

# Stepping Stones to Data Sharing for Statistical Purposes

## Introduction

In an era of falling response rates, increasing survey and census costs and concern about respondent burden, there is a strong case for using administrative data collected routinely by central and local government as well as other public authorities for statistical purposes. The Open Data agenda will make accessing several data sources easier however it is unlikely to meet all research requirements. This guide provides practical advice about the issues that need to be considered when sharing disclosive data for statistical, rather than operational, purposes.

This guide is designed to help members of the Government Statistical Service through the data sharing process. The section on the Parliamentary stage covers the use of the data sharing powers included in the Statistics and Registration Service Act 2007 (the 2007 Act). These powers allow secondary legislation to be used to access data collected as a result of legislation passed prior to the 2007 Act. The Guide provides a step-by-step description of the issues and actions that need to be considered.

## The Stepping Stones

- 1. Clarifying data requirements**
- 2. Legal assessment**
- 3. The preparatory stage**
- 4. Parliamentary stage**
- 5. Sharing the data**
- 6. Continuing the arrangement**

# 1. First Stepping Stone: Clarifying data requirements

## **Action on First Stepping Stone**

- Carrying out feasibility studies
- Understanding the statistical quality of the data

## **Outputs**

- Agreement that microdata need to be shared.

Any proposal for access to identifiable microdata (that is record level information) must be fully justified. **Feasibility studies** will usually be necessary and these should be undertaken in conjunction with the data owners. Such work can be used to show why access to record level rather than aggregate data is needed as well as to identify and select relevant data items. Such preparatory investigations, which could be taken forward in parallel with the preliminary legal assessment will:-

- contribute to a better understanding of the scope, content and statistical quality of individual administrative sources;
- provide the basis for understanding key concepts, data definitions and classifications;
- facilitate understanding of data collection processes including the steps taken to clean, validate and assure the quality of the data;
- make allowance for time lags in administrative and related procedures;
- help to identify the data items needed to meet specific statistical needs including, where appropriate, key identifiers for linking and matching; and
- establish if the data owner could undertake additional work in order to produce non-disclosive data that could more easily be shared.

The final point is particularly pertinent as gaining access to microdata can be a lengthy process. Non-disclosive data may not enable outputs to be produced with the same degree of accuracy but could enable them to be more timely as such the quality tradeoffs should be considered.

## **Do**

- recognise and make the best use of the knowledge and skills of statisticians who currently work with the data
- start building good working relationships from day one
- remember that any request for disclosive data must be proportionate to the benefit it will bring; the risks and costs of sharing the data need to be assessed against the 'public good' that will be realised.

## **Don't**

- under estimate the time required to access microdata, you may need a quality trade off between accuracy and timeliness to meet customer requirements.

## 2. Second Stepping Stone: Legal Assessment

### **Action on Second Stepping Stone**

- Establishing data ownership
- Checking whether there is an existing power to share the data for statistical purposes
- Considering what other legal powers could be used

### **Outputs**

- Agreement on data ownership
- Confirmation from lawyers representing all parties about the availability of an existing gateway or the need for legislation

Any sharing of data must be lawful. The second step is to determine the **ownership of the data** and seek legal advice to ascertain whether powers already exist which would enable data to be shared with the intended recipient. Further background information can be found in [Data Sharing a Practitioners Guide to the Legal Framework](#)<sup>1</sup>

Close liaison with the data owner, whether a Government department or other organisation, is essential. It may be the case that some of the data to be shared is provided by another organisation. In this case there are multiple owners and the legal position for each owner needs to be considered.

The data owner must establish whether there are **existing legal powers** (implied or express) to enable the required data to be shared for statistical purposes. Such powers may be specifically expressed in legislation or in the form of Common Law powers. It could be the case that there is no gateway allowing the flow of data to the intended recipient but there is one that would allow the flow of data from the recipient to the intended supplier. If this is the case then it may be preferable for roles to be reversed and the supplier to carry out the analysis.

If no legal gateway exists, and if the UK Statistics Authority is one of the parties involved, it may be appropriate to make use of the powers in the 2007 Act. More information on the use of the 2007 Act is included in the fourth stepping stone: the Parliamentary stage.

### **Do**

- identify as early as possible the data owners
- be mindful that previous data sharing arrangements may have been established some years ago and may not be documented to current standards.

### **Don't**

- under estimate the time it may take to resolve any issues discovered
- be surprised that if there is more than one data owner they each have different legal opinions.

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<sup>1</sup> <http://www.ons.gov.uk/ons/guide-method/best-practice/gss-best-practice/data-sharing-for-statistical-purposes/index.html>

### 3. Third Stepping Stone: Preparatory Stage

#### **Action on Third Stepping Stone**

- Preparing statistical business case
- Carrying out a Privacy Impact Assessment including privacy law compliance check
- Carrying out a Business Impact Assessment

#### **Outputs**

- Statistical business case
- Privacy Impact Assessment and agreement from the Information Commissioner's Office
- Business Impact Assessment

#### **The Business Case**

Proposals to share data must be supported by clear evidence to show how the information will be used and to explain why existing or bespoke non-disclosive outputs or analyses cannot meet requirements. Where access to the data will require a new legal gateway to be created under section 47(9) of the 2007 Act the proposal must be supported by a **business case** for each data item. Although not essential in other cases, it is recommended that a business case is still produced as the information it will contain will support the Privacy Impact Assessment.

The **business case** should provide a clear and comprehensive description of the statistical requirements together with a detailed explanation of how individual data items from the specified administrative source will be used. It must show that such needs are proportionate (that is, the minimum necessary to meet the specified requirements) and are in the public interest.

#### **The Privacy Impact Assessment**

More information on **Privacy Impact Assessments** (PIAs) can be found on the Information Commissioners website. The purpose of the PIA is to identify risks to the privacy of an individual that could occur as a result of the data share so that appropriate mitigation can be put in place. The scale of the PIA needed will depend upon the scope of the proposed data share.

In addition to the PIA checks should be carried out to ensure that the data share will comply with privacy laws, for example the Human Rights Act, and the Data Protection Act. Particular consideration may need to be given to the fair processing principles in the Data Protection Act 1998 if data collected prior to that date are to be accessed and to any specific undertakings given at the time the data were collected.

#### **The Business Impact Assessment**

Guidance on carrying out a [Business Impact Assessment](#) (BIA) has been produced by The National Technical Authority for Information Assurance (formerly CESG). While the PIA considers the risk to the individual of the proposed data share the BIA looks at the risk to the business. The process considers a number of scenarios and the associated risk to one or several records to come up with risk rankings for confidentiality, integrity and accessibility, for example 4, 4, 2.

The BIA needs to be prepared by the data supplier and should reflect the risk associated with the data covered by the proposed data share. Once the impact level (IL) for the data is known it will dictate the data security needed during transfer, access and storage.

**Do**

- ensure that any discussions with experts are recorded in such as way to support their use as 'case law' in the future; consider sharing the information with other departments to ensure this is the case,
- identify key requirements and be prepared to compromise if necessary.

**Don't**

- don't let any issues drag on without resolution; if necessary agree to differ and then agree a way forward.

## 4. Fourth Stepping Stone: Parliamentary Stage

### *Action on Fourth Stepping Stone*

- Drafting of regulation
- Policy clearance
- Preparation of briefing
- Preparation of Press statement
- Debates in Parliament

### *Outputs*

- Draft regulation
- Confirmation of lawfulness of the draft regulations by JCSI Counsel
- Policy clearance
- Consent of Ministers
- Publication of business case and privacy impact assessment
- Open legal gateway

The 2007 Act includes provisions that enable the bilateral sharing of data for statistical purposes providing one of the parties is the UK Statistics Authority. The legislation allows Ministers to make regulations to either remove a legal barrier to data sharing or to create a new gateway which will allow data to be shared between the UK Statistics Authority and another public authority in both directions (that is inflows to the UK Statistics Authority as well as outflows from the UK Statistics Authority). Regulations require the consent of the Minister for the Cabinet Office (on behalf of the UK Statistics Authority) and the Minister(s) with responsibility for the other public authority(ies). The regulations are subject to affirmative resolution by Parliament. Similar arrangements apply to regulations made in the Scottish Parliament or the Northern Ireland Assembly. Regulations involving public authorities in Wales are dealt with by Parliament in Westminster.

Data shared under the 2007 Act can be used only **for statistical purposes**. Although this is not defined in the legislation, in practice data sharing for statistical purposes must fulfil at least one the following four objectives:-

- to develop new (ad hoc or regular) statistics;
- to improve the quality and/or coverage of existing statistics;
- to provide statistical information to underpin policy development, analysis or evaluation;
- to reduce the cost and burden of producing statistics by avoiding the collection of the same data more than once.

If the data sharing provisions in the 2007 Act are relevant then draft regulations will need to be drawn up. Although the regulations are usually quite brief, commonly varying between three and four pages in length, they do need to be drawn up with care. The regulations will be drafted by the Cabinet Office's lawyers however departmental lawyers may be called on to deal with specific queries or provide advice on other relevant legislation. The regulations will be subject to detailed scrutiny by Counsel to the Joint Committee on Statutory Instruments and by the Lords Merits of Statutory Instruments Committee.

In parallel with these legal processes policy clearance from the Domestic Affairs Committee may be sought. Finally, the formal consent of Ministers must be obtained - first from the Cabinet Office and then from the relevant Government department(s). These arrangements may differ in detail for the devolved administrations.

If regulations are required, briefing and other relevant material will need to be prepared to support the Ministers presenting the regulations for consideration in both Houses of Parliament (or equivalent in the devolved legislatures). It will be important to demonstrate that relevant stakeholders are aware of, and agree with, the proposed sharing of data. Regulations will be subject to Parliamentary approval by affirmative resolution in each House.

At the time the regulations are laid the business case and the privacy impact assessment should be published. It may also be advantageous to prepare a press statement at this stage in case there is media interest.

Following Parliamentary approval, regulations under the 2007 Act will be signed by the Minister for the Cabinet Office and the Minister(s) responsible for the public authority supplying or receiving the data.

### **Do**

- be prepared for questions loosely associated with the data share to be raised in debate, for example questions relating to the initial data collection,
- be prepared for a flexible timetable if more pressing Parliamentary business arises debates may be deferred.

### **Don't**

- finalise your briefing material too far in advance, new issues may emerge that could lead to new areas for questions.

## **5. Fifth Stepping Stone: Sharing the Data**

### ***Action on Fifth Stepping Stone***

- Preparation of the memorandum of understanding, service level agreement or contract
- Implementation of data management processes

### ***Outputs***

- Memorandum of understanding, service level agreement or contract in place
- Data management processes operational
- Data transferred

All those involved in data sharing will need to make practical arrangements for the transfer and ongoing management of the data. These arrangements will need to take into account the business impact level associated with the data (see third stepping stone) and comply with the guidance produced by The National Technical Authority for Information Assurance (formerly CESG).

While requirements may vary the drawing up of a contract, memorandum of understanding or service level agreement is good practice. Such documents may set out specific contractual or other obligations; specify the data transfer and security requirements, including monitoring or auditing procedures, and any financial arrangements. In practice, much of this work can be done in parallel with the other stages but of course cannot be completed until legal authority is obtained.

The agreement and data management processes should be reviewed periodically to ensure they are still appropriate.

### **Do**

- start thinking about the management of the data at an early stage in case system changes are required.

### **Don't**

- assume what you did last time in a similar situation will work this time – data security measures change as technology develops

## **6. Sixth Stepping Stone: Continuing the arrangement**

### ***Action on Sixth Stepping Stone***

- Consideration of the benefits realised by accessing the data.
- Consultation on any proposed changes to the underlying data source

### ***Outputs***

- Feedback provided to the data supplier on the benefits realised by accessing the data
- Agreed and managed changes to the underlying administrative system

However, this may not be the end of the story. Once the data and accompanying metadata have been supplied and are being used it is good practice to provide feedback to the data supplier. This feedback may cover any issues that have been identified as having an impact upon the quality of the statistics produced; it is also helpful to share any benefits that are realised, for example the ability to discontinue a survey or improvements to the quality of key statistical outputs.

If access to the data does lead to improved statistical outputs then it is important that the statisticians concerned are consulted over any changes that will impact upon the data they use. It may also be beneficial to include the statisticians when discussing more general system enhancements so that future statistical benefits are considered including the adoption of standard codes.

## **Sources of Information and Advice**

Any enquiries about data sharing should be directed in the first instance to:

Demographic Administrative Sources  
Office for National Statistics  
Segensworth Road  
Titchfield  
Fareham  
Hampshire  
PO15 5RR  
**Tel No:** 01329 444061  
**E-mail:**