Digital Government (Disclosure of Information) Draft Regulations and associated Codes of Practice

medConfidential believes every use of data by Government must be lawful, safe, and transparent. The Codes go some way to improving that over the status quo, although resulting from the passage of the recent Data Protection Act, they fall short of delivering on Government’s statements of intent.

The Draft Regulation

We draw the committee’s attention to the breadth of ‘factors’ in paragraph 2 of the Schedule of the Statutory Instrument. The requirement that data can be shared for any “two” of the items in the list suggests that this is overly broad. While technically multiple disadvantage, the list covers factors at a household level - so data on a household can be copied if there is anyone disabled or with “ill-health” in a house which has expressed concerns about anti-social behaviour.

There is no justification for why the SI has categorised a long list with “pick any two” reasons, rather than grouping themes, and/or the boundary for “multiple” raised higher than two”.

If one person in a household qualifies for multiple categories, there can be justifiable reasons to provide assistance to the household, but these powers are designed to be used where consent of citizens is not available nor required; which in many of the cases outlined, they would entirely be. As such, the bar set in the Statutory Instrument can be raised from the extremely low level.

Missing (but cited) guidance on ethics of data sharing (PSD + Civil Registration)

Many areas of the the PSD Code of Practice refer to obligations the “Data Science Ethical Framework”, which the Government has confirmed is being updated to address fundamental flaws, but no update has yet been published.

It is impossible for Parliament to provide effective scrutiny of the Codes, given they outsource ethical concerns to a non-statutory framework which Government admits has “key areas for improvement”. Published before GDPR came into effect, it suggests that a Privacy Impact Assessment can be completed on a single side of A4. With the 2018 Data Act “updating and strengthening data protection laws”, the ethics framework is based on outdated law. As a non-statutory framework, Parliament has no oversight of any changes to the ethics framework yet is being asked to approve something depending on it, thereby giving Government arbitrary powers over the use of data.

Separately, the 2018 Data Protection Act also creates a new ‘Framework for Data Processing by Government’. No draft has as yet been published. There was no clarity during passage of the Bill whether the ‘Framework for Data Processing by Government’ would replace or supersede the ‘Data Science Ethics Framework’.

Either way, the Code of Practice on “Public Service Delivery, Debt and Fraud”, and the Code on “Civil Registration”, as laid before Parliament, can not be fully evaluated without understanding the changes from the Data Protection Act 2018 which have not yet been published.

Parliament should not be asked approve for use details which it has not seen and need not be shown.
Additionally and separately, the ICO has announced that a Data Protection Act 2018 compliant Code of Practice on Data Sharing is expected in the near future, and the Codes currently laid before Parliament are required to be compliant with it. It is unclear how they will work together, or whether another update to these Codes will therefore be needed within months. DCMS should not attempt to subvert the work of their statutory regulator by asking Parliament to approve one code before others are ready.

**Contents of Registers of Data Sharing**

All the codes require some form of publicly searchable register of data sharing that will be conducted in line with the Codes. These are all welcome and should be strongly supported - they allow the public to see how data is shared by Government. While data sharing gateways in these codes will likely be easier for Departments to use, all old gateways remain without the obligations of transparency.

While the PSD code is extremely prescriptive on the content of the Register, the Civil Registration Code says nothing about the content, and no examples have been published as to what either would contain.

The level of prescription in the PSD register may be excessive, since it may result in data sharing through other gateways not being able to be included voluntarily in that register. There is a loophole that the excessive prescription may create by excluding anything outside the register as prescribed. The interests of good governance suggest that there should be an equivalent mechanism for other data sharing mechanisms to be included in such a register (either the same one, or a clone) but with the obligation to specify the legal basis on which data was shared.

In the Civil Registration code, paragraph 61 contains a great deal less precision than section 5.1 of the PSD code. Additionally, the “should” in paragraph 62 suggest that some data sharing under the Code would not be included in the register (as indicated by “must”).

**Trivia**

In the Civil Registration and Statistics Codes, on page 2, the same email address is given twice on the page for licensing queries (it is given only once in the PSD code).

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7 This was a surprise addition to the Bill by the Government at Committee stage in the House of Lords. All discussions about these Codes of Practice were prior to the Framework on Data Processing by Government was snuck into the Bill without any discussions with civil society.  
8 The usual ingenuity of the civil service to neuter any meaningful safeguards has not yet been publicly shown.