

Statement on the Cabinet Office consultation 'Better use of data in government'

1 April 2016

The Cabinet Office has recently launched a consultation document 'Better use of data in government' (available from <https://www.gov.uk/government/consultations/better-use-of-data-in-government>). This statement presents the Royal Statistical Society (RSS)'s initial response.

As a charity and a membership organisation which focuses on the production and use of statistics and statistical research, one of our core aims is to promote better use of data for the public good. This is represented most recently in our Data Manifesto, which identified 10 areas for improvement in government policy and practice. One of the key recommendations in the Data Manifesto is that there should be greater data sharing for the purpose of statistics and research.¹

The Cabinet Office consultation document sets out proposals for new legislation that addresses data sharing in government for several purposes: improving public services, tackling fraud and debt, and improving the use of data for research and for official statistics.

We welcome and support the Cabinet Office initiative and believe clarity, efficiency and proportionality of any new data sharing legislation will be crucial to support the better use of data by government.

Below we respond to key proposals with regard to how they address UK statistics and research needs, and indicate how we believe these proposals can be strengthened.

In summary, our five key areas of comment on the proposed legislative framework are:

1. The proposals for improved **access for statistical purposes** should be strengthened to an automatic presumption of access, rather than the right to access;
2. To improve sharing and linkage of **data for research purposes**, we believe greater flexibility should be introduced, including for access to survey data, and that the proposals for research overall require clear oversight and allocation of funding. The proposals need to allow for faster and more agile access, without losing privacy safeguards;
3. We would like to see a clearer articulation of how **privacy concerns** would be met for the new proposals, especially where they do not build on existing safeguards;
4. The proposals are silent on how **health and social care data**, which are of essential interest to the research and statistical communities, will be handled;

¹ Royal Statistical Society (2014) Data Manifesto (webpage), available at: www.rss.org.uk/manifesto



5. The proposals should be clear on how the government wants to handle the issue of **access to data by non-public bodies**.

The paragraphs below expand on each of these points. One general point to make is that improved legislation in this area will be a necessary but not sufficient condition – culture and resources will also play an important part and must be tackled side by side with legislation.

1. Improved powers for the ONS to access administrative data for production of statistics

- 1.1. The findings of the *Independent Review of Economic Statistics* (the ‘Bean Review’), which the Government has fully endorsed, show the importance of greater powers for the Office for National Statistics (ONS) to improve UK statistics and understanding of our economy.^{2, 3} As part of our *Data Manifesto*, the RSS called for legislation to be strengthened for the ONS to access the data needed for national statistics. The current framework is cumbersome and unwieldy and takes far too long to enable data access for the production and improvement of official statistics. We therefore welcome the intention stated in Cabinet Office proposals for the ONS to “access detailed administrative data from across government and businesses, to provide more accurate, frequent and timely statistics and to update how the census is managed, instead of relying on surveys”.⁴
- 1.2. The way the draft legislation is currently framed, government departments will be given the right to provide information to ONS if they are satisfied that this is required by the ONS to exercise its functions. We fear, however, that this will not achieve the stated purpose. The Bean Review recommends as a model the arrangements that are currently in place the Office for Budget Responsibility (OBR), which gives “a right of access (at any reasonable time) to all Government information which it may reasonably require for the purpose of performance of its duty”, and says that the ONS should be similarly empowered. This should be accompanied by “an independent ombudsman (or similar) appointed to adjudicate difficult cases”.⁵ We also believe that in the detail of the legislation, the mandate for the ONS should be strengthened so that there is a presumption of data access for statistical purposes.

² ‘Better data access will improve economic statistics, says Bean’, *StatsLife*, 2 December 2015

<https://www.statslife.org.uk/news/2585-better-data-access-will-improve-economic-statistics-says-bean>

³ Cabinet Office, HM Treasury (2016) ‘Independent review of UK economic statistics: government response’ (webpage). Available at: <https://www.gov.uk/government/news/independent-review-of-uk-economic-statistics-government-response>

⁴ 4, p. 3 in Cabinet Office (2016) *Better Use of Data: Consultation Paper* (PDF), Available from:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/503905/29-02-16_Data_Legislation_Proposals_-_Con_Doc_-_final_3_.pdf

⁵ 4.154 p. 166 in Professor Sir Charles Bean (2016) *Independent Review of UK Economic Statistics* (PDF).



- 1.3. Additionally we welcome the Cabinet Office proposal that “a new power be created to broaden the scope of data that can be requested [from businesses] and allow more modern methods of data collection which can move current processes away from outmoded, burdensome and expensive surveys”.⁶ This is in line with what has been recommended by the Bean Review, by the Science and Technology Committee, and what has already been enacted in other countries such as Canada. The legislation should enable safe statistical processing of more different types of business data, for the production of aggregate statistics.

2. Support for secure access to de-identified linked data for research projects

- 2.1. The consultation sets out proposals to ease access to de-identified government data for the purpose of research, by setting out standards for accredited research, researchers, and facilities. Research that explores public attitudes has shown substantial support from the public for data to be used for scientific, social or statistical research, with an intended public benefit, and with privacy safeguards in place.^{7, 8, 9} The proposed legislation would standardise what in many cases are already the type of data protection that research approvals panels seek, to support ethical research that protects the identities and privacy of people during and after the research process.
- 2.2. We welcome the proposal that government departments should share and link more data for research through such well-protected arrangements. We think however that Departments may also need stronger incentives to take part. Delays to data access approval, even after research bids and projects have been approved, are a drain on public funding for researchers and for their funders. The Cabinet Office are consulting on their proposal that Departments charge a fee to the applicant, on a cost-recovery basis, in return for supplying data for linkage. We are not convinced that this is the right model, especially if it creates more of an administrative burden in the system. We note the governance role that will be played by the UK Statistics Authority and we welcome that there will be an oversight body in this area, but we note it must be adequately resourced for this function.
- 2.3. It is important that the legislative framework has enough flexibility for researchers. The proposals being consulted on go into some detail about the Trusted Third Party model for de-identifying linked administrative data. However one opportunity which is not currently

⁶ 14, p.4 in Cabinet Office (2016) Better Use of Data: Consultation Paper (PDF), Available from: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/503905/29-02-16_Data_Legislation_Proposals_-_Con_Doc_-_final__3_.pdf

⁷ ESRC (2014) ‘Public dialogues on using administrative data’ (webpage), Available at: www.esrc.ac.uk/public-engagement/public-dialogues/public-dialogues-on-using-administrative-data/

⁸ ‘RSS research finds data trust deficit, with lessons for policymakers’, *StatsLife*, 22 July 2014. Available at:

<https://www.statslife.org.uk/news/1672-new-rss-research-finds-data-trust-deficit-with-lessons-for-policymakers>

⁹ ‘Public supports sharing health data for research, survey says’, *StatsLife*, 14 March 2016. Available at:

<https://www.statslife.org.uk/news/2721-public-supports-sharing-health-data-for-research-poll-says>



addressed by the proposals (and which therefore appears unduly limited) is the possibility of linking administrative data with survey data. From our perspective this is a key opportunity to be realised. Administrative data is not designed for research purposes, and the most fruitful research will often come from being able to link it with surveys.

- 2.4. We also believe in general terms that there should be no long-term 'lock-in' to the Trusted Third Party model, and we support that it will be implemented by a statutory Code of Practice that should be reviewed and updated with ministerial approval. Scope for revision is important so that the legislation does not build in obsolescence. We are in a period of significant technological change, and new ways to manage safe data linkage may evolve. The legislation should establish the broad principles of research approval rather than making detailed prescriptions.
- 2.5. We also welcome that Cabinet Office proposals will not sweep away any of the pre-existing legal gateways for data sharing. This reflects that there are areas where existing access arrangements are working, and need not to be disturbed. For example devolved administrations of the UK are noted as areas where further discussions of approved systems for de-identified data linkage are taking place.

3. Articulation of privacy safeguards

- 3.1. Privacy safeguards in the Cabinet Office's proposed legislation include a criminal offence for unlawful disclosure of data, by which those found guilty will face either a fine or up to two years' imprisonment. In addition, statutory Codes of Practice will set out if, how and when data can be disclosed. Although we believe these provisions will be helpful, it is unclear to us how they will satisfy privacy concerns and we believe they should be spelled out in further detail.
- 3.2. This could usefully be done by explaining the consequences of the proposals in relation to the Information Commissioner's Office advice to the Law Commission which stated that "the "recipe" for data sharing standards, such as security, transparency, and privacy impact assessments, [should be] broadly consistent, and should contain meaningful safeguards for individuals, especially in light of the different levels of sensitivity and privacy impact that different types of data might have."¹⁰

¹⁰ 11.7 p. 167 in Law Commission (2014) *Data Sharing between Public Bodies: A Scoping Report* (PDF).



4. Integration of health and social care data

- 4.1. Another concern we have is that it is not clear if and how health and social care data can be linked with other data for research purposes. This is an area where the scope of the Cabinet Office's interventions has been strictly limited, as health data is subject to separate legislation and has been under review by Dame Fiona Caldicott. It is hugely important that standards for research emerging from the Cabinet Office proposals are integrated with those that will be brought in place for patient records. Many of the most socially beneficial research questions seek to link health and care data with other data domains, such as conditions of employment and welfare, education, and the environment. This was represented under the tagline 'data saves lives' as the new EU General Data Protection Regulation was being debated, in a campaign that made clear that data linkage across health and other domains supports hugely valuable research for public benefit, and needs to be workable and permitted.¹¹

5. Data access for non-public bodies

- 5.1. Non-public bodies engaging in research, such as private companies, the media and charities, are not clearly covered by the proposals. We do not in general terms think that a different set of rules should apply to private actors, as compared to public bodies. Our own research identified that although research uses are relatively well regarded by the public, government needs to tread carefully for public trust in the uses data may be put to by non-public third parties.¹² We have welcomed important insight into the nuance of public views on this, in findings that have recently been obtained by the Wellcome Trust.¹³ We would therefore welcome a clear statement of how the government intends to grasp the issue of private sector access to data.

¹¹ EHDA (2015) *Data Protection Regulation and health research: The issues explained* (PDF). Available from: <http://www.datasaveslives.eu/media/1178/data-saves-lives-position-paper-october-2015.pdf>, and case studies at <http://www.datasaveslives.eu/case-studies/>

¹² Royal Statistical Society (2014) *Research on trust in data and attitudes towards data use / data sharing* (PDF), Available from: <http://www.statslife.org.uk/images/pdf/rss-data-trust-data-sharing-attitudes-research-note.pdf>

¹³ Ipsos MORI SRI (2016) *The One-Way Mirror: Public attitudes to commercial access to health data: Report prepared for the Wellcome Trust* (PDF). Available from: http://www.wellcome.ac.uk/stellent/groups/corporatesite/@msh_grants/documents/web_document/wtp060244.pdf



Background and further resources

The Cabinet Office's proposals for legislation follow a number high profile calls for improved data sharing. For research and statistics in particular, we have seen the *Independent Review of Economic Statistics*,¹⁴ the Science and Technology Select Committee's *Big data dilemma* inquiry report,¹⁵ the Law Commission's scoping of data sharing between public bodies,¹⁶ the findings of the Administrative Data Taskforce,^{17,18} as well as the UK Statistics Authority recent outline of the case for change in their [policy paper](#).¹⁹

¹⁴ Professor Sir Charles Bean (2016) *Independent Review of UK Economic Statistics* (PDF). Available from: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/507081/2904936_Bean_Review_Web_Accessible.pdf

¹⁵ Science & Technology Committee (Commons) (2016) 'Big data' is a big opportunity, but Government should tackle misuse' (webpage). Available at: <http://www.parliament.uk/business/committees/committees-a-z/commons-select/science-and-technology-committee/news-parliament-2015/big-data-dilemma-report-published-15-16/>

¹⁶ Law Commission (2014) *Data Sharing between Public Bodies: A Scoping Report* (PDF). Available from: http://www.lawcom.gov.uk/wp-content/uploads/2015/03/lc351_data-sharing.pdf

¹⁷ Administrative Data Taskforce (2012) *Improving access for research and policy* (PDF). Available from: https://www.statisticsauthority.gov.uk/wp-content/uploads/2015/12/images-administrativedatataskforcereportdecember2012_tcm97-43887.pdf

¹⁸ Department for Business, Innovation and Skills (2013) 'Administrative Data Taskforce report: government response' (webpage). Available at: <https://www.gov.uk/government/publications/administrative-data-taskforce-report-government-response>

¹⁹ UK Statistics Authority (2016) *Delivering better statistics for better decisions: Why we need new legislation for better access to data* (PDF). Available from: <https://www.statisticsauthority.gov.uk/wp-content/uploads/2016/03/Delivering-better-statistics-for-better-decisions-data-access-legislation-March-2016.pdf>

