

## Response to government consultation on Digital Economy Act 2017: Codes of Practice and Regulations for Part 5 of the Act – Research and Statistics

### 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.

22.1 'Suspended or withdrawn': Suspension is usually temporary, but it's not clear why one would be used rather than the other.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 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? \***

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.

*Response submitted 2 November 2017, amended 7 November 2017*