purposes we share information for. It seems odd the Government would leave it to public bodies to propose further objectives, it would be more sensible to ask public bodies now what the objectives should be so a wider range of objectives could then be included in a single set of regulations.

Have concerns about having to register data sharing agreements on a new register. Many northern local authorities are attempting to consolidate data sharing recording and processes by using the Information Sharing Gateway designed by Morecambe Bay NHS Trust. It would help if Government was aware of activities, ie via LGA, and encouraged efficiencies through use of existing portals and repositories.

Section 2.5 - Code is confusing why bother using it when Data protection overrides any data sharing, and if the information is personal information it would be covered under the data protection act and if not then it is not personal data, ethical or legal concerns would not apply (as the information is available under FOI).

Section 4.1 - If an organisation is transparent by default then the rationale for releasing said information is 'transparency' no other rationale is required.

In terms of offending, is there a time frame for criminal activity or at any point in their lives? It would be useful to clear definition what is meant by criminal activity and what it means.

## Digital Economy Act 2017 Consultation on Codes of Practice and Regulations for Part 5 of the Act – Lincolnshire County Council

### 4. Civil Registration

#### 6. Overall, do you find this [Code of Practice](#) clear and easy to understand?

Whilst it is clear to read, we would like to request clarity on the following:

- a) It is not clear who the data controller is at the various stages of collection and inputting of data as well as in relation to historic records.
- b) Confirmation of who the data controller is, is crucial for both modern and historic records and will then be required for any decisions about future data sharing.
- c) Consideration of future changes to the existing registration service legislation should be a consideration. If the electronic record was to become the legal record rather than the existing 'registers' does that change the data owner and controller?
- d) Please expand the definition of 'public authority', it is not completely clear who these are and therefore the impact of understanding these powers.
- e) There is inconsistent use of terminology e.g. registration officials, civil registration officials, nominated registration officials and data protection officers.
- f) Please explain why there is the use of terminology data protection officers at Principle 5. The following sentence does not fit with current local authority processes for handling registration data: 'Only nominated registration officials (e.g. local data protection officers)' - where is the current role of Superintendent Registrars in this connection?

#### 7. Does the Code explain clearly the process for sharing information under these powers?

- a) There is no mention of the General Data Protection Regulations (GDPR) due for implementation in 2018.
- b) Section 5.3 – the power to allow disclosure lies with the Registrar General. Is there a potential conflict of interest in relation to the commercial opportunities for sharing data? Will there be a mechanism to challenge the Registrar General's power of veto or their decisions on data sharing?
- c) Will there be an appeal process in relation to the Registrar General's decision?
- d) There is only one reference to the Local Registration Service at (49) however the role of the local registration service would benefit from expansion in connection with existing service provision and future service provision.
- e) Consideration should be given of the impact if the electronic record becomes the legal record for registration data.
- f) The commercial aspects of data sharing should be more clearly outlined, and for whose benefit.

#### 8. Is there anything which you think is missing from the Code or which requires greater detail?

Please explain the following:

- a) The role of data protection officers in this document and how this will function operationally. This is a new statutory post under the General Data Protection Regulations (GDPR) and the document does not explain the role in context to registration data. Where do they sit? Within the local authority or within the General Register Office? Clarity is required on the definition and role in connection to registration data.
- b) Has the Code of Practice taken into account the General Data Protection Regulations (GDPR) and the Data Protection Bill, soon to be Data Protection Act 2018, which will repeal the existing Data Protection Act 1998?
- c) This will allow greater sharing of data and information between registration officials and will support future modernisation.

**9. The Code includes a set of principles for sharing information under these powers, together with certain requirements to ensure that information shared under these powers is handled in a way that is transparent and fair.**

The commercial aspects of sharing data should be more clearly explained and considered.

Transparency and fairness are important principles.

# Research Code of Practice and Accreditation Criteria

## Background – About the MRS and CCG

The Market Research Society (MRS) is the world's largest research association. It's for everyone with professional equity in market, social and opinion research and in business intelligence, market analysis, customer insight and consultancy.

MRS promotes, develops, supports and regulates standards and innovation across market, opinion and social research and data analytics. MRS regulates research ethics and standards via its Code of Conduct. All individual members and Company Partners agree to regulatory compliance via the MRS Code of Conduct and its associated disciplinary and complaint mechanisms.

The Census and Geodemographics Group (CGG) is an MRS advisory board, founded in 1989 to represent the interests of this important activity. The CGG has specialists in market research, retail site location, market and database analysis, as well as census distributors and academic researchers. The CGG is involved with census developments through representation on the ONS Business and Professional Interests Advisory Group, and with wider matters through membership of the Statistics User Forum, as well as through an extensive network of contact in the market research industry.

MRS and CGG are happy for this response to be published and attributed.

For further information or clarification on this submission please contact Dr Emma White, Chair, MRS CGG [REDACTED]. This submission is made on behalf of The Market Research Society and the Census and Geodemographics Group, 15 Northburgh Street, London EC1V 0JR. The Market Research Society is a company limited by guarantee, registered in England No. 518685.

## Submission - Digital Economy Act 2017 Consultation: Codes of Practice and Regulations for Part 5 of the Act

Q10. Overall, do you find this Code of Practice and accreditation criteria clear and easy to understand?

- yes
- no
- not applicable

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

Although the Code is generally written and presented in a clear style there is insufficient clarity on some of the key terms and concepts:

- There is a lot of interchangeable terminology, e.g., data owner, holder, supplier etc. Perhaps it would be more helpful to use strict definitions in line with existing data protection legislation, e.g., Data Controller, Data Processor etc.
- 2.3 lists what is meant by processing data. While it might be covered as a 'related procedure', 'curation' could be added to the list to cover the creation of metadata, quality reports etc.
- 5.1 mentions the DPA, whereas the GDPR is not mentioned until 14.1; perhaps it should also be explicitly mentioned in 5.1.
- It is confusing that the items listed as serving the public interest in 6.1 and 33.1 are different. Furthermore, while it might be argued that improving research methodology is covered by 'to improve the quality, coverage or presentation of existing research', one of the best ways to improve the quality of research is to improve methodology and therefore methodological research should be explicitly included as research that is in the public interest.
- 30.1: clarification as to what is meant by peer reviewers is required. It is unlikely to be feasible to facilitate access to the data for reviewers of journal articles in the time scale (within two months) required to complete the reviews, particularly for those not based in the UK. However, access to data to undertake a reproducibility study is highly desirable.

Q11. Do the Code and accreditation criteria explain clearly the principles by which information may be shared under these powers?

- ~~yes~~
- no
- ~~not applicable~~

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

Perhaps some illustrative case studies would have been useful.

There seems to be seven (rather than eight) principles governing the disclosure of data.

4.1 states that the 'Authority may choose to publish details on data requests ...'. In the interest of transparency it should publish these details. "Public data" could mean data that are publicly available rather than data that are controlled by public authorities.

5.2: the phrase 'highest ethical standards' is rather vague and further clarification would be useful. The issue of consent should be added to those to be considered.

7.1: who will decide if the 'burdens and costs are proportionate', since this seems difficult to measure. Furthermore, it is not clear how and who will decide whether 'cost recovery charges are proportionate'. Cost recovery charging models should be made publicly available.

Q12. Is there anything which you think is missing from the Code or accreditation criteria or which requires greater detail?

- yes
- ~~no~~

- ~~not applicable~~

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

8.1: “set out in the Act” – perhaps replace with “set out in the research proposal, compliant with the Act”.

9.1: Does data owner have input into time periods for which data can be retained?

10.1: Typo – first bullet point “conditions to be met”

15.1 refers to ‘security control framework’ and providing ‘evidence of meeting the current security controls’. The framework and controls need to be published along with the procedures for providing the evidence. Currently, the procedures for providing such evidence are unclear and vary by data owner.

16.1 refers to ‘the necessary skills and experience’ and ‘security clearance appropriate to ... data they are handling’. Guidance on what these entail is required.

26.1 states that the ‘Authority may choose to provide training’ but does not indicate how such training might be provided should the Authority not provide any. Details of how other providers will be accredited are required.

33.1: Commercial organisations use ONS census data to derive social grade algorithm ([https://www.mrs.org.uk/pdf/social\\_grade\\_approximation.pdf](https://www.mrs.org.uk/pdf/social_grade_approximation.pdf)). Which public interest condition would apply to make this and similar activities permissible?

34.1 states that ‘outcomes of the research must be made open and accessibly available’. Therefore, it would be useful if the Code referred to the 5 star scale of openness: [http://guidance.data.gov.uk/five\\_stars\\_of\\_openness.html](http://guidance.data.gov.uk/five_stars_of_openness.html).

Is there a relationship to existing Codes of Practice eg UKSA and MRS?

Information on who will manage the process, appeals and audits; and when and how the implementation will be evaluated, especially if it becomes clear that part of the Code may not be working as intended in practice.

## medConfidential response to the Cabinet Office Data Sharing Consultation

### \*Introduction

1. medConfidential is grateful to the Cabinet Office for sharing a draft of the Codes with the Cabinet Office Privacy and Commercial Advisory Group of which we are a member. The Cabinet Office Codes have clearly benefited from the listening and understanding that came from that process. Headings in this document marked with a \* contain changes since the first draft of this document was published for comment.<sup>1</sup>
2. The institutional culture that produced the policy behind these drafts contains a fatal flaw: an assumption that the system will always work, and that care.data could not happen “here” - a theory will be no doubt be tested.<sup>2</sup>
3. It is the same thinking that pervades the Home Office, and this summer, lead them to unapologetically threatening to deport mothers with the right to remain, and NHS hospitals demanding ID off an 8 day old baby - the examples are becoming endless, and will continue until the culture that creates them changes. This should be part of digital transformation, however, there is barely any encouragement of digital transformation within this strategy - it simply promotes the status quo and its problems.<sup>3</sup>
4. For example, the Home Office<sup>4</sup> believes its systems have sufficient integrity to deny an individual a bank account, and that theory is now being tested in practice.<sup>5</sup> Departments which are required to take actions in response to the Home Office statement should relay those statements to the citizen involved - and the assessment can be made and measured by the public, not other Departments. Do Departments wish to be the defender of Home Office<sup>6</sup> mistakes, or the neutral messenger acting as a legitimate and responsible data controller to their data subjects?
5. GDPR requires transparency and accountability - it's arguably the only new thing. How much are you going to require of Departments? There is no active support for digital transformation in the current proposals - it supports business as usual far more than supporting change.

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<sup>1</sup> Although as a result, footnote and paragraph numbers will have changed throughout the document.

<sup>2</sup> As discussed further, with detailed proposals, in <https://medconfidential.org/2017/data-in-the-rest-of-government-ai-and-todays-laws-for-tomorrows-benefits/>

<sup>3</sup> See paragraphs 1 and 2 of our the recent supplement to our annual report:

<http://medconfidential.org/wp-content/uploads/2017/09/government-supplement.pdf>

<sup>4</sup> While the culture is pervasive across Whitehall, the examples of mistakes are most clearly recognisable in the Home Office. Which, while it may consider citizens the same way DEFRA considers animals, DEFRA has the advantage that the cages it regulates do not contain data subjects with inalienable human rights.

<sup>5</sup> <https://www.theguardian.com/uk-news/2017/sep/22/home-office-errors-already-leading-to-people-being-denied-bank-accounts>

<sup>6</sup> As an example

6. One of the largest burdens on departments, and impediments to successful data matching and APIs, is error detection and correction.
7. Just because data sharing can be done, it does not necessarily mean it should be done - there are better ways to use digital services to deliver better outcomes for citizens and Government. These principles and Code of Practice will be usable in future Governments, as well as the current administration. In that light, we comment on the Civil Registration Code of Practice in a separate document.
8. Just as this Government is committed to telling taxpayers how their money was spent, it should tell citizens how *their* data was used.
9. If the only narrative available to citizens is continual data loss as reported by the media, and if there is no way for citizens to see the benefits of data sharing in the public interest, then public support will continue to decline. On this issue, Cabinet Office and Government thinking is a very long way behind the considered position of the NHS.<sup>7</sup>

#### **\*Health data**

10. It would be the height of absurdity for the medical records of the nation for it to be explicit policy for be treated with a level of disregard that an office cafeteria in the West Country<sup>8</sup> does not allow for their menus.<sup>9</sup>
11. Paragraph 31: We note that the Secretary of State for Health remains outside of these powers, and the Cabinet Office has not consulted on modifying the Regulations to include them. It would require a public consultation on any change, and the Cabinet Office has chosen not to take this opportunity to do so. The current Codes make no special provision for health data, and would need to be rewritten to do so, which would also require a public consultation on what would be a substantial change.
12. As a result, we are deeply concerned that these proposals, while they exclude the Secretary of State for Health (and subordinate agencies and bodies), it does not exclude data that relates to people's health and care. While a GP will be a data controller for data pursuant to work done for the Secretary of State of Health (and thereby excluded), they will also be contracted with bodies which are covered (such as the local council) who can request data under these powers.

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<https://medconfidential.org/2017/data-in-the-rest-of-government-ai-and-todays-laws-for-tomorrows-be-n-efits/> and

<https://medconfidential.org/wp-content/uploads/2017/10/available-next-steps-cabinet-office.pdf>

<sup>8</sup> "The same exemption was also invoked ... for mundane information such as GCHQ's cafeteria menu." <https://www.privacyinternational.org/node/83>

<sup>9</sup> It may already be true, but it would be unfortunate to accidentally make it worse.

13. To Parliament, Government was clear - it was not covered by the Bill, and as such, that was not the time nor the place to discuss it. The Code of Practice does not repeat such assertions, and as such, provides no protection of special treatment for data.
14. Were Cabinet Office to deliver on their privately stated goal of including Secretary of State for Health in the scope of these clauses, as it currently stands, the entire Code could stand unchanged providing no protection for medical records. There must be a reference to the exclusion in the Codes to avoid such a surreptitious action by a future Government.

**\*A new Data Protection Bill - with a coverup clause...**

15. This consultation submission is being written before Committee stage of the Bill in the Lords, and may be supplemented in later engagements with the Cabinet Office. Ongoing information can be found at [www.medConfidential.org/news/](http://www.medConfidential.org/news/)
16. The Digital Economy Act was passed with assurances and undertakings from the then-Minister Matthew Hancock MP that it did not amend the Data Protection Act, as the Data Protection Act was seen as a safeguard against some of the most invasive interpretations of the Digital Economy Act.
17. A year on, Matthew Hancock MP is now steering another Bill through Parliament - a new Data Protection Act, with new loopholes.
18. As such, some of the “safeguards” that were in the original DEA should also be tested against the new Data Protection Bill. And they are found lacking, due to failures in Clause 15.
19. The goal of clause 15 seems to be to allow processing that was lawful under DPA to continue. However, that is not all clause 15 allows.<sup>10</sup> Due to drafting failures, it allows any Department to exempt itself from the Data Protection Act if it claims the data will be used for a lawful purpose. This is overly broad, and has toxic implications for the Digital Economy Act Codes of Practice.

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<sup>10</sup> <https://medconfidential.org/wp-content/uploads/2017/10/data-protection-clause-15.pdf>

## Comments across multiple codes

20. \*It is unclear why the Civil Registration code has a UK Statistics Authority imprintur,<sup>11</sup> and the PSD/fraud/debt has that of the Home Office.<sup>12</sup> The Civil Registration code also seems to fall between two stools.

### **\*Resharing**

21. To determine eligibility for services, Departments may, and do, oblige a citizen to provide evidence of medical conditions and other highly sensitive personal data. The purpose of “ill health or mental ill-health” in these codes allows such data to be shared. Once shared, these codes contain no obligations on Departments not to reshare that data.
22. In practice, within Government, the data of belonging to another department will be treated with a lower level of regard than data for which that Department is publicly responsible for. It is implicit in the nature of institutions.
23. While in the interests of good governance, resharing should be expressly prohibited, since it is unlikely that will be the case until after a major scandal,<sup>13</sup> it must be explicit in every data sharing agreement whether the recipient has the ability to reshare data or not. It is the Department that the citizen interacted with that will be held accountable by citizens through Parliament, the department to which it was (re)shared will receive less than its fair share of criticism.

### **\*Review Boards/Panels/Bodies**

24. The Review Boards that are proposed for Fraud and Debt should also exist in some for the wider “public service delivery” functions. That is does not is a symptom of wider “data science” governance failures that we address in more detail in other conversations with the “Better use of data” team in the Cabinet Office,<sup>14</sup> but summarise the areas of interest to the Codes here.

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<sup>11</sup> <https://www.gov.uk/government/consultations/digital-economy-act-part-5-data-sharing-codes-and-regulations/data-sharing-code-of-practice>

<sup>12</sup> <https://www.gov.uk/government/consultations/digital-economy-act-part-5-data-sharing-codes-and-regulations/information-sharing-code-of-practice-public-service-delivery-debt-and-fraud>

<sup>13</sup> This is one of the 5 major scandals which we expect to occur, as detailed at <https://medconfidential.org/wp-content/uploads/2017/10/available-next-steps-cabinet-office.pdf>

<sup>14</sup> At the time of writing, it is our intent to publish a detailed piece on that alongside our publication of this response. Both will be found at <https://medconfidential.org/news> if we forget to update this footnote.

25. During Bill passage, it was said by the Cabinet Office that the DEA would become the primary vehicle for data sharing in Government. Even if that is not the case, the Codes are likely to be the primary documented standard for data sharing processes.
26. From the perspective of the public, the legal gateway that Government uses should be irrelevant. The use of divergent standards will be confusing and lead to widespread public distrust - what do the lesser transparent projects have to hide?
27. Similarly, while there are a number of Registers of Data Sharing proposed, including for PSD, there will need to be a public front door to those mechanisms.<sup>15</sup> That front door will almost certainly have to signpost the work being done by NHS Digital (for all NHS data sharing), and ONS/UKSA (for statistical and some research purposes), and beyond.<sup>16</sup> This is akin to what GDS refer to as a “Register of Registers” - “you don’t have to know the answer, you just have to know where to find it”.<sup>17</sup>
28. The Data Review Board for PSD should be sighted on every project that uses the (successor to) Cabinet Office Data Science Ethics Framework.<sup>18</sup> While it may not cover everything, whatever the successor looks like should be more than it is now, which is currently (interpreted optimistically) a minimal standard for data sharing.<sup>19</sup> That replacement for that standard should be underpinned by the Registers, but also exceeded by the material published in the Registers.
29. Given the detail specified in the Code about Registers, that detail should also include a “References” (ie URLs) and “Notes” field to allow other relevant unstructured information to be included within the Register, and for the format to evolve as new information becomes mandatory.
30. The list of fields in the Register should also be clearly stated to not be an exhaustive list - individual Registers may wish to add their own columns for practical purposes in line with the Cabinet Office guidance on creating and managing registers.
31. The most senior data sharing review body in HMG is likely to be the National Statistician’s Data Ethics Committee (NSDEC). It operates in a transparent fashion, to UKSA standards - we expect this to continue. While complex issues may need advice from NSDEC, it should not routinely review the minutiae of Government Departments operations, but to deliver on its remit, there must be standardised

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<sup>15</sup> This will not be part of the DEA Codes itself, but where it interfaces with the rest of GDS. There should be a single URL, likely owned by the National Statistician, which serves as a single start point. It is “extremely likely” that there will be a single URL, owned by a civil society organisation, doing similar, although it will likely have a different focus...

<sup>16</sup> GDPR will require additional publications of which the ICO may require some form of index.

<sup>17</sup> <https://quoteinvestigator.com/2012/04/02/know-where-to-find/>

<sup>18</sup> We discuss this further in various other work, including: <https://medconfidential.org/2017/data-in-the-rest-of-government-ai-and-todays-laws-for-tomorrows-benefits/>

<sup>19</sup> the v1 framework assures readers that a PIA can be done in a single side of A4, which seems unwise

paperwork available to review should there become a question which it seeks to address.

32. In the case of future failures, which will happen, it will be necessary for there to be some assessment process. While whatever is put in place now will be shown to be insufficient by subsequent future events, a beginning now of simply mapping and listing those flows will make that future problem tractable when it does occur. It would be unwise to repeat the chaos that followed the 2007 HMRC child benefit discs loss.
33. The Cabinet Office will be partially tasked with fixing the failures caused by flawed data sharing, and in the long, long, term, such failures will occur.<sup>20</sup> Whether those failures are narrow or systematic depends only on quality and transparency of Governance that was put in place now. The examples of care.data, and Google DeepMind/Royal Free should be run through this model to test whatever is proposed.  
<sup>21</sup>
34. It is becoming expected that public safeguards will be undermined in practice - the panoply of failures that led to Grenfell Tower will hopefully remain the largest monument to administrative failure for a long time.

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<sup>20</sup> It could be argued that issues in the CO Data Science Ethics Framework v1 were designed to last only as long as it would take for them to be someone else's problem. PS: Good luck in your next role

<sup>21</sup> We are happy to assist in this work.

## Detailed Comments

### Public Service Delivery (etc)

#### Section 6 - transparency

35. When documents are published, or be able to be read, it should be expected that they are linked to from within the Cabinet Office Register.
36. Additionally, for agreements acquiring data which was supplied via a digital service, or where a digital service is used by some of those citizens via one of the involved department, then the data shared, reasons, and benefits *must* be visible via that digital service.<sup>22</sup>
37. Just because data sharing can be done, it does not necessarily mean it should be done. These principles and Code of Practice will be usable in future Governments, as well as the current administration.
38. Just as this Government is committed to telling taxpayers how their money was spent, it should tell citizens how *their* data was used. If the only narrative available to citizens is continual data loss, and if there is no way for citizens to see the benefits of data sharing in the public interest, then public support will continue to decline. On this issue, Cabinet Office and Government thinking is a very long way behind the considered position of the NHS.

#### Paragraphs

39. **Paragraph 12 - Principle 1:** The Code of Practice proposes a higher standard for transparency than the minimum requirements of the ICO. Either the CO are committed to those standards or they are not. If they are committed to transparency, then Principle 1 should state what those standards are - it currently states the minimum anyone can get away with; not the standards the Code itself expects to be upheld (see Section 6).
40. There are other areas of guidance which cover data sharing, and the Principles should also cover those.
41. **Paragraph 12 - Principle 2:** The exceptions should not be named in the short version of the Principle. The Principle is transparency; the current wording suggests the Principle is primarily secrecy.

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<sup>22</sup> See pages 1-3 of

<http://medconfidential.org/wp-content/uploads/2017/09/government-supplement.pdf>

- 42. Paragraph 12 - Principle 7:** Multiple processes are required, not just the DSEF, which is unfit for purpose, and unused by CO's own admission.
- 43. Paragraph 13** should become a new "Principle 0": follow the law. While this should not need to be restated, given the tendency for data sharing projects to run into legal problems, it would be wise to make it entirely clear that following the Code of Practice is not the same thing as following the Law.
- 44. Paragraph 14(2):** "*use or develop APIs to run binary checks*" - where an API is more appropriate (such as for the vast majority of transactional services), some APIs may need to be developed for the purpose - especially as the DEAct becomes established. As such, the Code should encourage the development of appropriate APIs, not just their use.
- 45. Paragraph 25(8):** safeguarding and National Security issues are very different - those two should be separated into their own bullet points.
- 46. Paragraph 91:** The categories of stakeholders mentioned should be "Government, ICO, *and the public*". Given the rhetoric of section 6 (transparency), it is surprising\* that it is missing in other places where that transparency should be effective.
- 47. Paragraph 91:** whether should be "whether and how". The details matter.

## Research Code of Practice

- 48. Paragraph 22:** Reword "Suffered a reported or suspected data breach". While we agree with and understand the principle, it is the failings that caused a breach of the rules that should be rectified (/punished), not the reporting or the suspecting of a data breach. Doing the right thing should explicitly be rewarded, not penalised.
49. We raise several issues about how the Research Code is being applied in practice in our recent annual report (page 6).<sup>23</sup>

## Statistics Code of Practice

- 50. Paragraph 3.1:** "all that is necessary to minimize the risk" is not the standard that legislation requires. This is a clear example of the weakening of a statutory safeguard down to something meaningless and ineffective to satiate a bureaucrat whose

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<sup>23</sup> <http://medconfidential.org/wp-content/uploads/2017/09/annual-report.pdf>

demand for data is as great as their desire to avoid any accountability or responsibility for their actions<sup>24</sup> - two desires that are impossible to entirely meet. This failing is one of the worst aspects of the civil service and should be removed from the Code, and replaced with the language that legislation and public trust in statistics requires - which is a higher standard than “minimize the risk”.

51. “Consent” here is that of the data controller/processor, and not the consent of the data subject. This paragraph ignores the data subject entirely, and does not require that dissent from processing be honoured - indeed, the Code as consulted doesn’t mention dissent at all. While this is primarily a GDPR issue, the scope of consent/dissent here must be considered given the effects of the Data Protection Bill. The Code must be as clear as the Law: **Where dissent is valid, it must be honoured.** While statistical purposes may override many dissents, it does not override them all. Given the pernicious effects of the Home Office<sup>25</sup> desire to acquire any data held anywhere, such as the school census, if the Statistics Code is not explicit on the punitive reuse of data, then many of the claims of statistical impartiality are ineffective and will undermine public confidence.
52. Information should be on a central ONS/UKSA site showing the overall benefit of research/statistical data use, and not separated across data silos. The register of data uses within this code, should, in practice, be part of a larger mechanism to inform citizens who wish to look (because, for example, they have just responded to a survey/census<sup>26</sup>) about how the UKSA/ONS uses data, and the benefits of the information that is provided. The census has long assumed public trust. While it has done so correctly, since 2011, the longer term effect of the Home Office use of the school census to deport children’s classmates means that the next census will not, entirely, take place in a culture of unwavering acceptance. It would be unwise of UKSA to ignore that issue until the problem has had statistically measurable effects.

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<sup>24</sup> There is currently a monument to such bureaucratic indifference in West London.

<sup>25</sup> Seebriefings for second reading of the Data Protection Bill at <https://medconfidential.org/news>

<sup>26</sup> <https://medconfidential.org/wp-content/uploads/2017/10/JP.pdf>

## Medconfidential response to the Code of Practice on Civil Registration (Home Office) consultation

### Headlines

1. This code will fail in its primary goal - it provides no basis for public confidence in data sharing of this data.
2. The claim of the Codes is to provide an overview of all rules; paragraph 2 is explicit that this is not the case:

“The Code should also be read in conjunction with procedural guidance that registration officials already follow when sharing information. This will ensure that responsibilities for sharing information are defined, controlled and managed at the right level.”
3. In practice, this code allows for data sharing to be controlled and managed at no level at all. It should be the explicit responsibility of Registrars (General) to ensure that no record they create is used inappropriately.
4. The Code omits a ‘statement of compliance’, which should be required to be in the data sharing agreement, as is the case with the other Codes. The document encourages people to find loopholes, not deliver a fair, safe, and transparent data infrastructure.
5. The code does not mention APIs for confirmation, or the use of verified attributes beyond a yes/no answer (which is what we understand this code was originally intended for). Does the Code as written even allow for the use of APIs/verified attributes - ie how Parliament was told the Code was intended to be used? The entire focus remains on bulk copying.
6. The one reference to attributes is that “registration officials should also consider whether” ... “Registration officials have the resource and technical capacity to either release information or provide responses to data-matching requests – e.g. yes/no responses”.<sup>1</sup> **This is pitiful and an embarrassment to the Government Digital Service running this consultation.** It should be incumbent upon Government, and the Registrar General to provide such infrastructure and resources to build such services, and not leave it up to local officials to decide whether they have the “resource and technical capacity” to do something that should be provided as part of a national infrastructure.

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<sup>1</sup> Paragraph 32 for both quotes

## “Written agreement”

7. There are a number of references to a process of “written agreement” which seem to cover national standards for data copying, rather than local agreements. While such agreements may be entirely benign, however, every “written agreement” should be published in the Register of sharing, as well as the more formal arrangement. It would be unfortunate for the process of “written agreement” to be something illegible on the back of a napkin...
8. There appears to be a desire to stick with decision-making by “nominated individuals or business areas” based on secret guidance, with lack of clarity around both oversight and accountability. There’s also no apparent requirement to consider risk/benefit – instead the question appears to be, can you find a “legal gateway”?
9. Part 6 encourages readers to look for exemptions wherever possible, and focuses solely on (after the fact) “audit purposes” which is seen as distinct from upfront publication.

## Paragraph notes:

10. Paragraph 12: Principle 2 – given the applicant must “clearly demonstrate” why they need the data, the presumption should be that this will be published.
11. Paragraph 12: Principle 4 – logically, given *storage* could *also* create an identity dataset, data sharing agreements must be in place for all disclosures to forbid this (ie “linkage *or storage*”). The word “retention” should be removed - any form of processing that could create a an identity dataset should be prohibited, not just “retention” (which is entirely gameable).
12. Paragraph 12: Principle 5 – if the Registrar General has to give written approval for certain disclosures, then the presumption should be that these approvals are published; otherwise, you are talking about secret mass copying of citizen data...
13. Paragraph 34: Any other sharing should also be included in the published register (described in paragraph 50).
14. Paragraph 39: While “conditions will need to be clearly specified”, every such condition should be contained in the published documentation (such as a data sharing agreement).

15. Para 41: is mute on opt-outs or dissent. While it may be “impracticable” to inform every individual, it is vital that those who *do* find out (and who have concerns) have the opportunity to withdraw consent – i.e. opt out – unless there is an overriding public interest, and statutory basis for not doing so.
16. Paragraph 41/49/50: Throughout this document, there are references to documents “for audit purposes”, and a seemingly separate register for public consumption. These two should be harmonised such that documentation required to show compliance with the law should be published in the public register. The relationship between the requirements of paragraph 49 and requirements of paragraph 50 are striking - and not in a good way.
17. Para 55: while it may be that “the Government’s reputation is at risk” if information is not shared, there seems to be little acknowledgement that “the Government’s reputation is [just as much] at risk” if information is shared, in some circumstances – cf. commercial re-use. “There should be no surprises”...

### **Missing items**

18. The Code omits a ‘statement of compliance’, which should be required to be in the data sharing agreement, as is the case with the other Codes.
19. No business cases required for new “data shares”, as per the Code for Fraud and Debt. The closest they seem to get to this is a brief mention in para 52 of “tangible benefits”.
20. There is no mention – or apparent consideration – of piloting new data sharing programmes or projects.
21. The ‘Principles’ make no mention of transparency – which is a bit odd, given Part 6 is about “Fairness and transparency”.
22. Nowhere does this code discuss or prohibit onward re-sharing of data.
23. There’s mention of (secret? certainly unpublished) “internal procedural guidance”, the publication of which might – or might not – provide some public reassurance that there are at least some procedures in place. Since that guidance is subject to FOI, this should be published somewhere (if not already) and can then be cited in data sharing agreements published in the register.

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# Digital Economy Act 2017 Consultation: Codes of Practice and Regulations for Part 5 of the Act

## Page 1: Privacy Policy Statement

Do you wish to continue completing this response form?

Yes

Do you wish your name to be published in the government evaluation of responses? (If 'no', the response will be treated as confidential).

Yes

## Page 2: Responding to the consultation - Your details

Name:

Peter Smith

Postal and/or email address - personal or business

[REDACTED]

Is this a personal response or an official response on behalf of your organisation?

Official response

Organisation name (if an official response):

National Energy Action (NEA)

Position (if an official response):

*No Response*

If you ticked "Official response", please respond accordingly -Type of responding organisation:

Charity

Type of representative group or interest group

**Other (please specify):**  
Fuel poverty charity

## Page 4: Public Service Delivery, Debt and Fraud

Q1. Overall, do you find this Code of Practice clear and easy to understand?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q2. Does the Code explain clearly the process for sharing information under these powers?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q3. Is there anything which you think is missing from the Code or which requires greater detail?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q4. The Code includes a set of principles for sharing information under the Public Service Delivery, Debt and Fraud powers, together with certain requirements to ensure that information shared under these powers is handled in a way that is transparent and fair. Are these the right principles for information sharing in the context of public service delivery, debt and fraud?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q5. Are the requirements for transparency under this Code appropriate and proportionate given the range of interests of those who use the powers and those who are interested in how they are used?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

## **Page 5: Civil Registration**

Q6. Overall, do you find this Code of Practice clear and easy to understand?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q7. Does the Code explain clearly the process for sharing information under these powers?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q8. Is there anything which you think is missing from the Code or which requires greater detail?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q9. The Code includes a set of principles for sharing information under these powers, together with certain requirements to ensure that information shared under these powers is handled in a way that is transparent and fair. Do you agree that these are the right principles for sharing information in the context of civil registration?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

## **Page 6: Research Code of Practice and Accreditation Criteria**

Q10. Overall, do you find this Code of Practice and accreditation criteria clear and easy to understand?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q11. Do the Code and accreditation criteria explain clearly the principles by which information may be shared under these powers?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q12. Is there anything which you think is missing from the Code or accreditation criteria or which requires greater detail?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

## Page 7: Statistics Statement of Principles and Code of Practice on changes to data systems

Q13. Overall, do you find the Statement of Principles and Code of Practice clear and easy to understand?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q14. Do the Statement of Principles and Code explain clearly the principles by which the UK Statistics Authority will operate under these powers about access to information it has been given in the Act?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q15. Is there anything which you think is missing from the Statement of Principles or Code or which requires greater detail?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

## Page 8: The Digital Government (Disclosure of Information) Regulations 2017

Q16. Do you agree that the specified objective for multiple disadvantages has been described clearly and in the right level of detail?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q17. Do you agree that the specified objective for television retuning has been described clearly and in the right level of detail?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q18. Do you agree that the specified objective for fuel poverty has been described clearly and in the right level of detail?

Yes

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q19. Do you agree that the specified objective for water poverty has been described clearly and in the right level of detail?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q20. Are the lists of the specified persons able to share information under each specified objective appropriately targeted?

Yes

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

NEA supports the list of persons however our understanding is that these regulations relate to disclosure of information pursuant to Section 35 of the Act (information sharing between public authorities). NEA refers to Section 36 of the Act which currently enables a public authority to disclose information to gas and electricity suppliers. We request the UK Government use its powers conferred in the Act and lay regulations to amend subsection 36(1) of the Act to add the following persons to whom information can be disclosed for the purpose of assisting people living in fuel poverty: gas distribution network (GDN) and electricity distribution network (DNO) companies. Disclosing information to GDNs and DNOs will enable the network companies to better identify, target and deliver fuel poverty measures to their fuel poor customers (for example through the Fuel Poor Network Extension Scheme).

NEA is also of the view that specified persons to whom gas and electricity suppliers may disclose information under Section 37 of the Act should include the National Health Service. This would have the benefit of allowing health service providers (e.g. GPs) to identify patients at risk of living in a cold home who are eligible for a fuel poverty measure provided by a gas or electricity supplier in order to refer that patient into the supplier for receipt of that measure. Without powers to disclose this information, health providers face barriers to effectively and efficiently identifying and assisting people in fuel poverty in order to improve their health and wellbeing.

## Page 9: Further Information

How did you find out about this consultation?

**Other (please specify):**  
UK Government civil servant

May we contact you for further information?

Yes

## Digital Economy Act 2017 Consultation on Codes of Practice and Regulations for Part 5 of the Act – NPR

### 4. Civil Registration

#### 6. Overall, do you find this [Code of Practice](#) clear and easy to understand?

Whilst it is clear to read, we would like to request clarity on the following:

- a) It is not clear who the data owner and the data controller is at the various stages of collection and inputting of data as well as in relation to historic records.
- b) Confirmation of who the data controller is, is crucial for both modern and historic records and will then be required for any decisions about future data sharing.
- c) Consideration of future changes to the existing registration service legislation should be a consideration. If the electronic record was to become the legal record rather than the existing 'registers' does that change the data owner and controller?
- d) Please expand the definition of 'public authority', it is not completely clear who these are and therefore the impact of understanding these powers.
- e) There is inconsistent use of terminology e.g. registration officials, civil registration officials, nominated registration officials and data protection officers.
- f) Please explain why there is the use of terminology data protection officers at Principle 5. The following sentence does not fit with current local authority processes for handling registration data:  
'Only nominated registration officials (e.g. local data protection officers)' - where is the current role of Superintendent Registrars in this connection?

#### 7. Does the Code explain clearly the process for sharing information under these powers?

- a) There is no mention of the General Data Protection Regulations (GDPR) due for implementation in 2018.
- b) Section 5.3 - the power to allow disclosure lies with the Registrar General. Is there a potential conflict of interest in relation to the commercial opportunities for sharing data? Will there be a mechanism to challenge the Registrar General's power of veto or their decisions on data sharing?
- c) Will there be an appeal process in relation to the Registrar General's decision?
- d) There is only one reference to the Local Registration Service at (49) however the role of the local registration service would benefit from expansion in connection with existing service provision and future service provision.
- e) Consideration should be given of the impact if the electronic record becomes the legal record for registration data.
- f) The commercial aspects of data sharing should be more clearly outlined, and for whose benefit.

#### 8. Is there anything which you think is missing from the Code or which requires greater detail?

Please explain the following:

- a) The role of data protection officers in this document and how this will function operationally. This is a new statutory post under the General Data Protection Regulations (GDPR) and the document does not explain the role in context to registration data. Where do they sit? Within the local authority or within the General Register Office?
- b) Clarity is required on the definition and role in connection to registration data.
- c) Has the Code of Practice taken into account the General Data Protection Regulations (GDPR) and the Data Protection Bill, soon to be Data Protection Act 2018, which will repeal the existing Data Protection Act 1998?
- d) This will allow greater sharing of data and information between registration officials and will support future modernisation.

**9. The Code includes a set of principles for sharing information under these powers, together with certain requirements to ensure that information shared under these powers is handled in a way that is transparent and fair.**

How will this impact on existing statutory responsibilities for data sharing?

The commercial aspects of sharing data should be more clearly explained and considered.

Transparency and fairness are important principles.

## NHS Digital Response to Digital Economy Act, part 5: data sharing codes and regulations

1 message

'TREDDENICK, Joanne (NHS DIGITAL)' via Digital Economy Act Part 5 codes of practice and regulations consultation <data-sharing@digital.cabinet-office.gov.uk>

2 November  
2017 at 12:55

Reply-To: "TREDDENICK, Joanne (NHS DIGITAL)"

To: "data-sharing@digital.cabinet-office.gov.uk" <data-sharing@digital.cabinet-office.gov.uk>

Dear Sir/Madam

Thank you for the opportunity to review and to provide feedback upon elements of part 5 of the Digital Economy Act 2017. Please find below NHS Digital's response and feedback upon the Codes of Practice most relevant to Health and Social Care and NHS Digital. Please do not hesitate to contact us if you wish to discuss this further.

### 1. Civil Registrations (Code of Practice - <https://www.gov.uk/government/consultations/digital-economy-act-part-5-data-sharing-codes-and-regulations/data-sharing-code-of-practice>)

Question	Yes/No/Not applicable	Comments
Q6. Overall, do you find this Code of Practice clear and easy to understand?	Yes	
Q7. Does the Code explain clearly the process for sharing information under these powers?	Yes	Section 3.1 would benefit from identifying whether this is a permissive gateway  5.2 Details examples of sharing with internal functions, but not to external public authorities implies that this gateway is only for this purpose
Q8. Is there anything which you think is missing from the Code or which requires greater detail?	Yes	Generally the code of practice does not appear to have taken account of GDPR  The COP does not highlight whether or not the provision of data is subject to a cost imposed – this may impact on public authorities decision upon applying for data under this particular legal gateway

*The Code includes a set of principles for sharing information under these powers, together with certain requirements to ensure that information shared under these powers is handled in a way that is transparent and fair.*

Q9. Do you agree that these are the right principles for information sharing in the context of civil registration?	Yes	Principle 4: States that this would not be for the purposes of creating linked identity data sets - Health Bodies are listed as a public body within this section who may request data to maintain health systems in performance of their functions.
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2. Research Code of Practice and Accreditation Criteria (<https://www.gov.uk/government/consultations/digital-economy-act-part-5-data-sharing-codes-and-regulations/research-code-of-practice-and-accreditation-criteria>)

Question	Yes/No/Not applicable	Comments
Q10. Overall, do you find this Code of Practice clear and easy to understand?	Yes	Yes
Q11. Does the Code explain clearly the process for sharing information under these powers?	Yes	Yes – please also see comments below
Q12. Is there anything which you think is missing from the Code or which requires greater detail?	Yes	The code would benefit from being explicit about the public authorities and information sets excluded from the DEA by virtue of this chapter <b>for example sharing Health and Social Care information for research purposes prohibited by virtue of this Chapter of the DEA.</b>

3. Statistics Statement of Principles and Code of Practice on changes to data systems (code of practice - <https://www.gov.uk/government/consultations/digital-economy-act-part-5-data-sharing-codes-and-regulations/statistics-statement-of-principles-and-code-of-practice-on-changes-to-data-systems>)

Question	Yes/No/Not applicable	Comments
Q13. Overall, do you find this Code of Practice clear and easy to	Yes	Yes and NHS Digital welcomes the spirit of proportionality and collaboration emphasised within

understand?		<p>the Code of Practice.</p> <p>The UKSA/ONS is the natural home for cross sector data, the expectation would be that organisation leading on a particular sector would be the lead for its specific data sets, for example NHS Digital would be natural home for the Health and Social Care analysis and statistics, but where this would be linked with other sectors, ie linked education/Health and Social Care data this would be within the UKSA/ONS functions.</p>
<p>Q14. Do the Statement of Principles and Code explain clearly the principles by which the UK Statistics Authority will operate under these powers about access to information it has been given in the Act?</p>	Yes	<p>Yes and NHS Digital welcomes the spirit of proportionality and collaboration emphasised within the Code of Practice.</p> <p><b>Principle 5:</b> Highlights the ONS principle of proportionality and minimising cost burden – this is welcomed and important to NHS and public authority organisations.</p> <p><b>Principle 6:</b> This principle highlights the important of collaboration with data suppliers, both to consider the form and manner of the data set and to consider the most proportionate and least burdensome manner.</p> <p>This also important when considering/consulting upon the legal instrument to implement the request (45B) or require function (45C) with a public authority.</p>
<p>Q15. Is there anything which you think is missing from the Statement of Principles or Code or which requires greater detail?</p>	Yes	<p>The statement of principles does not include duties upon UKSA/ONS not to disclose under s45(E) specifically with regard to s22 of SRSA (not onwardly sharing to third parties), Approved Researchers and requirements for express permission from the data supplier.</p> <p><b>Principle 5:</b></p> <p>The form of the data being requested/required could also be considered, for example agreeing nationally recognised formats, data models or terminologies rather than requesting a form that could lead to costly IT changes for the data supplier which could greatly impact upon the NHS.</p> <p><b>Governance</b></p> <p>10.3 NHS Digital welcomes that supplementary guidance. Including the guidance regarding data supply and transmission: technical guidance about the format(s) for the transmission of data and safeguards to ensure data is transmitted securely.</p>

		<p>This element should be considered within Principles 5 and 6 as this may place additional burdens and controls upon the data supplier. Within the NHS and NHS Digital there are nationally agreed and approved operational and technical processes in place for the transfer of data via SEFT – it would put undue stress and operational burden upon the NHS and the NHS Digital would seek to continue using this method of data transfer to ensure the safety and security of patient data.</p> <p>Within the governance section is does not appear within the Code of Practice that ONS will publish its statutory functions.</p>
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Kind Regards

Joanne

Joanne Treddenick  
Senior Information Assurance Specialist  
Strategic Information Governance  
Information Governance, Burden and Audit  
NHS Digital

NHS Digital



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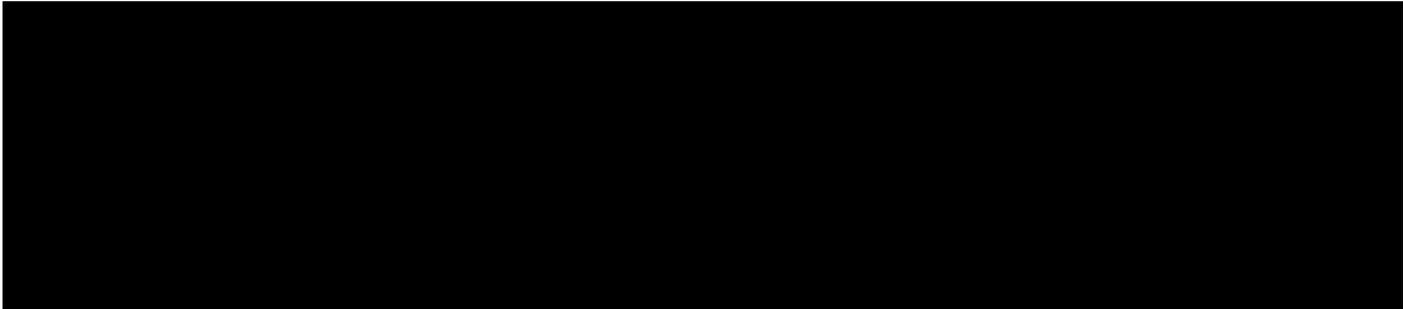
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Making a positive difference  
for energy consumers

Better Use of Data team  
7<sup>th</sup> floor  
The White Chapel Building  
Whitechapel High Street  
London  
E1 8QS

Email: [REDACTED]

Date: 2 November 2017

Dear colleague,

**Response to consultation: Digital Economy Act, part 5: data sharing codes and regulations**

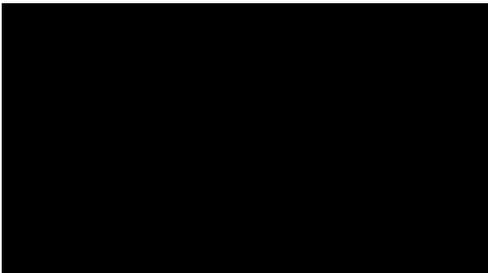
We welcome this important legislation and are grateful for the opportunity to respond to this consultation on its implementation.

Our response is provided in two annexes to this letter. We first explain why we would like a change to section 36(3) of the Digital Economy Act to enable more data matching with energy suppliers, including to support expanding our proposed vulnerable customer safeguard tariff. We then respond to some of the specific consultation questions on part 5.

We are content for this response to be published and attributed to Ofgem.

If you have any questions about our response, or would like to discuss it with us, please contact me in the first instance.

Yours faithfully,



**Anna Rossington**

Associate Partner, Consumers and Competition

## Annex 1 – Data matching with energy suppliers

The energy market is not working for all consumers and those who have not switched tariff are losing out.

We have already sought to take action, using the data currently available to suppliers. On 11 October, we published a statutory consultation on extending the existing safeguard tariff in place for consumers on a prepayment meter.<sup>1</sup> This would provide direct assistance to around one million households who receive the Warm Home Discount (WHD).

This will only capture a subset of the most vulnerable in society. We want to go beyond this, to improve the support and protection provided to vulnerable consumers. In particular, we have stated that we will work on extending price protection to at least a further two million vulnerable households for winter next year, once the timing of the government's default tariff price cap is confirmed. This would deliver significant direct and immediate financial assistance to these consumers. (The precise savings will depend on the methodology used. As an illustration, we estimate that our extension of the prepayment safeguard tariff will save the average dual fuel consumer who receives WHD around £120 per year. This is additional to the support they receive through WHD).

To do this, suppliers need to be able to identify eligible vulnerable consumers, in line with criteria set by us. One approach is to provide price protection to all consumers who receive income-related or disability benefits, using a bespoke data matching process. Suppliers would receive information from the Department of Work and Pensions (DWP), indicating which of their customers receive these benefits. This would mirror the data matching process used for the WHD Core Group at present.

Data matching would allow accurate and timely identification of vulnerable consumers, and therefore would allow us to protect them in a targeted and effective way. It would allow consumers who are at risk of being vulnerable to be automatically enrolled onto a safeguard tariff, without having to apply. DWP data would provide suppliers with new information, particularly about consumers who have low incomes. Data matching would also help to ensure that eligible consumers receive the same level of protection, whoever their supplier is. Furthermore, it would align with the recent recommendation from the National Audit Office that "regulators and government should work together to...consider developing a system to allow firms to easily establish consumers' eligibility for support schemes based on receipt of means-tested benefits".<sup>2</sup>

Beyond a safeguard tariff, we recently added a broad vulnerability principle to the domestic supply licences. This clarifies to suppliers that they need to make an extra effort to identify and respond to the needs of those in vulnerable situations, in order to uphold their obligation to treat all domestic customers fairly.<sup>3</sup> Benefits data provided through data matching could help suppliers to meet their regulatory obligations, by allowing them to better identify those vulnerable customers at risk of fuel poverty. (Vulnerability is multi-faceted, and so suppliers would need to continue using a range of information sources to identify other types of vulnerable consumers, such as those in temporary vulnerability). We could monitor suppliers' progress in helping these consumers, which would also allow us to understand which groups remain on poor value deals.

In order to implement the data matching described above, we would need an amendment to the Digital Economy Act. At present, section 36(3) of the Act only allows disclosure of

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<sup>1</sup> Ofgem (2017) Statutory consultation for a vulnerable customer safeguard tariff.

<https://www.ofgem.gov.uk/publications-and-updates/statutory-consultation-vulnerable-customer-safeguard-tariff>

<sup>2</sup> National Audit Office (2017) Vulnerable consumers in regulated industries, paragraph 21.

<https://www.nao.org.uk/wp-content/uploads/2017/03/Vulnerable-consumers-in-regulated-industries.pdf>

<sup>3</sup> Ofgem (2017) Final decision: Standards of conduct for suppliers in the retail energy market.

<https://www.ofgem.gov.uk/publications-and-updates/final-decision-standards-conduct-suppliers-retail-energy-market>

information to suppliers in relation to particular government support schemes, and not in relation to an Ofgem licence condition. We are therefore asking you to make this important change, which would enable us to implement a safeguard tariff to a wider group of vulnerable energy consumers and enable suppliers to better identify their customers at risk of fuel poverty.

Specifically, we would like relevant Ministers to make Regulations to add to the list in section 36(3) of the Digital Economy Act 2017 by making reference to fuel poverty protections put in place by Ofgem using its statutory powers. This would cover interventions such as a safeguard tariff and suppliers' regulatory obligations towards vulnerable customers. We would be happy to discuss the legal issues further at working level.

We are already working with DWP and the Department for Business, Energy and Industrial Strategy to understand the practical steps that would be required to implement a bespoke data matching process.

In parallel with developing an expanded vulnerable customer safeguard tariff, we will work with the government to implement its proposals for a default tariff price cap as quickly as possible, if legislation is passed.

The government's proposal is for a temporary price cap, which would run until 2023 at the latest. While effective competition should be delivering benefits for the majority of consumers by this stage, we think there are important questions about what protection vulnerable consumers may need in the medium term, as we move to a smarter market. An amendment to the Digital Economy Act would therefore give us a tool to help protect vulnerable consumers in the future, as well as in the near-term.

## **Annex 2 – Responses to specific questions**

### ***Q4. Are these the right principles for information sharing in the context of public service delivery, debt and fraud?***

Yes, they are. We assume that the Valuation Office Agency (VOA) is included within Her Majesty's Revenues and Customs (HMRC) as a specified person in Schedule 4. We note the provision in paragraph 26 of the information sharing code of practice requiring that using personal information disclosed by VOA may require HMRC consent, depending on the purpose for which it is used. Ofgem believes that VOA datasets can assist in the identification of persons living in fuel poverty.

### ***Q18. Do you agree that the specified objective for fuel poverty has been described clearly and in the right level of detail?***

Yes, Ofgem agrees that the specified objective for fuel poverty has been described clearly and in a sufficient level of detail. The objective, as outlined in the Act and draft regulations for Disclosure of Information, is directly aligned with Ofgem's objectives.

Ofgem considers the definition for "Living in fuel poverty" in section 36(10) to be appropriate and to a suitable level of detail. The definition is broad but consistent with Ofgem's understanding of "living in fuel poverty". This broadness and flexibility are welcomed by Ofgem as we develop eligibility criteria using an encompassing definition of fuel poverty. This definition provides both us and obligated suppliers with the scope to be innovative in identifying consumers in, or at risk of, fuel poverty. It also reflects that the definition is evolving and is currently different across England, Wales and Scotland. Ofgem believes that defining fuel poverty in a less flexible way can restrict the opportunities to assist consumers.

The 'improving their health or financial well-being' element of the objective is indirectly aligned with the aims of ECO and WHD schemes that Ofgem administers. Installations under the HHCR0 element of ECO improve the energy efficiency of fuel poor people's homes, provide cost savings and encourage the installation of other measures which can maintain the heat of the household and improve health. Rebates can improve the financial well-being of WHD recipients. This in turn can allow them to heat their home more regularly, mitigating the health risks associated with poorly-heated homes.

### ***Q20. Are the lists of the specified persons able to share information under each specified objective appropriately targeted?***

Yes, for the 'fuel poverty' specified objective, Ofgem agrees that the list of specified persons able to share the information is appropriately targeted. As this is the only specified objective Ofgem is responding to, we will not comment on the lists of specified persons for the remaining three specified objectives.

We assume that the Valuation Office Agency (VOA) is included within Her Majesty's Revenues and Customs (HMRC) as a specified person in Schedule 4. We note the provision in paragraph 26 of the information sharing code of practice requiring that using personal information disclosed by VOA may require HMRC consent, depending on the purpose for which it is used. Ofgem believes that VOA datasets can assist in the identification of persons living in fuel poverty.

# Digital Economy Act 2017 Consultation: Codes of Practice and Regulations for Part 5 of the Act

## Page 1: Privacy Policy Statement

Do you wish to continue completing this response form?

Yes

Do you wish your name to be published in the government evaluation of responses? (If 'no', the response will be treated as confidential).

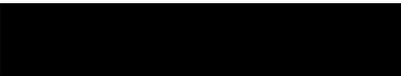
Yes

## Page 2: Responding to the consultation - Your details

Name:

Ian Litton

Postal and/or email address - personal or business



Is this a personal response or an official response on behalf of your organisation?

Official response

Organisation name (if an official response):

Positive Attributes Ltd

Position (if an official response):

Director

If you ticked "Official response", please respond accordingly -Type of responding organisation:

Business

Type of representative group or interest group

*No Response*

## Page 4: Public Service Delivery, Debt and Fraud

Q1. Overall, do you find this Code of Practice clear and easy to understand?

Yes

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q2. Does the Code explain clearly the process for sharing information under these powers?

Yes

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q3. Is there anything which you think is missing from the Code or which requires greater detail?

Yes

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

More emphasis should be put on using citizen consent to facilitate data sharing that goes beyond the purposes already covered in the Act and the supporting Code. Seeking explicit citizen consent ensures transparency and builds trust, a key objective of the Act. There is passing reference to citizen consent in paragraph 25, but it only covers the use of information for the purposes described in the Act and Code.

In proposing a new Objective organisations should be encouraged to consider if citizen consent could be used to enable it. This is a quicker, more efficient, and more transparent enabler than creating a new objective under the Code.

The Code should state that explicit citizen consent is always a sufficient, and better, basis for data sharing than a legislative instrument. The principles (section 1.2) should make this clear, and should also make it clear that, where consent is used to enable data sharing, citizens should be given online facilities (preferably User Managed Access or UMA tools) to manage any ongoing consents. Furthermore, where consent is sought online it should be underpinned by an online identity (such as GOV.UK Verify) that is assured to level 2.

Paragraph 14 should not mandate APIs in situations where citizen consent is the enabler. An Attribute Exchange ecosystem, served by APIs but driven by consent, is superior. Where enduring consent is given the citizen should be able to manage these using User Managed Access (UMA) tools, again underpinned by an LoA2 identity.

Q4. The Code includes a set of principles for sharing information under the Public Service Delivery, Debt and Fraud powers, together with certain requirements to ensure that information shared under these powers is handled in a way that is transparent and fair. Are these the right principles for information sharing in the context of public service delivery, debt and fraud?

No

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

The Code should state that explicit citizen consent is always a sufficient, and better, basis for data sharing than a legislative instrument. The principles (section 1.2) should make this clear, and should also make it clear that, where consent is used to enable data sharing, citizens should be given online facilities to manage any ongoing consents. Furthermore, where consent is sought online it should be underpinned by an online identity (such as GOV.UK Verify) that is assured to level 2.

Q5. Are the requirements for transparency under this Code appropriate and proportionate given the range of interests of those who use the powers and those who are interested in how they are used?

No

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

Putting more emphasis on using citizen consent as the basis for data sharing would lead to greater transparency and greater trust. For transactional services, consent can be sought at the point of service delivery in a way that is clear, relevant, and specific.

## Page 5: Civil Registration

Q6. Overall, do you find this Code of Practice clear and easy to understand?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q7. Does the Code explain clearly the process for sharing information under these powers?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q8. Is there anything which you think is missing from the Code or which requires greater detail?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q9. The Code includes a set of principles for sharing information under these powers, together with certain requirements to ensure that information shared under these powers is handled in a way that is transparent

and fair. Do you agree that these are the right principles for sharing information in the context of civil registration?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

## Page 6: Research Code of Practice and Accreditation Criteria

Q10. Overall, do you find this Code of Practice and accreditation criteria clear and easy to understand?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q11. Do the Code and accreditation criteria explain clearly the principles by which information may be shared under these powers?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q12. Is there anything which you think is missing from the Code or accreditation criteria or which requires greater detail?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

## Page 7: Statistics Statement of Principles and Code of Practice on changes to data systems

Q13. Overall, do you find the Statement of Principles and Code of Practice clear and easy to understand?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q14. Do the Statement of Principles and Code explain clearly the principles by which the UK Statistics Authority will operate under these powers about access to information it has been given in the Act?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q15. Is there anything which you think is missing from the Statement of Principles or Code or which requires greater detail?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

## Page 8: The Digital Government (Disclosure of Information) Regulations 2017

Q16. Do you agree that the specified objective for multiple disadvantages has been described clearly and in the right level of detail?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q17. Do you agree that the specified objective for television retuning has been described clearly and in the right level of detail?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q18. Do you agree that the specified objective for fuel poverty has been described clearly and in the right level of detail?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q19. Do you agree that the specified objective for water poverty has been described clearly and in the right level of detail?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q20. Are the lists of the specified persons able to share information under each specified objective appropriately targeted?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

## Page 9: Further Information

How did you find out about this consultation?

**Other (please specify):**  
from a colleague

May we contact you for further information?

Yes

## Research Code of Practice and Accreditation Criteria

We are seeking views on whether the Code of Practice is clear and easy to understand, and provides sufficient explanation of how information is shared under this power.

**10. Overall, do you find this [Code of Practice](#) and accreditation criteria clear and easy to understand? \***

Yes

No

N/A

**If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.**

Although the Code and Accreditation Criteria are generally clear, there are a significant number of areas that need clarification.

2.1 The three bullet points need to have something about 'while maintaining confidentiality...'.

2.3 and 2.4 are confusing. At the reference in second sentence of 2.3 to 'can disclose personal information', and the first sentence and first bullet point of 2.4, need to be clear on what 'can be disclosed' means. Is this saying that information passed by a public body to a third party must be non-disclosive? To us it would seem to be the job of the third party to make the data non-disclosable. First bullet point - 'made available' to who? Second bullet point, 'must take reasonable steps': How will this be defined?

4.1 Last sentence: 'the Authority may choose . .' Why is this permissive rather than prescriptive?

5.2 First sentence: what are the 'highest ethical standards', and 'unique ethical challenges'? Could some reference to accepted standards be included?

Section 12: It is unclear what is meant by 'processors' – is it institutions or the individuals who work in them – or either one of these? It would be helpful to make the definition clear at the outset.

15.1 is about security standards for central government. What about other public bodies?

18.1 The five bullet points do not make clear what the standards are for these policies and how they are approved. Processors could have policies that say nothing.

18.2 What are 'appropriate' data processing agreements? Presumably, they have to be approved and have to be relevant to the data.

Royal Statistical Society response (unabridged) to Digital Economy Act 2017 Consultation:  
Codes of Practice and Regulations for Part 5 of the Act – Research and Statistics

22.1 'Suspended or withdrawn': Suspension is usually temporary, but it's not clear why one would be used rather than the other. The last bullet point makes the first mention of charging. Should this be covered more fully?

26.1 Who pays for the training?

38.1 'No longer covered by ethical approval'. What does this mean?

39.1 End of third bullet point: 'right to appeal'. To who?

Footnote 3: needs correcting. The Act (clause 65(4)) does not exclude these bodies, but data held in connection with their health and social care functions are excluded. We think that this should be set out in full in the body of the text.

Minor points:

18.1 'At the point of application...': We presume this means application for accreditation rather than application of a process – this could be clarified.

1.1 Meaning of the last part of the final sentence is unclear.

1.4 Delete comma after 'purposes'.

**11. Do the Code and accreditation criteria explain clearly the principles by which information may be shared under these powers? \***

Yes

No

N/A

**If you want to provide further comments to explain your answer, please do so below.  
Please limit your answer to 250 words.**

**12. Is there anything which you think is missing from the Code or accreditation criteria or which requires greater detail? \***

Yes

No

N/A

**If you want to provide further comments to explain your answer, please do so below.  
Please limit your answer to 250 words.**

A particular limitation in this part of the legislation is that data from public authorities with functions relating to the provision of health services and adult social care is excluded if the

Royal Statistical Society response (unabridged) to Digital Economy Act 2017 Consultation:  
Codes of Practice and Regulations for Part 5 of the Act – Research and Statistics

data is held by the authority in connection with such functions. We support the principles and accreditation criteria set out in this Code but we also think that the procedure entailed by them may not encourage the conduct of legitimate research if it is not a more widely shared procedure – researchers may be subject to duplicated processes. The Law Commission (2014) scoping report on Data Sharing between Public Bodies found diverse legislative arrangements in place and a complicated legislative picture. For third parties who seek access to data for research in the public interest, the range of gateways that are available and the rules that apply to them have not been clearly established.

To further clarify the situation for researchers, we recommend that a review of gateways should be undertaken to establish how government, including the Government Statistical Service, approach sharing de-identified data for research in the public interest. The experience of the Administrative Data Research Network could doubtless help to inform this.

## **Statistics Statement of Principles and Code of Practice on changes to data systems**

We are seeking views on whether the Statement of Principles and Code of Practice are clear and easy to understand, and provide sufficient explanation of how information is shared under this power.

<https://www.gov.uk/government/consultations/digital-economy-act-part-5-data-sharing-codes-and-regulations/statistics-statement-of-principles-and-code-of-practice-on-changes-to-data-systems>

**13. Overall, do you find the [Statement of Principles and Code of Practice](#) clear and easy to understand? \***

Yes

No

N/A

**If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.**

**14. Do the Statement of Principles and Code explain clearly the principles by which the UK Statistics Authority will operate under these powers about access to information it has been given in the Act? \***

Royal Statistical Society response (unabridged) to Digital Economy Act 2017 Consultation:  
Codes of Practice and Regulations for Part 5 of the Act – Research and Statistics

Yes

No

N/A

**If you want to provide further comments to explain your answer, please do so below.  
Please limit your answer to 250 words.**

**15. Is there anything which you think is missing from the Statement of Principles or Code or which requires greater detail? \***

Yes

No

N/A

**If you want to provide further comments to explain your answer, please do so below.  
Please limit your answer to 250 words.**

More detailed procedures are likely to be required but should not be set out in the statutory document.

We would be pleased if the UK Statistics Authority / Office for National Statistics can indicate, in their Data Access Agreements with individual suppliers, the requirement for the supplier's consent if data is to be processed additionally for a research purpose, and ensure that the data supplier can give their active consent to, or rejection of, specified research proposals.



Better Use of Data Team  
The Government Digital Service  
7th Floor, The White Chapel Building  
Whitechapel High Street  
London  
E1 8QS



Dear Team

## **DIGITAL ECONOMY ACT, PART 5: DATA SHARING CODES AND REGULATIONS**

As an energy supplier obligated to deliver assistance to eligible customers through Government programmes such as the Energy Companies Obligation (ECO) and the Warm Home Discount scheme, we support the proportionate, secure and well-governed sharing of information to enable better targeting of these schemes.

The existing data matching process for the Warm Home Discount (WHD) scheme takes place under section 142 of the Pensions Act 2008 and has proved successful in facilitating the provision of a financial rebate to certain persons in receipt of state pension credit. Automatic entitlement has ensured that assistance reaches those targeted by the scheme without the requirement for often lengthy and complicated eligibility processes. We welcome effective steps to further enhance data sharing.

However, we note that the provisions in Part 5 of the Digital Economy Act 2017, especially sections 36 and 37, are framed quite differently to the provisions in the Pensions Act. In particular:

- (a) All data sharing under sections 36 and 37 is required to be for the purpose of assisting people living in fuel poverty, which is in turn defined as “member[s] of a household living on a lower income in a home which cannot be kept warm at a reasonable cost”. This suggests that assistance must be targeted at poorly insulated homes. However, the existing Warm Home Discount Broader Group is not required to be linked to the condition of the home – it is generally paid to people on lower incomes regardless. It is unclear to us whether such a scheme would fit the powers of the Digital Economy Act and, if the Warm Home Discount had to be redesigned to facilitate data sharing, how suppliers would be able to ascertain which properties they supply could not be kept warm at a reasonable cost; and
- (b) The list of functions for which information can be disclosed is much narrower than that set out in the Disclosure of State Pension Credit Information (Warm Home Discount) Regulations 2011 – a problem exacerbated by the narrow definition of beneficiaries in terms of energy performance of their homes (which would appear



to make disclosure unlawful if it is discovered that the home is well insulated). For example, it is unclear whether provision of advice is allowed and the gateway to allow information disclosure for the purpose of managing the account is no longer available.

- (c) There seems to be no provision for the disclosure of data for the purposes of testing the relevant systems.

We think it would be helpful if BEIS and DWP could consider these issues on the primary powers and assure themselves (and energy suppliers) that the new legislation is suitable given the differences with the provisions under the Pensions Act which were discussed at length with the industry at the time.

We would also suggest that, if data sharing is introduced for the Warm Home Discount Broader Group, a system of levelisation similar to that for the Core Group should be implemented. Similarly, both this scheme and the ECO scheme need to be extended to suppliers with 50,000 or more customers to minimise market distortion.

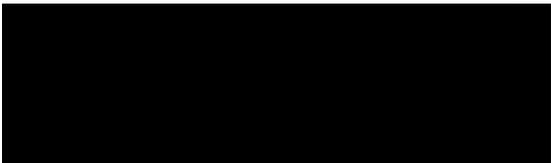
Turning to the more detailed matters being consulted upon, we would observe that the draft Digital Government (Disclosure of Information) Regulations 2017 (“the draft Regulations”) add little to the provisions of sections 36(2) and (10) of the Digital Economy Act, and the same issue about the condition of the home arises. It is unclear to us whether it is feasible for the draft Regulations to be cast more widely in terms of beneficiaries and for the data matching to take place under section 35 of the Act rather than section 36.

In relation to the proposed Code of Practice, we think this could be beneficial to assure compliance with an agreed upon set of objectives and to enhance consumer confidence. However, it is unclear to us whether the Code is addressed to Government Departments or Suppliers or both and indeed what if anything happens if it is not complied with. To the extent that information sharing is mandatory under the Warm Home Discount scheme or ECO, it would not be possible for a Department to withdraw the data sharing facility from a supplier without putting the supplier in breach of its own obligations. This needs to be addressed in the drafting of the Code.

Recognising the wider questions set out in this letter, we have provided in the attached Annex answers to the specific Consultation questions that relate to our activities.

We would be happy to discuss any of the points raised in more detail. Please contact me if this would be useful or you require further information.

Yours sincerely,



**Rupert Steele**  
Director of Regulation

**DIGITAL ECONOMY ACT, PART 5: DATA SHARING CODES AND REGULATIONS**

**SCOTTISHPOWER RESPONSE**

**Public Service Delivery, Fraud and Debt**

**Question 1**

Overall, do you find this Code of Practice clear and easy to understand?

As currently drafted, the Code sets out a reasonable level of detail and definition with respect to the data sharing requirements. However we believe more detail is required as it is not clear what, if anything, is envisaged will be provided by energy suppliers. The Digital Economy Act provides a permissive power for Suppliers to share data for fuel poverty reasons, which includes a requirement for the data to be used for the purpose of assisting people living in fuel poverty (ie a member of a household living on a lower income in a home which cannot be kept warm at a reasonable cost). However, the existing Warm Home Discount Broader Group is not linked to the condition of the home – it is generally paid to people on lower incomes regardless. It is unclear how this issue is to be resolved given the terms of the new primary legislation. It will be important to provide early clarification on this matter.

One of the main drivers for the new data sharing powers is to enable public authorities (who may be restricted from sharing as they have no specific power to do so) to share data, rather than Suppliers who could share data as long as it complies with the data protection legislation. It is not clear whether the Code is intended to be focussed on public authorities supplying data to Suppliers only, or whether there are any specific obligations on Suppliers (and any associated means of enforcing them).

Under the Pensions Act precedent, the ‘Disclosure of State Pension Credit Information (Warm Home Discount) Regulations 2011’ provided a power for the Secretary of State to issue a direction for the provision of the data. If it is not intended to repeat this, Suppliers will need to be satisfied that there is another valid legal ground for sharing under the data protection legislation.

**Question 2**

Does the Code explain clearly the process for sharing information under these powers?

Focusing specifically on section 2.3 (the process for using the public service delivery power), we believe that the draft Code generally sets out the steps that should be followed to ensure any data sharing has been considered against a framework that will ensure all necessary protections are in place.

We would suggest, however, that DWP avoids re-inventing the wheel in this space. There are already arrangements under the Pensions Act 2008 which should be reviewed to ensure

compliance under the General Data Protection Regulation (GDPR). There is no need or benefit in setting out along an entirely different course.

### **Question 3**

Is there anything which you think is missing from the Code or which requires greater detail?

As currently drafted we are concerned that the Code of Practice could inadvertently create a situation where public authorities impose their standards on energy Suppliers in relation to data security. For example, paragraph 39 requires “receiving parties” to follow all departmental or local authority security standards when providing or receiving information. Principle 8 (paragraph 12) seems to require Suppliers to adhere to public sector Codes of Practice of which they have no previous knowledge. Suppliers must be free to determine their own security arrangements and establish how they comply with the data protection legislation. It would be unreasonable, for example, for a public authority to mandate a particular type of secure transfer of information when there are other ways that an appropriate standard of security can be met.

More generally, it is unclear who the Code applies to, how (if at all) it is to be enforced, how it will deal with the issues mentioned in our covering letter and how it relates to the existing arrangements under the Pensions Act 2008.

Additionally, more detail about how the requirements apply may be helpful in places. For instance, the Code requires that all persons or parties must follow the Principles for Data Sharing (section 1.2) and that Privacy Impact Assessments (PIAs) are conducted before any data sharing occurs. It could be helpful to clarify responsibilities in this regard. The data protection legislation makes clear that responsibility for conducting a PIA rests with the controller. Any data sharing agreement will include two or more controllers. It is not clear whether each controller would be expected to complete a separate PIA or whether the intention would be that the disclosing controller conducts a PIA with contributions as appropriate from the receiving parties. This needs further clarification.

### **Question 4**

Are these the right principles for information sharing in the context of public service delivery, debt and fraud?

Subject to the important points raised in our answer to Question 3 above, we consider that these principles are broadly the right kind of principles though more clarity and detail is required in places.

**Question 5.**

Are the requirements for transparency under this Code appropriate and proportionate given the range of interests of those who use the powers and those who are interested in how they are used?

The requirements for transparency seem appropriate and proportionate. We believe, however, that more detail is needed around exactly how the requirements will be used.

**The Digital Government (Disclosure of Information) Regulations 2017**

**Question 18**

Do you agree that the specified objective for fuel poverty has been described clearly and in the right level of detail?

No. The specified objective is not consistent with existing Warm Home Discount programmes or in many cases the information available to Suppliers. Whilst recognising that this issue arises from the primary legislation (as drafted) it clearly requires further consideration on how to address this issue.

**Question 20**

Are the lists of the specified persons able to share information under each specified objective appropriately targeted?

With respect to the fuel poverty objective, the list of persons seems appropriate. This does not, however, deal with the wider problems we have identified in the covering letter. We do not offer a view on the specified persons under any other objective.

**ScottishPower**  
November 2017

# Digital Economy Act 2017 Consultation: Codes of Practice and Regulations for Part 5 of the Act

## Page 1: Privacy Policy Statement

Do you wish to continue completing this response form?

Yes

Do you wish your name to be published in the government evaluation of responses? (If 'no', the response will be treated as confidential).

Yes

## Page 2: Responding to the consultation - Your details

Name:

John L Curtis

Postal and/or email address - personal or business

[REDACTED]

Is this a personal response or an official response on behalf of your organisation?

Official response

Organisation name (if an official response):

Sheffield City Council

Position (if an official response):

Head of Information Management

If you ticked "Official response", please respond accordingly -Type of responding organisation:

Local authority

Type of representative group or interest group

*No Response*

## Page 4: Public Service Delivery, Debt and Fraud

Q1. Overall, do you find this Code of Practice clear and easy to understand?

Yes

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

The code is well structured and links with existing guidance from central Government.

Importantly this code also mentions the importance of data standards and schemas which is key for data sharing activities.

It would make sense that any further supplementary guidance reuse for example templates that are available from either the ICO or Centre of Excellence for Information Sharing.

Q2. Does the Code explain clearly the process for sharing information under these powers?

Yes

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q3. Is there anything which you think is missing from the Code or which requires greater detail?

Yes

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

It would make sense that you also include the National Cyber Security Guidance as well as guidance from the cabinet office around secure networks such as PSN.

It would make sense that any further supplementary guidance reuse for example templates that are available from either the ICO or Centre of Excellence for Information Sharing.

Flowcharts maybe useful to explain aspects of the proposed data sharing and what you should consider.

Given that the value from this data sharing will more than likely be similar in nature for each Local Authority, there needs to be a sensible level regarding the need for business cases.

Any publication needs to be embedding into existing publication schemes (FOI) and overall it would make sense that you use the Information Sharing Gateway which is already in place across the UK.

Q4. The Code includes a set of principles for sharing information under the Public Service Delivery, Debt and Fraud powers, together with certain requirements to ensure that information shared under these powers is handled in a way that is transparent and fair. Are these the right principles for information sharing in the context of public service delivery, debt and fraud?

Yes

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q5. Are the requirements for transparency under this Code appropriate and proportionate given the range of interests of those who use the powers and those who are interested in how they are used?

Yes

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

See above comments

## Page 5: Civil Registration

Q6. Overall, do you find this Code of Practice clear and easy to understand?

Yes

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q7. Does the Code explain clearly the process for sharing information under these powers?

Yes

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q8. Is there anything which you think is missing from the Code or which requires greater detail?

Yes

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

Reference to the national Cyber Security Centre guidance should be included.

If publication of the ISA is required then it more than likely makes sense that the PIA is included which will more than likely be an expectation of all bodies. The information Sharing Gateway should be adopted to manage ISA's and support overall management of ISA's going forward. This needs to be aligned with Publication Schemes. .

Q9. The Code includes a set of principles for sharing information under these powers, together with certain requirements to ensure that information shared under these powers is handled in a way that is transparent

and fair. Do you agree that these are the right principles for sharing information in the context of civil registration?

Yes

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

Skills in Information Management are mentioned as a key requirement. It more than likely would make sense to link this to existing competency frameworks.

## Page 6: Research Code of Practice and Accreditation Criteria

Q10. Overall, do you find this Code of Practice and accreditation criteria clear and easy to understand?

Yes

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q11. Do the Code and accreditation criteria explain clearly the principles by which information may be shared under these powers?

Yes

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q12. Is there anything which you think is missing from the Code or accreditation criteria or which requires greater detail?

Yes

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

As mentioned previously reference should be made to the National Cyber Security Centre Guidance.

Data Standards needs to be included where applicable.

There is no reference to PSRI. I am therefore assuming that this is not relevant.

It more than likely makes sense to include a paragraph regarding requests from the public for information and how these will be handled.

GDPR needs to be referenced where appropriate.

It needs to be clear if categorised data will be shared as well as retention which I assume will be detailed within the ISA.

Security Incidents/breaches procedures need to be explained within the ISA. .

## Page 7: Statistics Statement of Principles and Code of Practice on changes to data systems

Q13. Overall, do you find the Statement of Principles and Code of Practice clear and easy to understand?

Yes

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q14. Do the Statement of Principles and Code explain clearly the principles by which the UK Statistics Authority will operate under these powers about access to information it has been given in the Act?

Yes

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q15. Is there anything which you think is missing from the Statement of Principles or Code or which requires greater detail?

Yes

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

Please refer to previous comments

## Page 8: The Digital Government (Disclosure of Information) Regulations 2017

Q16. Do you agree that the specified objective for multiple disadvantages has been described clearly and in the right level of detail?

Yes

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q17. Do you agree that the specified objective for television retuning has been described clearly and in the right level of detail?

Yes

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q18. Do you agree that the specified objective for fuel poverty has been described clearly and in the right level of detail?

Yes

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q19. Do you agree that the specified objective for water poverty has been described clearly and in the right level of detail?

Yes

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q20. Are the lists of the specified persons able to share information under each specified objective appropriately targeted?

Yes

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

## Page 9: Further Information

How did you find out about this consultation?

**Other (please specify):**  
I was emailed directly

May we contact you for further information?

Yes

# Digital Economy Act 2017 Consultation: Codes of Practice and Regulations for Part 5 of the Act

## Page 1: Privacy Policy Statement

Do you wish to continue completing this response form?

Yes

Do you wish your name to be published in the government evaluation of responses? (If 'no', the response will be treated as confidential).

Yes

## Page 2: Responding to the consultation - Your details

Name:

Benjamin Bennett

Postal and/or email address - personal or business

Civic Centre  
Sutton Borough Council  
SM1  
London

Is this a personal response or an official response on behalf of your organisation?

Official response

Organisation name (if an official response):

London Borough of Sutton

Position (if an official response):

Data and Intelligence Manager

If you ticked "Official response", please respond accordingly -Type of responding organisation:

Local authority

Type of representative group or interest group

*No Response*

## Page 4: Public Service Delivery, Debt and Fraud

Q1. Overall, do you find this Code of Practice clear and easy to understand?

Yes

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q2. Does the Code explain clearly the process for sharing information under these powers?

Yes

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q3. Is there anything which you think is missing from the Code or which requires greater detail?

Yes

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

The code would be better if the public were made more aware of what government is trying to achieve and how this will benefit them, clarity of the consequence of making data more available across the public services in order to primarily support residents, reducing time spent registering with each organisation and reducing costs in public services by sharing data across organisations.

Q4. The Code includes a set of principles for sharing information under the Public Service Delivery, Debt and Fraud powers, together with certain requirements to ensure that information shared under these powers is handled in a way that is transparent and fair. Are these the right principles for information sharing in the context of public service delivery, debt and fraud?

Yes

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q5. Are the requirements for transparency under this Code appropriate and proportionate given the range of interests of those who use the powers and those who are interested in how they are used?

Yes

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

## Page 5: Civil Registration

Q6. Overall, do you find this Code of Practice clear and easy to understand?

No

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

As mentioned more information available for members of the public.

Q7. Does the Code explain clearly the process for sharing information under these powers?

Yes

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q8. Is there anything which you think is missing from the Code or which requires greater detail?

Yes

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q9. The Code includes a set of principles for sharing information under these powers, together with certain requirements to ensure that information shared under these powers is handled in a way that is transparent and fair. Do you agree that these are the right principles for sharing information in the context of civil registration?

Yes

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

## Page 6: Research Code of Practice and Accreditation Criteria

Q10. Overall, do you find this Code of Practice and accreditation criteria clear and easy to understand?

Yes

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q11. Do the Code and accreditation criteria explain clearly the principles by which information may be shared under these powers?

Yes

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q12. Is there anything which you think is missing from the Code or accreditation criteria or which requires greater detail?

Yes

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

## **Page 7: Statistics Statement of Principles and Code of Practice on changes to data systems**

Q13. Overall, do you find the Statement of Principles and Code of Practice clear and easy to understand?

Yes

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q14. Do the Statement of Principles and Code explain clearly the principles by which the UK Statistics Authority will operate under these powers about access to information it has been given in the Act?

Yes

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q15. Is there anything which you think is missing from the Statement of Principles or Code or which requires greater detail?

Yes

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

## Page 8: The Digital Government (Disclosure of Information) Regulations 2017

Q16. Do you agree that the specified objective for multiple disadvantages has been described clearly and in the right level of detail?

Yes

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q17. Do you agree that the specified objective for television retuning has been described clearly and in the right level of detail?

Yes

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q18. Do you agree that the specified objective for fuel poverty has been described clearly and in the right level of detail?

Yes

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q19. Do you agree that the specified objective for water poverty has been described clearly and in the right level of detail?

Yes

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q20. Are the lists of the specified persons able to share information under each specified objective appropriately targeted?

Yes

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

## **Page 9: Further Information**

How did you find out about this consultation?

Gov.uk website

May we contact you for further information?

Yes

## Response to the consultation:

UK Statistics Authority, Gov Digital Service,  
Cabinet Office, HMPO consultation on Digital  
Economy Act, part 5: data sharing codes and  
regulations

## **CIPFA**

The Chartered Institute of Public Finance (CIPFA) is an internationally recognised, global authority on financial management.

It launched the CIPFA Counter Fraud Centre in 2014 to lead and coordinate the fight against fraud and corruption across all public service organisations.

Building on CIPFA's 130 year history of championing excellence in public finance management, the Centre offers training and a range of products and services to help organisations detect, prevent and recover fraud losses.

In the fight against fraud and corruption, working closely with others is essential and we regularly collaborate with the City of London Police, the Local Government Association (LGA), the National Crime Agency (NCA), Cabinet Office, NHS Protect and the National Audit Office (NAO).

We lead on the national counter fraud and anti-corruption strategy for local government, 'Fighting Fraud and Corruption Locally' and were named in the UK Government's 2014 Anti-Corruption plan as having a key role to play in combatting corruption, both within the UK and abroad.

We also conduct the annual CIPFA Fraud and Corruption Tracker (CFaCT), the national overview of all fraud, bribery and corruption activity throughout the UK public sector.

In 2016, we launched the inaugural Government Counter Fraud Awards with the NCA and Cabinet Office. The awards recognise the exceptional work being done by organisations and individuals to improve fraud and corruption defences across the public services.

## **Contact**

Oliver Stopnitzky  
CIPFA Counter Fraud Centre Technical and Development Advisor  
77 Mansell Street  
London  
E1 8AN



## **Response to consultation questions relating to Public Service Delivery, Fraud and Debt**

Views on whether the Code of Practice is clear and easy to understand, and provides sufficient explanation of how information is shared under this power.

Q1. Overall, do you find this Code of Practice clear and easy to understand?

**Yes**

Q2. Does the Code explain clearly the process for sharing information under these powers?

**Yes**

Q3. Is there anything which you think is missing from the Code or which requires greater detail?

**Yes**

**CIPFA acknowledges that ample legislation and Codes exist to allow for sharing of data to prevent fraud. We do however believe that more needs to be done to encourage sharing of data between both the public and private sector. There is a need to highlight and publicise the feasibility of private sector organisations benefitting from data held within the public sector to prevent and detect fraud.**

The Code includes a set of principles for sharing information under the Public Service Delivery, Debt and Fraud powers, together with certain requirements to ensure that information shared under these powers is handled in a way that is transparent and fair.

Q4. Are these the right principles for information sharing in the context of public service delivery, debt and fraud?

**Yes**

Q5. Are the requirements for transparency under this Code appropriate and proportionate given the range of interests of those who use the powers and those who are interested in how they are used?

**No**

**We do not feel that the requirements for transparency under this Code is appropriate. We feel that the Code does not say enough about what is fair and transparent and should offer some more comprehensive guidance.**

# Digital Economy Act 2017 Consultation: Codes of Practice and Regulations for Part 5 of the Act

## Page 1: Privacy Policy Statement

Do you wish to continue completing this response form?

Yes

Do you wish your name to be published in the government evaluation of responses? (If 'no', the response will be treated as confidential).

No

## Page 2: Responding to the consultation - Your details

Name:

[REDACTED]

Postal and/or email address - personal or business

[REDACTED]

Is this a personal response or an official response on behalf of your organisation?

Official response

Organisation name (if an official response):

The Registration Service of the Royal Borough of Kensington and Chelsea

Position (if an official response):



If you ticked "Official response", please respond accordingly -Type of responding organisation:

Local authority

Type of representative group or interest group

*No Response*

Q1. Overall, do you find this Code of Practice clear and easy to understand?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q2. Does the Code explain clearly the process for sharing information under these powers?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q3. Is there anything which you think is missing from the Code or which requires greater detail?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q4. The Code includes a set of principles for sharing information under the Public Service Delivery, Debt and Fraud powers, together with certain requirements to ensure that information shared under these powers is handled in a way that is transparent and fair. Are these the right principles for information sharing in the context of public service delivery, debt and fraud?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q5. Are the requirements for transparency under this Code appropriate and proportionate given the range of interests of those who use the powers and those who are interested in how they are used?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q6. Overall, do you find this Code of Practice clear and easy to understand?

Yes

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

Yes, however it could be improved by being more concise, so that registration officers (whose roles are very busy) are able to refer to it quickly. Additionally, it should annotate out to other sources less; instead creating a brief description of what it is annotating out to.

Q7. Does the Code explain clearly the process for sharing information under these powers?

Yes

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

Yes, although it is difficult to grasp what is different from present data sharing permissions and processes and present legal gateways for allowing bodies to access information. It seems that the processes are much the same but it's just that there will be new legal gateways allowing us to offer information to public bodies upon our consideration.

Q8. Is there anything which you think is missing from the Code or which requires greater detail?

Yes

If you want to provide further comments to explain your answer, please do so below. Please limit

your answer to 250 words.

The guidance must absolutely be accompanied by the following:

- Suggested templates for data sharing agreements.
- Suggested templates for privacy impact assessments.
- Suggested wording for privacy notices.

At present, it is unclear the levels of requests for information registration services will start to receive. We fear being inundated with information. The guidance therefore must also make clear some specifics around timelines for responses - e.g. 40 days?

Furthermore, the guidance does not state whether it is possible to charge for passing the information on under the new powers. This must be made clear, as registration services are already stretched to full capacity in terms of their resources; taking on extra work to pass on data to new bodies must allow us to receive payment for this so that we can cover the costs of delivering this.

Q9. The Code includes a set of principles for sharing information under these powers, together with certain requirements to ensure that information shared under these powers is handled in a way that is transparent and fair. Do you agree that these are the right principles for sharing information in the context of civil registration?

Yes

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

## Page 6: Research Code of Practice and Accreditation Criteria

Q10. Overall, do you find this Code of Practice and accreditation criteria clear and easy to understand?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q11. Do the Code and accreditation criteria explain clearly the principles by which information may be shared under these powers?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q12. Is there anything which you think is missing from the Code or accreditation criteria or which requires greater detail?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

## Page 7: Statistics Statement of Principles and Code of Practice on changes to data systems

Q13. Overall, do you find the Statement of Principles and Code of Practice clear and easy to understand?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q14. Do the Statement of Principles and Code explain clearly the principles by which the UK Statistics Authority will operate under these powers about access to information it has been given in the Act?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q15. Is there anything which you think is missing from the Statement of Principles or Code or which requires greater detail?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

## Page 8: The Digital Government (Disclosure of Information) Regulations 2017

Q16. Do you agree that the specified objective for multiple disadvantages has been described clearly and in the right level of detail?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q17. Do you agree that the specified objective for television retuning has been described clearly and in the right level of detail?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q18. Do you agree that the specified objective for fuel poverty has been described clearly and in the right level of detail?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q19. Do you agree that the specified objective for water poverty has been described clearly and in the right level of detail?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q20. Are the lists of the specified persons able to share information under each specified objective appropriately targeted?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

## Page 9: Further Information

How did you find out about this consultation?

**Other (please specify):**

Circular from the General Register Office (HMPO).

May we contact you for further information?

Yes

# Digital Economy Act 2017 Consultation: Codes of Practice and Regulations for Part 5 of the Act

## Page 1: Privacy Policy Statement

Do you wish to continue completing this response form?

Yes

Do you wish your name to be published in the government evaluation of responses? (If 'no', the response will be treated as confidential).

Yes

## Page 2: Responding to the consultation - Your details

Name:

Matthew Woollard

Postal and/or email address - personal or business

University of Essex  
Colchester CO4 3SQ  
United Kingdom

Is this a personal response or an official response on behalf of your organisation?

Official response

Organisation name (if an official response):

UK Data Service

Position (if an official response):

Director

If you ticked "Official response", please respond accordingly -Type of responding organisation:

University or other higher education institution

Type of representative group or interest group

**Other (please specify):**  
Data Service Provider

## Page 4: Public Service Delivery, Debt and Fraud

Q1. Overall, do you find this Code of Practice clear and easy to understand?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q2. Does the Code explain clearly the process for sharing information under these powers?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q3. Is there anything which you think is missing from the Code or which requires greater detail?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q4. The Code includes a set of principles for sharing information under the Public Service Delivery, Debt and Fraud powers, together with certain requirements to ensure that information shared under these powers is handled in a way that is transparent and fair. Are these the right principles for information sharing in the context of public service delivery, debt and fraud?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q5. Are the requirements for transparency under this Code appropriate and proportionate given the range of interests of those who use the powers and those who are interested in how they are used?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

## **Page 5: Civil Registration**

Q6. Overall, do you find this Code of Practice clear and easy to understand?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q7. Does the Code explain clearly the process for sharing information under these powers?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q8. Is there anything which you think is missing from the Code or which requires greater detail?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q9. The Code includes a set of principles for sharing information under these powers, together with certain requirements to ensure that information shared under these powers is handled in a way that is transparent and fair. Do you agree that these are the right principles for sharing information in the context of civil registration?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

## Page 6: Research Code of Practice and Accreditation Criteria

Q10. Overall, do you find this Code of Practice and accreditation criteria clear and easy to understand?

Yes

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

Yes, but in providing clarity and simplicity some detail which would make implementation easier has been omitted. Plain English might be used throughout, Harmonisation of specific terms would also be helpful, e.g., data owner, data holder, etc., can generally be subsumed under the single term Data Controller. Having these terms defined would induce greater clarity.

Principle 4: This principle is not the same as the ONS definition in its Approved Researcher guidance. Why has exploratory analysis, to inform a final research proposal, been removed as a potential area of public good? Also, there is a strong argument that methodological research should be explicitly included as in the public interest.

In terms of a wording change in Section 2.3 "minimise the risk of the data being re-identified" should surely be "data being identifiable" or "data subjects being re-identified"? In the same section "processing data means linking, de-identifying, storing or related procedures" - 'related procedures' could be better described as 'curation'? Also - processing data is NOT defined as including 'extracting from the original source'? This has implications as to whether data providing orgs need to obtain processor accreditation?

Q11. Do the Code and accreditation criteria explain clearly the principles by which information may be shared under these powers?

Yes

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

Pretty clearly.

Para 4.1: the "Authority may choose to publish details on data requests ...". In the interest of transparency it should publish these details. [Check use of 'may'/'shall' language]

Section 5.2: "highest ethical standards" is vague. Consent is omitted as an issue to be considered.

Para 13.1 "They will also need to demonstrate a record of appropriate compliance..." will prevent any incomers into the data processor market. Perhaps this is intentional.

Para 15.1 the current security controls are not cited, nor are they currently publicly available. A persistent link to what is publicly available should be explicit.

Para 22.1. This suggests that a processor would have its accreditation removed if it suffered a suspected data breach. Given that most data breaches are likely to be far beyond the control of the processor this seems unfair. We expect much fuller details to be provided when this code is up and running.

Para 30.1. We expect that any processor will find it hugely resource intensive to monitor the provision that data can only be used for the purpose of an accredited research project. This may require some flexibility if a researcher identifies a new research area through examination of the data to which they have legal access, but is beyond the original research question.

Para 34.1 If verification of research is a possibility, then the maintenance of data files from every research project should be expressly permitted.

Q12. Is there anything which you think is missing from the Code or accreditation criteria or which requires greater detail?

Yes

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

Where possible avoid the word 'may' unless it is to simply denote uncertainty. (e.g., 26.1 states that the 'Authority \*may\* choose to provide training' but does not indicate whether or not they shall provide it. Clarity is also required on how it should be provided and whether other providers will be allowed to provide training, and if so, whether or not it will be accredited.

Paras 5.2, 13.1, 15.1, 16.1, 22.1 and 30.1 all need additional guidance. Paras 23.1, 30.1 and 39.1 all mention 'further guidance'. No time frame is provided, and no clarity is given on whether this further guidance will form part of the Codes of Practice.

Para 34.1 Standard academic freedom to publish results of research should be able to be upheld. The research process should never allow a data-holding public authority to veto the publication of results (especially those which may be inimical to that data-holding public authority).

The CoP does not take into consideration the potential for the long-term curation of any data assets which may be created for research. There is a considerable cost-benefit in allowing multiple (accredited) researchers access to the same data --- either for different purposes or for the verification of earlier research.

## Page 7: Statistics Statement of Principles and Code of Practice on changes to data systems

Q13. Overall, do you find the Statement of Principles and Code of Practice clear and easy to understand?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q14. Do the Statement of Principles and Code explain clearly the principles by which the UK Statistics Authority will operate under these powers about access to information it has been given in the Act?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q15. Is there anything which you think is missing from the Statement of Principles or Code or which requires greater detail?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

## Page 8: The Digital Government (Disclosure of Information) Regulations 2017

Q16. Do you agree that the specified objective for multiple disadvantages has been described clearly and in the right level of detail?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q17. Do you agree that the specified objective for television retuning has been described clearly and in the right level of detail?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q18. Do you agree that the specified objective for fuel poverty has been described clearly and in the right level of detail?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q19. Do you agree that the specified objective for water poverty has been described clearly and in the right level of detail?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q20. Are the lists of the specified persons able to share information under each specified objective appropriately targeted?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

## Page 9: Further Information

How did you find out about this consultation?

Gov.uk website

May we contact you for further information?

Yes

# Digital Economy Act 2017 Consultation: Codes of Practice and Regulations for Part 5 of the Act

## Page 1: Privacy Policy Statement

Do you wish to continue completing this response form?

Yes

Do you wish your name to be published in the government evaluation of responses? (If 'no', the response will be treated as confidential).

Yes

## Page 2: Responding to the consultation - Your details

Name:

Vanessa Cuthill

Postal and/or email address - personal or business

[REDACTED]

Is this a personal response or an official response on behalf of your organisation?

Personal response

Organisation name (if an official response):

*No Response*

Position (if an official response):

*No Response*

If you ticked "Official response", please respond accordingly -Type of responding organisation:

*No Response*

Type of representative group or interest group

*No Response*

## Page 4: Public Service Delivery, Debt and Fraud

Q1. Overall, do you find this Code of Practice clear and easy to understand?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q2. Does the Code explain clearly the process for sharing information under these powers?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q3. Is there anything which you think is missing from the Code or which requires greater detail?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q4. The Code includes a set of principles for sharing information under the Public Service Delivery, Debt and Fraud powers, together with certain requirements to ensure that information shared under these powers is handled in a way that is transparent and fair. Are these the right principles for information sharing in the context of public service delivery, debt and fraud?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q5. Are the requirements for transparency under this Code appropriate and proportionate given the range of interests of those who use the powers and those who are interested in how they are used?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

## Page 5: Civil Registration

Q6. Overall, do you find this Code of Practice clear and easy to understand?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q7. Does the Code explain clearly the process for sharing information under these powers?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q8. Is there anything which you think is missing from the Code or which requires greater detail?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q9. The Code includes a set of principles for sharing information under these powers, together with certain requirements to ensure that information shared under these powers is handled in a way that is transparent and fair. Do you agree that these are the right principles for sharing information in the context of civil registration?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

## **Page 6: Research Code of Practice and Accreditation Criteria**

Q10. Overall, do you find this Code of Practice and accreditation criteria clear and easy to understand?

No

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

The Powers within the Act are Permissive, as stated in paragraph 2.3, and so does not provide for the clarity and certainty about what data can be made available for research purposes under this Power. There is no requirement, therefore, for data owning public authorities to disclose data they hold and for the data to be transparent for the research community. Therefore paragraph 2.2 is not clear as the Act does not provide the clarity it claims.

There is a lack of clarity about what 'public authority' means within this context and the description of the 'the processor' is therefore less clear than it might be.

The terminology 'peer reviewer' has an understood meaning within the research community and within the context of this Code or Practice it may cause confusion. The intention I have drawn from section B paragraphs 24.1 onwards is that a peer reviewer in this context would have access to potentially disclosive data during the process of research, subject to statistical disclosure control, but the description in paragraph 24.1 suggests the peer reviewer is at the end of the process at the point at which 'research would be reviewed'. This is like a traditionally understood peer reviewer of scholarly outputs or grant applications and there would be no expectation that potentially disclosive data would be available to such a person. So the terminology is leading to confusion.

Q11. Do the Code and accreditation criteria explain clearly the principles by which information may be shared under these powers?

No

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

A number of Principles are not clearly explained.

- Principle 2 (transparency) is a challenge given the power is permissive and so it will never be clear what data might be available, and whether data will be shared or not. Transparency by publishing 'cost recovery charges' so researchers can scrutinise them and plan for charges is essential but isn't clearly required within this Code.

- Principle 4 (public interest) examples are inconsistent with the public interest for research project list provided in paragraph 33.1 so doesn't offer sufficient clarity.

- Principle 5 (proportionality) is critical in the context of the degree of 'safeguards' expected for different data, and especially critical in the situation where 'cost recovery charges' are being levied on researchers. Proportionality should seek to avoid the creation of barriers and disincentives to undertake research using such data.

- Principle 6 (accreditation) is unclear. Extensive accreditation by the Authority will be necessary for current processors, of all individuals and of many research projects. There is insufficient explanation of how existing infrastructures and 'persons' can be accredited and there is series risk of delays, un-necessary barriers, and inefficiencies. The Authority will have extensive obligations and it remains unclear how it can meet these.

- Principle 7 (retention) is critical for many researchers, data owners and in particular longitudinal studies seeking links to administrative data. The explanation of how the principle of retention and onward disclosure will be applied, in particular avoiding concerns raised above regarding Principle 6, is insufficient.

Q12. Is there anything which you think is missing from the Code or accreditation criteria or which requires greater detail?

Yes

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

In addition to points raised in response to Q10 and Q11, there are many areas where it is unclear how the Authority will seek to discharge its obligations under this Act. For example will the Authority undertake all training is suggested in paragraph, or will it approve others to act on its behalf? Another area lacking clarity is whether accreditation of research projects that have already been subject to scrutiny by independent processes (such as via research councils, other funders, or bodies such as ADRN approvals board) be scrutinised again so introducing 'double-jeopardy' and inefficiencies. There are opportunities for benefiting from established and recognised high quality infrastructure and processes that are not referenced or considered.

Finally a comment on the consultation questions which I do not think allow respondents to focus on the areas of most concern. Selecting yes or no will vary depending on how the respondent wants their comments to be classified, but in reality is unlikely to be reflective of the comments submitted. Having offered expert advice on the previous consultation in relation to the development of this Act I am disappointed that advice has not been followed and am concerned that the responses received to this consultation will not be as helpful as they might have been.

## Page 7: Statistics Statement of Principles and Code of Practice on changes to data systems

Q13. Overall, do you find the Statement of Principles and Code of Practice clear and easy to understand?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q14. Do the Statement of Principles and Code explain clearly the principles by which the UK Statistics Authority will operate under these powers about access to information it has been given in the Act?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q15. Is there anything which you think is missing from the Statement of Principles or Code or which requires greater detail?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

## **Page 8: The Digital Government (Disclosure of Information) Regulations 2017**

Q16. Do you agree that the specified objective for multiple disadvantages has been described clearly and in the right level of detail?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q17. Do you agree that the specified objective for television retuning has been described clearly and in the right level of detail?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q18. Do you agree that the specified objective for fuel poverty has been described clearly and in the right level of detail?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q19. Do you agree that the specified objective for water poverty has been described clearly and in the right level of detail?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q20. Are the lists of the specified persons able to share information under each specified objective appropriately targeted?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

## Page 9: Further Information

How did you find out about this consultation?

**Other (please specify):**  
Alerted to it via UK Statistics Authority contacts

May we contact you for further information?

Yes

2 November 2017

Better Use of Data Team  
Cabinet Office  
7<sup>th</sup> Floor  
The White Chapel Building  
Whitechapel High Street  
London  
E1 8QS



**Digital Economy Act part 5:  
data sharing codes and regulations consultation**

Dear Sir/Madam,

Water UK represents all major water and sewerage service providers in the UK, and we are pleased to respond to this consultation. We are content for our response to be published and attributed to Water UK.

We welcome the consultation on the Codes of Practice and regulations to implement the information sharing provisions of the Digital Economy Act, both in general and in particular in relation to the water poverty objective in the Act.

We agree that sharing of information can enable better services that are tailored to the needs of people, and that appropriate safeguards and protections are needed to maintain confidence.

In relation to the water poverty objective, in England and Wales, 24% of households are spending more than 3% of their disposable income on water bills, and 11% more than 5% of their disposable incomes – while 12% of customers say that they are struggling to pay their water bills and unpaid bills add £21 to the bill of each customer that does pay.

As noted in the Government's strategic priorities and objectives for Ofwat<sup>1</sup>, the measures in the Digital Economy Act should enable water companies to more easily identify which of their customers are eligible for support, and we welcome the pace at which implementation of the Act is being taken forward.

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<sup>1</sup> <https://www.gov.uk/government/publications/strategic-policy-statement-to-ofwat-incorporating-social-and-environmental-guidance>

The consultation of the Code of Practice and Regulation, and their subsequent implementation, mark a key step towards this.

Continued...

However, benefits to customers will only be delivered by actual sharing of information, with appropriate safeguards and protections.

We see the greatest prospects of benefits for customers from information sharing involving water companies and the Department for Work and Pensions.

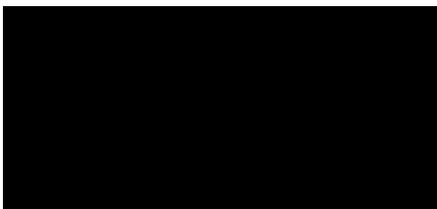
We therefore urge the early establishment of a working group involving the water industry, Defra, DWP, the Consumer Council for Water and other relevant parties to understand how these benefits to customers can be delivered in practice.

We also see prospects for significant benefits to customers from information sharing involving water companies and local government.

To maximise the prospects of securing these benefits in a timely manner, it would be beneficial for there to be a structured approach towards sharing of knowledge, experiences and best practice related to information sharing across local government, and the water industry would be happy to play a role in this.

In the appendix, we provide responses to the specific consultation questions where relevant; we would be pleased to discuss any aspect of our response further if that would be helpful.

Yours sincerely



**Rob Wesley**  
Head of Policy



## **Appendix: Responses to specific questions**

Below, we provide responses to specific consultation questions where relevant, focussing on public service delivery, and within this on the water poverty objective.

Throughout these responses, references to the Code of Practice are to the public service delivery components of the Information sharing code of practice.

### **Q1. Overall, do you find this Code of Practice clear and easy to understand?**

Overall, we do find the Code of Practice clear and easy to understand, and we appreciate that significant efforts that have gone into its development.

There are some specific areas, notably the sections relating to which organisations can use the powers (paragraphs 27-33) that it would be helpful to explore further to understand in more detail what they might mean in practice, and whether this might conflict with current service delivery models.

In relation to the water poverty objective, this would be best done by moving to a piloting phase and we urge the early establishment of a working group involving the water industry, Defra, DWP, the Consumer Council for Water and other relevant parties to understand how this objective would be implemented in practice.

### **Q2. Does the Code explain clearly the process for sharing information under these powers?**

The Code of Practice provides a helpful high level understanding of the process for sharing information under these powers. However, to deliver the benefits of better services that are tailored to people's needs, it is likely that further levels of detail will need to be explored and potentially more detailed guidance provided.

In relation to the water poverty objective, this would be best done by moving to a piloting phase and we urge the early establishment of a working group involving the water industry, Defra, DWP and the Consumer Council for Water and other relevant parties to understand how this objective would be implemented in practice and therefore what further guidance may be needed.

### **Q3. Is there anything which you think is missing from the Code or which requires greater detail?**

We suggest that it would be helpful to include in the overview and introductory sections of the Code a brief section outlining the public policy purpose of the information sharing powers under the Code – so that better services can be offered that are tailored to the needs of people.

We suggest that it would be helpful to provide this explicit context within the text of the Code to guide all users that while the powers under the Digital Economy Act are permissive (in that they do not require information to be shared) it is the Government's policy that information sharing (with appropriate protections and safeguards) is desirable.

**Q5. Are the requirements for transparency under this Code appropriate and proportionate given the range of interests of those who use the powers and those who are interested in how they are used?**

We agree that transparency in the use of the powers governed by the Code is important to maintain trust and confidence that these powers are being used appropriately to the benefit of the public.

The public register of information sharing activity will also provide transparency on whether the Government's policy objective of sharing information to offer better services that are tailored to the needs of people is being delivered in practice.

If, for example, after a certain period, the public register showed no information sharing activity for one or more of the specified objectives, this would invite scrutiny of the reasons for non-delivery.

**Q19. Do you agree that the specified objective for water poverty has been described clearly and in the right level of detail?**

The specified objective for water poverty does appear to be clear and in the right level of detail. However, it will only be possible to test this fully by moving to a piloting phase and we urge the early establishment of a working group involving the water industry, Defra, DWP, the Consumer Council for Water and other relevant parties to understand how this objective would be implemented in practice.

**Q20. Are the lists of the specified persons able to share information under each specified objective appropriately targeted?**

In relation to the water poverty objective, the list of specified persons does appear to be appropriately targeted. As well as progressing sharing information with DWP, we see significant potential to meet the water poverty objective through information sharing between local government and water companies.

This raises an additional complication of the large numbers of organisations that would be involved. To maximise the prospects of securing benefits for people in a timely manner, it would be beneficial for there to be a structured approach towards sharing of knowledge, experiences and best practice related to information sharing across local government, and the water industry would be happy to play a role in this.

# Digital Economy Act 2017 Consultation: Codes of Practice and Regulations for Part 5 of the Act

## Page 1: Privacy Policy Statement

Do you wish to continue completing this response form?

Yes

Do you wish your name to be published in the government evaluation of responses? (If 'no', the response will be treated as confidential).

Yes

## Page 2: Responding to the consultation - Your details

Name:

Colin Fraser

Postal and/or email address - personal or business

Yorkshire Water  
Western House  
Halifax Road  
Bradford  
West Yorkshire  
BD6 2SZ

Is this a personal response or an official response on behalf of your organisation?

Official response

Organisation name (if an official response):

Yorkshire Water

Position (if an official response):

Regulatory Strategy Manager

If you ticked "Official response", please respond accordingly -Type of responding organisation:

Business

Type of representative group or interest group

*No Response*

## Page 4: Public Service Delivery, Debt and Fraud

Q1. Overall, do you find this Code of Practice clear and easy to understand?

Yes

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

The Code of Practice for public service delivery, debt and fraud is clearly laid out and provides a useful guide to organisations for the use and disclosure of information under the powers provided by Part 5 of the Digital Economy Act 2017.

We welcome the inclusion of the principles for data sharing, and confirmation that disclosure remains consistent with the Digital Economy Act and the requirements of the Data Protection Act 1998 (and the General Data Protection Regulations from May 2018).

We also value the detailed explanation of the purpose of the public service delivery power to support the wellbeing of individuals and households.

Once the Code of Practice has been finalised, we would welcome the availability of a PDF copy for ease of reference.

Q2. Does the Code explain clearly the process for sharing information under these powers?

Yes

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

As a water and sewerage undertaker, Yorkshire Water is interested in the use of public service delivery powers, relating to sections 38, 39, and 35 of the Digital Economy Act 2017.

The Code of Practice clearly explains that the parties involved in the information sharing need to operate according to the Digital Economy Act 2017 and comply with other relevant legal requirements. It goes onto explain in reasonable detail many aspects of creating a case for, and implementing, an information sharing arrangement, including:

- when 'persons' are specified to use the information sharing powers;
- how to identify the policy objective being met;
- the need to conduct a privacy impact assessment;
- how data accuracy should be checked prior to transfer;
- that organisations should agree processes for correcting data including audit trails and contacting data subject; and
- the role of the Government Digital Service in maintaining a register of information sharing agreements available to the general public.

We welcome the clarity provided about the use of information sharing agreements between the sharing organisations, and the emphasis on avoidance of data over-sharing through the use of structured formats for output and standardised minimal confirmations to specific questions.

Q3. Is there anything which you think is missing from the Code or which requires greater detail?

Yes

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

We would welcome an explanation within the Code of Practice its governance arrangements and the process for proposing, and making, changes to the Code of Practice, including how potentially impacted parties will be consulted in regards to any proposed changes.

Q4. The Code includes a set of principles for sharing information under the Public Service Delivery, Debt and Fraud powers, together with certain requirements to ensure that information shared under these powers is handled in a way that is transparent and fair. Are these the right principles for information sharing in the context of public service delivery, debt and fraud?

Yes

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q5. Are the requirements for transparency under this Code appropriate and proportionate given the range of interests of those who use the powers and those who are interested in how they are used?

Yes

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

It is vital that in exercising the powers provided by the Act, trust and legitimacy is maintained between water and sewerage undertakers and customers. As such, we believe the requirements for transparency within the Code of Practice are appropriate and proportionate.

## Page 5: Civil Registration

Q6. Overall, do you find this Code of Practice clear and easy to understand?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q7. Does the Code explain clearly the process for sharing information under these powers?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q8. Is there anything which you think is missing from the Code or which requires greater detail?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q9. The Code includes a set of principles for sharing information under these powers, together with certain requirements to ensure that information shared under these powers is handled in a way that is transparent and fair. Do you agree that these are the right principles for sharing information in the context of civil registration?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

## Page 6: Research Code of Practice and Accreditation Criteria

Q10. Overall, do you find this Code of Practice and accreditation criteria clear and easy to understand?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q11. Do the Code and accreditation criteria explain clearly the principles by which information may be shared under these powers?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q12. Is there anything which you think is missing from the Code or accreditation criteria or which requires greater detail?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

## **Page 7: Statistics Statement of Principles and Code of Practice on changes to data systems**

Q13. Overall, do you find the Statement of Principles and Code of Practice clear and easy to understand?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q14. Do the Statement of Principles and Code explain clearly the principles by which the UK Statistics Authority will operate under these powers about access to information it has been given in the Act?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q15. Is there anything which you think is missing from the Statement of Principles or Code or which requires greater detail?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

## Page 8: The Digital Government (Disclosure of Information) Regulations 2017

Q16. Do you agree that the specified objective for multiple disadvantages has been described clearly and in the right level of detail?

No

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

Given the range of factors that affect individuals or households for them to be classified as facing multiple disadvantages, we would welcome some further clarity on what is intended by the "provision of assistance" under this objective.

Q17. Do you agree that the specified objective for television retuning has been described clearly and in the right level of detail?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q18. Do you agree that the specified objective for fuel poverty has been described clearly and in the right level of detail?

N/A

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

*No Response*

Q19. Do you agree that the specified objective for water poverty has been described clearly and in the right level of detail?

Yes

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

We believe in paragraph 1(2)(d) there should be a reference to Schedule 6 of the Act (not Schedule 4) when referring to the 'specified persons' in relation to the water poverty specified objective.

Q20. Are the lists of the specified persons able to share information under each specified objective appropriately targeted?

No

If you want to provide further comments to explain your answer, please do so below. Please limit your answer to 250 words.

We would welcome consideration that the list is extended to include the Secretary of State for Environment, Food and Rural Affairs, and the Water Services Regulation Authority.

## **Page 9: Further Information**

How did you find out about this consultation?

Internet search

May we contact you for further information?

Yes