

**EXPLANATORY MATERIAL TO**

**THE DIGITAL ECONOMY ACT PART 5 (DIGITAL GOVERNMENT) CODES OF PRACTICE AND STATEMENT OF PRINCIPLES**

**1. Introduction**

1.1 This explanatory material has been prepared by the Department for Digital, Culture, Media and Sport, the Cabinet Office, the General Registrar and the UK Statistics Authority and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

2.1 These four instruments set out six codes of practice and one statement of principles associated with Chapters 1-5 and 7 of Part 5 of the Digital Economy Act 2017 (“the Act”). The Act requires these documents to be issued by the relevant Minister, the Registrar General and the UK Statistics Board. These instruments are:

- Information-sharing Code of Practice: Public Service Delivery, Debt and Fraud;
- Civil Registration Data-sharing Code of Practice;
- Research Code of Practice and Accreditation Criteria; and
- Statistics Statement of Principles and Code of Practice on Changes to Data Systems.

2.2 These instruments are intended to provide guidance and best practice on use and disclosure of information under these Chapters of the Act, as well as explaining the legal framework.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

3.1 These codes of practice and statement of principles are the first such codes and statement to be prepared under the powers. Accordingly they may not be issued unless they have been laid before and approved by a resolution of each House of Parliament. Subsequent uses of the powers will be subject to the draft negative procedure instead.

3.2 Related draft affirmative regulations, The Digital Government (Disclosure of Information) Regulations 2018, are also being laid before Parliament at this time. They are relevant to the draft Information-sharing Code of Practice: Public Service Delivery, Debt and Fraud because they specify objectives for which information may be shared under the Public Service Delivery power. They also specify which persons may use which of those objectives.

*Other matters of interest to the House of Commons*

3.3 None.

#### 4. Legislative Context

- 4.1 Part 5 of the Act makes provision for information-sharing in relation to public service delivery (Chapter 1), civil registration (Chapter 2), debt owed to the public sector (Chapter 3), fraud against the public sector (Chapter 4), sharing for research purposes (Chapter 5), disclosure by revenue authorities (Chapter 6) and statistics (Chapter 7).
- 4.2 There is a legal requirement to issue codes of practice and a statement of principles under the following provisions of Chapters 1-5 and 7:
- Public service delivery: section 43 requires the Secretary of State to issue a code of practice about the disclosure of information under any of sections 35 - 39, and the use of information disclosed under those sections. This Code accordingly is to cover the general power to disclose information to improve public service delivery under section 35 and the more specific powers in sections 36 to 39 which permit the disclosure of information to or by gas and electricity suppliers and water and sewerage undertakers to assist people living in fuel or water poverty.
  - Civil registration: section 46 inserts into the Registration Service Act 1953 new section 19AC, which requires the Registrar General to issue a code of practice about the disclosure of information under section 19AA.
  - Debt and fraud: sections 52 and 60 require the relevant Minister to issue a code of practice about the disclosure of information under the debt and fraud powers respectively.
  - Research: section 70 requires the Statistics Board to issue a code of practice about the disclosure, processing, holding and use of personal information under section 64 of the Act.
  - Statistics statement: section 80 inserts new section 45E into the Statistics and Registration Service Act 2007, which requires the Statistics Board to prepare and publish a statement of the principles to which it will have regard in exercising its functions under sections 45B, 45C and 45D, and the procedures it will adopt in exercising those functions.
  - Statistics Code: section 80 also inserts new section 45G into the Statistics and Registration Service Act 2007, which requires the Board to prepare, adopt and publish a code of practice containing guidance on the matters to be taken into account by a public authority in making changes to—
    - its processes for collecting organising, storing or retrieving information, or
    - its processes (if any) for supplying information to the Board.
- 4.3 The Code of Practice for the public service delivery powers (including the specific fuel and water poverty powers) has been consolidated with the Codes for debt owed to the public sector and fraud against the public sector into a single document.
- 4.4 The Research Code of Practice also includes the UK Statistics Board's Accreditation principles. The latter are subject to a requirement for consultation and publication, under section 71, but do not themselves require parliamentary approval.
- 4.5 The Statistics Statement of Principles and the Code of Practice on Changes to Data Systems have been consolidated into a single document.

- 4.6 A person disclosing information under Chapters 1, 3 and 4 must have regard to the Information-sharing Code of Practice: Public Service Delivery, Debt and Fraud when disclosing and using information disclosed under sections 35-39, 48 and 56.
- 4.7 A civil registration official must have regard to the Civil Registration Code of Practice when disclosing information under new section 19AA of the Registration Service Act 1953.
- 4.8 A public authority must have regard to the Research Code of Practice in disclosing personal information or participating in processing of information for research purposes under section 64 of the Act. A person who is accredited under section 71(1)(a) must have regard to this Code of Practice when participating in the processing of information for disclosure under section 64(1), and a person who is accredited under section 71(1)(b), (c) or (d) must have regard to the Code in holding or using personal information under section 64.
- 4.9 The Statistics Board must have regard to the Statistics Statement of Principles and Code of Practice when exercising its functions under sections 45B, 45C and 45D of the Statistics and Registration Service Act 2007 and when making changes to its processes under section 45G under that Act respectively.
- 4.10 All of the codes of practice and the statement of principles associated with Part 5 of the Act are required to be consistent with the Code of Practice issued under section 52B (data-sharing Code) of the Data Protection Act 1998 (as altered or replaced from time to time). The Data Protection Bill, when brought into force, would repeal the Data Protection Act 1998 and provide for a new data-sharing code to be issued under the new legislation. The Bill would also amend the requirements in the Act so that after a transitional period revised versions of the codes of practice and statement of principles will be required to be consistent with the new data-sharing code.
- 4.11 The initial version of the codes of practice and statement of principles are subject to the affirmative procedure. Any further versions of the codes of practice or statement of principles are subject to the draft negative procedure.
- 4.12 It is also a statutory requirement that the relevant Minister or the Statistics Board consult with certain persons before issuing the codes of practice or statement of principles respectively. Section 8 contains further information on the outcome of the consultation undertaken on these instruments.
- 4.13 Responsibility for certain functions under the public service delivery provisions of Chapter 1 transferred from the Minister for the Cabinet to the Secretary of State on 18 May 2018 under The Transfer of Functions (Digital Government) Order 2018 (SI 2018/526). Accordingly, the consolidated code of practices for public service delivery, debt and fraud on which the Minister for the Cabinet Office originally consulted will now be issued by the Secretary of State (in relation to public service delivery) and by the Minister for the Cabinet Office (in relation to debt and fraud).

## **5. Extent and Territorial Application**

- 5.1 The extent and territorial application of the four codes of practice and statement of principles varies:
- 5.2 The extent and territorial application of the Information-sharing Code of Practice: Public Service Delivery, Debt and Fraud is Great Britain. Chapters 1, 3 and 4 of Part 5 of the Act have not yet been commenced in Northern Ireland. In addition, there are

no Northern Ireland bodies currently listed as specified persons in Schedules 4 - 8 to the Act<sup>1</sup>.

- 5.3 The extent and territorial application of the Civil Registration Data-Sharing Code of Practice is England and Wales only, as civil registration functions are devolved in Scotland and Northern Ireland.
- 5.4 The extent and territorial application of the Research Code of Practice and Accreditation Criteria and the Statistics Statement of Principles and Code of Practice on Changes to Data Systems is the United Kingdom. Chapters 5 and 7 of Part 5 of the Act have been commenced in Northern Ireland.

## 6. European Convention on Human Rights

- 6.1 David Lidington, Minister for the Cabinet Office and Chancellor of the Duchy of Lancaster, has made the following statement regarding Human Rights:

“In my view the codes of practice are compatible with the Convention rights.”

## 7. Policy background

### *What is being done and why*

- 7.1 Chapters 1-5 and 7 of Part 5 of the Act establish a number of areas in which the government and wider public sector can share data for specified areas of public benefit. The Act requires six codes of practice and one statement of principles to be issued about the disclosure and use of information under these powers. The Government has prepared and consulted on these instruments, which set out the processes and safeguards governing the use of powers.
- 7.2 These instruments are primarily intended to guide all persons who are involved in disclosing or using information under Chapters 1-5 and 7 of Part 5 of the Act. These instruments provide information on the processes for applying to use and using the powers, as well as the safeguards and oversight arrangements in place to help ensure these powers are used as intended. This includes requirements for transparency — one of the key safeguards for appropriate use of the powers — so that citizens, the Information Commissioner and other interested parties can easily understand what data is being shared and why. Specific descriptions of the purpose and content of each code are set out below.
- 7.3 **Information-sharing Code of Practice: Public Service Delivery, Debt and Fraud** - this Code provides a set of principles and guidance for the use and disclosure of information under the public service delivery, debt and fraud powers (Chapters 1, 3, and 4 respectively of Part 5 of the Act), covering powers to share information to help make the digital delivery of government services more efficient and effective.
- 7.4 The Code covers sections 35 to 39 (public service delivery, including fuel and water poverty), section 48 (debt owed to the public sector) and section 56 (fraud against the public sector), which create specific gateways to share information for the purpose of improving public service delivery, and managing debt owed to and fraud against the public sector respectively.

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<sup>1</sup> The Digital Economy Act 2017 (Commencement No. 4) Regulations 2018 - <http://www.legislation.gov.uk/uksi/2018/382/made>

- 7.5 The Code applies to public authorities and specified persons providing a service to public authorities who are able to make use of these powers, as set out in Schedules 4-8 to the Act. The Code sets out principles and good practice to follow when exercising the powers, such as the need to have robust safeguards in place to ensure that information is processed in a secure and appropriate way (in line with the requirements of data protection legislation).
- 7.6 The Code also outlines the process for proposing and establishing new objectives under the public service delivery power, as well as the process for proposing and establishing information-sharing pilots under the debt and fraud powers. In addition, the Code states that review boards will be established for both the public service delivery power and the debt and fraud power. The review boards will consider proposals for new objectives or pilots as well as monitoring the use of the powers. Anyone sharing information under these chapters is required to have regard to the Code when doing so.
- 7.7 Government departments will expect public authorities and other participants in an information sharing arrangement to agree to have regard to the Code before any information is shared. Failure to have regard to the Code may result in a public authority or organisation losing the ability to disclose, receive and use information under the powers. The Code also sets out the criminal sanctions for misusing information or disclosing personal information in ways that are not permitted by the Digital Economy Act 2017.
- 7.8 **Civil Registration Data-sharing Code of Practice** - this Code relates to the exercise of functions conferred by Chapter 2 of Part 5 of the Act, covering powers to share information to help make the digital delivery of government services more efficient and effective.
- 7.9 The Code explains how the discretionary powers contained in the Registration Service Act 1953 should be used by civil registration officials when sharing registration information with other civil registration officials and with specified public authorities for the purpose of enabling the recipient to exercise one or more of their functions. In addition, it provides civil registration officials with guidance on procedures that need to be followed when considering requests to disclose registration information. This includes details about the application process, decision-making process and governance procedures.
- 7.10 **Research Code of Practice and Accreditation Criteria** - this Code relates to the exercise of functions conferred by Chapter 5 of Part 5 of the Act, which facilitate the linking and sharing of datasets held by public authorities for research purposes. The Code covers provisions that aim to broaden the capacity of research to deliver a number of direct and indirect public benefits, including the production of valuable new research insights about UK society and the economy.
- 7.11 The Code states the conditions and principles governing the disclosure of data for research purposes, as well as the specified groups of people who must have regard to the Code. In accordance with the Act, the Code also sets out that all persons involved in the processing or use of information under this gateway must secure appropriate accreditation.
- 7.12 Use of the research power is conditional on any persons involved being accredited. The Code sets out the conditions that must be met by any persons in order to be accredited by the UK Statistics Authority. The Code states that all accredited persons

using the power must have regard to the Code of Practice and its principles. Having appropriate regard to the Code is a central condition for the maintenance of a person's accredited status and may be assessed by an audit.

- 7.13 **Statistics Statement of Principles and Code of Practice on Changes to Data Systems** - this Code relates to the exercise of functions conferred by Chapter 7 of Part 5 of the Act, to provide the UK Statistics Authority (UKSA) and its executive office, the Office for National Statistics (ONS), with greater and easier access to a range of data sources held within the public and private sectors.
- 7.14 The statement of principles sets out the principles governing the disclosure of data for statistical purposes. The statement also outlines how powers enabling this access will operate with clarity and transparency. The statement sets out the transparent governance processes that will be in place to monitor the use of these powers.
- 7.15 The Code contains guidance on the matters to be taken into account by public authorities in making changes to their processes for collecting, organising, storing or retrieving information, or their processes for supplying information to the UKSA. The Code is intended to provide guidance for public authorities that are supplying data to the UKSA, but will have practical relevance for all organisations who supply data for statistics or statistical research. The Code is relevant where public authorities supply data to the UKSA to enable it to carry out one or more of its functions, including the production and publication of official statistics and statistical research.
- 7.16 Public authorities must have regard to this Code when considering or making changes to their data systems. The Code imposes a duty on data suppliers to consult the UKSA before making changes to the data they collect, the way they collect or process these data, and / or arrangements for providing the UKSA with access to these data and for monitoring compliance.

#### ***Consolidation***

- 7.17 These are the first Codes of practice and Statement to be issued under the powers so consolidation is not required.

## **8. Consultation outcome**

- 8.1 A public consultation on the Codes of Practice and Statement ran between 21 September and 2 November 2017. The response to the consultation was published in March 2018 and is available at <https://www.gov.uk/government/consultations/digital-economy-act-part-5-data-sharing-codes-and-regulations>
- 8.2 A total of 38 responses were received to the consultation. Responses came from a range of sectors, including 10 from business, seven from local government, 11 from the wider public sector and four from the academic and research community who had specific interest in the Research and Statistics Codes of Practice and Accreditation Criteria. Views were also gathered from two open engagement sessions that took place in October 2017, which were attended by approximately 70 attendees from a wide range of sectors.
- 8.3 Under the Act, certain persons must be consulted before these instruments can be laid before Parliament. These included the Information Commissioner, and in most cases the views of the three Devolved Administrations must also be sought. The Information Commissioner welcomed the inclusion of a publicly available register of information sharing agreements under the Act. She also recommended an additional

principle be included in the Information-sharing Code of Practice: Public Service Delivery, Debt and Fraud — before taking decisions as to whether personal information should be used as part of an information sharing proposal, consider if the sharing is necessary to achieve the desired objective. The Codes were updated to address the Information Commissioner’s response. Responses from Scottish and Welsh ministers, and the Department of Finance in Northern Ireland, were positive.

8.4 The majority of responses to the public consultation agreed that the Codes were clear and easy to understand, but most respondents also made suggestions on additional content. The suggested areas for improvement and greater clarity fell into five broad themes:

- Clearly setting out the process by which information sharing is established under the powers (including better use of graphic illustrations);
- Describing how the information sharing regime under the Digital Economy Act 2017 differs from other powers (i.e. what additional steps need to be taken);
- Ensuring consistency in references to the General Data Protection Regulation;
- Clarifying the scope of the Codes: for example, whether they extend to information sharing by private utility companies; and
- Explaining the position of information from health and adult social care bodies.

8.5 Revisions have been made to the codes of practice and statement of principles to address the views of consultation respondents. Where respondents raised issues around clarity of the guidance, the documents have been reviewed to ensure that practitioners can understand the processes and other requirements placed on them.

## **9. Guidance**

9.1 The instruments are themselves guidance for practitioners regarding use of the provisions for information-sharing under Part 5 of the Digital Economy Act 2017.

## **10. Impact**

10.1 The codes of practice and statement of principles in and of themselves do not impact businesses, charities, voluntary bodies or the public sector; rather they set out guidance and best practice, primarily for public authorities, in relation to the exercise of information-sharing powers.

10.2 An Impact Assessment has been produced for the Act and is available at <https://www.parliament.uk/documents/impact-assessments/IA16-012.pdf> or on request from the department (see contact details below).

## **11. Regulating small business**

11.1 There is no impact on small business. The codes of practice and statement of principles in and of themselves do not impose requirements on small businesses; rather they set out guidance and best practice, primarily for public authorities, in relation to the exercise of information-sharing powers.

## **12. Monitoring & review**

- 12.1 Sections 53 and 61 of the Act require the relevant Minister to review the operation of the debt and fraud chapters respectively within three years of their coming into force, for the purposes of deciding whether they should be amended or repealed, and to publish a report on the findings and lay a copy of this report before Parliament.

## **13. Contact**

- 13.1 Lee Pope in the Data Policy team within the Department for Digital, Culture, Media and Sport on 07984 114737 or email: [lee.pope@culture.gov.uk](mailto:lee.pope@culture.gov.uk) can answer any queries regarding the instrument.