



National Statistics: A Guide to Data Access

Forward by the National Statistician

To be written after this consultation

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Introduction

The Framework for National Statistics sets out the roles and responsibilities for Ministers. In 4.1.7 the Framework says :

"4.1.7. Departmental Ministers, including the Minister responsible for ONS...authorise Heads of Profession for statistics and their staff to make a full professional contribution to National Statistics activities and authorise access to all data within their control for statistical purposes across government subject to confidentiality considerations and statutory requirements"

This guide aims to help the GSS meet this clear requirement of government by addressing some of the confidentiality and statutory requirements for the sharing of data for statistical purposes.

In 2001 the Government set out its vision for engaging with deprived neighbourhoods, including the aims of delivering economic prosperity, safe communities, high quality education, decent housing, and better health.

In order to meet its objectives, a number of Policy Action Teams (PAT) were established. PAT 18 was given the task of developing a cross-government strategy to provide current and relevant information on local areas. The original PAT18 recommendations were published in April 2000 in its report *Better Information*. A number of the recommendations were accepted as policy and the Office for National Statistics (ONS) was asked to take the lead in some of the key areas. These include:

- Government should attach a high and early priority to delivering a coherent cross-government information policy and strategy, with particular emphasis on social exclusion
- There should be adequate safeguards to ensure proper protection of individual-level data at all stages in the process [of collecting and publishing information]
- A single organisation, ONS, should be the operational focus for synthesising and disseminating Neighbourhood Statistics. It should act as a focal point for all administrative and survey data held by departments, local authorities and other agencies
- The ONS should promote good practice in data collection, data sharing and data use. ONS (on behalf of the Government Statistical Service (GSS)), and in conjunction with the Data Protection Registrar (now the Information Commissioner), Local Government Association (LGA) and the Home Office should prepare guidance on what sharing of statistical data is currently allowed and not allowed, with examples of good practice.
- Government departments, LGA and all related agencies which are subject to legislation in respect of data collection, protection or sharing should carry out an audit of their relevant powers and functions with a view to clarifying their practice

As part of an audit exercise following adoption of the recommendations, it was stated that ONS, working with the GSS, should develop a guide on the issue of data sharing. This document is part of the ONS wider response to these commitments.

Background

The National Statistics Code of Practice recognises that the sharing and combining of data is one way of reducing the burden on data suppliers and extending the range of statistics available. The Code also recognises that these enhanced datasets may be more disclosive and that the maintenance of confidentiality is paramount. This commitment to confidentiality applies to all respondents be they individuals, households or businesses. Data sharing must therefore take place within a framework designed to honour this commitment. It should also be born in mind that sharing abstracts of administrative data under suitable governance arrangements may be less intrusive to privacy than the alternative of additional large statistical inquiries. The recommendations are therefore entirely consistent with government policy - that both public services and the privacy of individuals can be improved by sharing data.¹

¹ Full PIU report <http://www.dca.gov.uk/majrep/datasharing/update.htm>

In the past it has been perceived that the public have reservations about the data they provide being passed from one organisation to another. Research carried out by the Department for Constitutional Affairs (DCA) has shown to the contrary that the public expect data being shared provided those granted access to the data use it for a purpose consistent with its original collection.² (See Annex D)

Sharing data originally provided for administrative purposes for the production of Neighbourhood Statistics and other National Statistics is not incompatible with the original purpose - indeed this important principle is found in section 33 of the Data Protection Act. (See Section 33 text in Annex B)³

The purpose of the guide

The first purpose of this guide is to lead the reader through the legal framework surrounding the sharing of data. It can not provide authoritative legal advice, but it will help departments decide if legal advice is needed and if so over which questions. The guide highlights, step by step, the matters that data providers need to consider before data can be shared for statistical purposes. Links are provided to other documents which provide more detail on the concepts raised in this guide.

The guidance provided applies to the sharing of both microdata (unit level data) and aggregates. It is a data protection principle, which can equally well be applied to other non-personal data, that the data shared should be adequate, but not excessive, for the purposes of the processing.

This introduces the second purpose of the guide. There are risks, either actual or perceived, when data is shared. *Producing statistics using shared sources is therefore a risk management activity, not a risk avoidance activity.* To manage risk, it is necessary to know where risk arises and to have a mechanism in place that, for each instance of sharing data, checks for and confirms compliance with the law and the National Statistics Code of Practice. It is also necessary to be able to audit data sharing activity to confirm compliance, or to investigate potential breaches of the law or the Code. The guide suggests a governance framework for data sharing for statistical purposes.

Data Sharing for statistics

In the past, when records were kept on paper, punched card, or magnetic tape, it was often easier to assemble a new database than to access one that already existed in another department or authority. The opposite is now true. It is technically easier to access a database that already exists than to create and populate a new one. This is most particularly true for multi-topic databases. The issue that now faces statisticians is how to exploit the advantages of electronic records while guaranteeing the confidentiality that data providers can reasonably expect.

The terms 'data access' and 'data sharing' are often used interchangeably to refer to the use of information by more than one organisation or individual. The exchange of data may involve several organisations each contributing and receiving data or just one researcher using one dataset belonging to a particular institution.

Within the context of National Statistics, 'data sharing' might be reserved for those relatively rare occasions where a statistical inquiry is initiated by joint survey partners, or where a common data resource is equally and jointly owned by two departments. It is likely the survey respondents or data providers would be informed of the joint ownership of the data, and most of the legal issues will have been addressed at the time the collection was initiated.

More common, and the activity this guidance is most relevant to, is where a source collected or acquired by a data owner is made available to another authority under certain limitations of use. In these cases, ownership remains with the organisation or organisations that collected the data and/or maintains the legal obligations to the data. This is 'data access'.

² Full DCA report <http://www.dca.gov.uk/majrep/rights/mori-survey.pdf>

³ Link to full act <http://www.hms.gov.uk/acts/acts1998/19980029.htm>

A number of advantages arise from providing access to data for statistical purposes. The most obvious is the potential savings in burden and compliance costs in not having to collect the same information twice. Another is accuracy. Administrative databases will often cover the entirety of a given population, where a conventional statistical survey may cover only a small part. Using data collected through administrative channels can also provide more focused information on specific populations that would be difficult to reach through surveys. This is important when government policy is increasingly targeted at relative differences at the local level rather than at the sub-national or national level. Administrative sources of data may improve the relevance and timeliness of a statistic.

Sharing data to improve statistics and reduce respondent burden is consistent with Government policy. The Government's Performance and Innovation Unit (now the Strategy Unit) presented a report called "Privacy and Data sharing: the way forward for public services." The Report recommendations were soon adopted as government policy, and DCA provide advice and resources on their website to help departments deliver better public services in this way"⁴

ONS has worked on this policy through the DCA's Data Sharing Practitioners Group. We have also provided DCA with the case for improving statistics through sharing data (See Annex D). The case argues that the current legislative framework for sharing data for statistics is overly complex, given that our products can not identify individuals, nor cause any direct harm or distress to individuals. We will continue to argue that new legislation to provide for data sharing would help produce the statistics public authorities need to improve their public services.

It is important to share statistical data with trusted users in the commercial and academic sectors. Much policy development in government is founded upon research done outside central government departments, and such research feeds back vital quality information to the producers of National Statistics. ONS has developed a risk management mechanism for access to its micro-data that aims to provide data to those who need it within a risk management regime. This Micro-data Release Panel is our response to the demands of the Code of Practice, but also meets the stewardship requirements within the recommendations in the PIU Report.

For more information on the ONS' micro-data release arrangements, please contact ONS Legal Services (see annex E).

⁴ Link <http://www.dca.gov.uk/foi/sharing/#part1>

Legal Issues

It is a matter for the data owner to ensure that when access is given to another party, the sharing is lawful. For personal data, the 'owner' is likely to be the Data Controller, as defined in the Data Protection Act.

This section takes the data owner through the fundamental questions of law that should be answered before sharing takes place. These are:

1. What is the status of the data?
2. Is there the necessary administrative power to share this sort of data?
3. Is there a legal duty of confidentiality owed to the data, and if so will the proposed sharing of the data breach this 'duty of confidence'?
4. Is the data 'personal data', and if so will the data sharing comply with the Data Protection Act?
5. Is there statutory provision, or statutory prohibition, for the sharing of this data?
6. Is the Human Rights Act engaged, and if so is the sharing compliant with Article 8 - Right to a private and a family life.

What is the status of the data to be shared?

The answers to subsequent questions will depend on the status of the data in question. It is useful to place data into one of three categories:

- *Identified* - allowing the direct identification of individual people, households, businesses, or other unit records.
- *Identifiable* - anonymised but detailed micro-data or aggregates that may allow for the indirect identification of individual unit records.
- *Non-disclosive* - data which is not likely to allow for the identification of an individual unit record, without using disproportionate time, effort and expertise.

Data must be considered 'personal data', and therefore caught by the Data Protection Act, if it is identified or identifiable data that relates to living individuals. The processing of such data to make it non-disclosive is caught by the Act, but once non-disclosive the further use of the data is not caught by the Data Protection Act.

Whether or not the data relates to individuals will affect particular sources covered by statute, such as Council Tax data. Whether the data is 'personal' or not will determine whether the statutory prohibitions relating to personal Council Tax data will apply.

Does the power to share the data exist?

There are two elements to determining whether the power to share data exists.

- Firstly, the data owner must have the administrative power (*vires*) to share data in their possession. Sharing data beyond the owner's administrative powers is *ultra vires* and therefore unlawful. It is the responsibility of the data owner to assure themselves that they can lawfully share the data in question; usually it will be necessary to seek qualified legal advice on this point.
- Secondly, it must be lawful for the recipient of the data to process the data. It is for the recipient to assure themselves that they have lawful authority to process the data; this will rest on the reason for the data sharing.

The below is derived from the DCA publication 'Public Sector Data Sharing - Guidance on the Law'.⁵

A data owner's administrative powers to share data may be derived from a number of sources. If the source of *vires* is not obvious, it is important to get advice on where these powers may lie. DCA suggests in their publication that data owners are over-reliant on express legislation, and under use their equally valid implied and common law powers derived from other sources of law. The Legal Services Branch in ONS can give advice, or help data owners with what they should ask lawyers. (See Annex E for contact detail)

⁵ Full report <http://www.dca.gov.uk/foi/sharing/toolkit/index.htm>

The extent of the powers necessary will be determined by the status of the data in question. It would be unusual if a data owner did not have adequate powers for the designing and sharing of non-disclosive data. However, the bulk transfer of identified personal data is likely to require a data owner to identify and confirm the source of the necessary administrative power. There are three broad types of power: statutory powers; implied statutory powers; and common law or prerogative powers

Are there express statutory powers?

A natural person may do anything until the law stops them. In contrast, a statutory body can only do what statute provides for. An express power is one explicitly found in statutory law, specifically written in order to enable a given activity. A number of express statutory powers currently exist to allow data sharing within the UK. If expressed powers exist then the sharing is *intra vires*. These powers usually contain a permission to give data rather than making it mandatory, so it will usually be necessary to convince the data owner of the need to share data. Very often this discussion will involve the most senior people in the organisation. Occasionally, mandatory powers are established in statute, but these will usually be only for a specific purpose; where you are relying on a mandatory power to give or request data, you should confirm, with departmental solicitors, that the statute gives you these powers. More information on express powers can be found in annex A

Are there implied statutory powers?

In the absence of express statutory powers, it may be possible to establish *vires* for data sharing through implied powers. The extent of the powers that can be implied will vary according to its legal status - for example, how reasonable it is to expect that all the activities a statutory body carries out should be expressly provided for in statute. Organisations established under statute ("statutory bodies") may have quite specific functions set out and limited in law; and here the powers that can be implied are narrower because the scope of these organisations is limited in the first place.

However, statutes establishing public bodies sometimes include a broadly framed section enabling the body to do whatever is necessary to achieve its purpose.

For example: section 111(1) of the Local Government Act 1972 provides - 'Local authorities shall have power to do anything.....to facilitate, or is conducive or incidental to, the discharge of their functions.....' This gives local authorities considerable scope to share information for statistical purposes where the resultant analyses are directly relevant to the authority's functions. This can include the need for one local authority to compare its performance with that of another.

When establishing *vires* through implied powers the data owner needs to be able to demonstrate how by granting access to data for statistics they are properly discharging their statutory duties. In every case where implied powers are to be relied upon to support a data sharing initiative, the data owner should seek legal advice on whether the implied powers exist. This advice should be documented in case there is a legal challenge, audit by the Information Commissioner, or a Judicial Review. More information on implied powers can be found in annex A

Are there common law or prerogative powers?

A department headed by a Minister of the Crown may also be able to establish *vires* under common law or prerogative powers. A department headed by a Minister of the Crown is likely to have the powers in law to perform functions reasonably incidental to the functions of the Minister, as long as there is nothing expressly prohibiting the activity. Such a department has these powers because the Crown, in contrast to a statutory authority, has the ordinary common law powers of a natural person. However, in every case where implied powers are relied upon, this should be supported by advice from departmental lawyers. This advice should be documented.

Summary information on common law and prerogative powers can be found in annex A.

It is important to bear in mind that much of the statistical activity in the UK is performed under implied statutory powers or the common law powers of a Crown ministry. There is no overarching statistical law that provides express powers for the general acquisition of data from other administrative sources for statistical purposes.

Many statistics are a by-product of an administrative process within the department, where there are express powers for the administrative function, from which implied powers to produce statistics may be derived. Most departments will be using some implied or common law powers to process data for statistics from their own sources, and it is possible that these powers may extend to using data from other sources too. These same powers may also provide for the provision of data to others. It is not only acceptable to find implied powers for statistics - it is often essential as the only practicable solution.

Research by DCA and others suggests that many data owners under-use implied and common law powers. This may be the result of ignorance of them, or a (false) perception that using implied or common law powers is less valid, and therefore introduces risk. It is in the data owner's interest to audit its administrative powers, and to ask its solicitors to advise on the value of these powers for improving statistics through sharing data.

Does granting access to the data comply with the Human Rights Act?

Once the power to grant access to data has been established the next step is to ensure the granting of access does not breach the Human Rights Act (HRA).

The Human Rights Act 1998 has a special place in the UK in that all other law has to be compatible with it. Article 8 of the Human Rights Act guarantees the right to respect for a private and family life, home and correspondence. The state may only 'interfere' for a number of given reasons: national security, public safety, protection of the economy, prevention of crime and disorder, protection of health or morals, or the protection of the rights and freedoms of others. The interference must be in accordance with the law and necessary in a democratic society. ONS has completed a submission to the Department of Constitutional Affairs that describes how the Office has taken account of Human Rights requirements in its strategic planning (See annex E)

In assessing whether the proposed data sharing is compliant with the HRA, it will be important to demonstrate that the data sharing has appropriate limitations in volume and scope (that it is "proportionate"). Experience shows that this can be achieved with an adequate specification, setting out the size and complexity of the sample (and the rationale behind its selection), the purpose of the data sharing, what will be achieved by the data sharing, and access controls.

Does granting access to the data comply with the common law tort of 'breach of confidence'?

Within the UK whilst there is no privacy legislation, there is a common law right to confidentiality. A breach of confidentiality may provide grounds for a civil action for damages. The defining characteristics of information protected by common law (confidential information) are that it should:

- Have the necessary quality of confidence (i.e. not be in the public domain, and to have some value to either party)
- Have been communicated in circumstances in which confidentiality can be reasonably expected, or in circumstances giving rise to an obligation of confidentiality. The expectation or obligation can be expressed (e.g. provided in a statement of confidentiality) or implied (such as when information is provided to a doctor, banker or lawyer).

It is not a breach of the common law duty of confidence if information is disclosed to another party

- with consent,
- when its disclosure is a matter of life or death,
- when disclosure is in the substantial public interest
- or when required by statute.

It is not necessary to show damage or detriment, nor does there have to be dishonesty, to be able to have a cause for action for breach of confidence.

The disclosing of confidential information needs to be balanced with the fact that confidentiality is itself in the public interest. It is therefore important to emphasise that in respect of sharing data for statistical purposes, there is no focus on the unit data, but that statistics produced are organised around social, economic and demographic categories, and geographic areas.

Have the principles of the Data Protection Act been complied with?

The Data Protection Act (1998) applies to data that relates to a 'living individual'. Information collected under other legislation (such as the Census Act) will be subject to the requirements of the Data Protection Act when the information is personal data. Further information on the Data Protection Act can be found in annex B.

Section 33 of the Data Protection Act 1998 specifies the special treatment accorded to statistics. These special conditions only apply if the statistics to be produced will not be used to support decision-making in respect of individuals and will not cause the individuals concerned 'substantial damage or substantial distress'. The special treatment for statistics means that:

- With regards to the second data protection principle, the further processing of personal data is not to be regarded as incompatible with the purpose for which they were obtained.
- With regards to the fifth data protection principle, personal data processed only for research, history or statistics may be kept indefinitely, provided this is for the specified purposes.
- With regards to the seventh data protection principle, personal data processed only for research, history or statistics are exempt from provisions allowing data subjects the right of access to their own personal data.

The Office for National Statistics does not provide data subjects with access to their own personal information where that information is used only for statistics and research.

Although exempt from parts of the 2nd, 5th and 7th data protection principles, the rest of the Act and the other data protection principles apply in full. The most challenging principle for data sharing and data access for statistics will be the First Principle. This requires that the processing of personal data is 'fair', 'lawful', and meets certain conditions set out in the Act.

- 'Fairness' is a complex matter, made up of a combination of minimum requirements to provide information to the data subjects, and a balance of further information necessary in the circumstances. There are limited concessions for the 'fairness' requirements where providing the necessary information would involve a disproportionate effort. Where you seek to rely on this argument, you will need to keep a record of why you take this view and the arguments for and against informing data subjects. One-off data access arrangements may qualify for the concession, but it is unlikely the Information Commissioner would agree that for long-standing access or sharing arrangements the provision of fair information would be disproportionate.

Informing the Information Commissioner about data sharing and matching.

The National Statistician considers it to be good practice for GSS departments to provide the Information Commissioner with the details of any large scale, long term or permanent arrangements for sharing or matching data across departments for statistical purposes. The details are provided for information purposes only.

Is there any other statute prohibiting access to the data?

Whilst the sharing of some dataset may be highly desirable the granting of access may be specifically prohibited. For example the Local Government Finance Act 1992 bars the use of personal council tax information for purposes other than the administration and collection of council tax. It is therefore necessary for the data supplier to consider any legislation specific to each dataset when an access request is received.

Across national and local government there is a vast quantity of legislation that could apply to the diverse range of administrative and statistical datasets. This guide can not seek to document every statute that could apply. Annex C provides a brief overview of some legislation, and provides links to some more detailed information. Users of this guide are encouraged to supply additional material to the ONS Legal Services Team so that this knowledge base can be extended.

Does the original data provider have 'legitimate expectations' as to how their information might be used?

The final question a potential data supplier needs to answer relates to any legitimate expectations the original data provider may have. Sometimes when the data was initially collected the data subject will have been asked to give their consent for the data to be shared. If consent was not sought then the data subject may have legitimate expectation that it will not be shared either from an express promise or from custom and practice.

That said, the advent of the National Statistics Code of Practice, and the commitments to confidentiality it contains, should add to any defence that the further use of administrative data for statistical purposes within the Code is not to be considered beyond the legitimate expectations of the data provider.

Consent

The Data Protection Act does not define consent. The existence or validity of consent should be assessed against the facts of the intended processing of personal data. However, to help this assessment the definition of consent in the EU Data Protection Directive should be considered:

"...any freely given specific and informed indicating of his wishes by which the data subject signifies his agreement to personal data relating to him being processed"

The fact that the individual must signify consent indicates that there has to be some active communication between the relevant parties. The individual may signify consent other than in writing, but when dealing with information that is of a sensitive nature then that consent should be explicit and be evidential. An organisation should also be aware that the adequacy of consent or purported consent must be evaluated, for example any consent that is obtained under duress or based on misleading information could be deemed to be invalid.

If the individual does not signify his consent to his personal data being processed but is given an opportunity to object this does not amount to consent for the purposes of the act. However, it may allow the data controller to rely upon another condition for the processing. For example, the processing of personal data obtained under a right to object, but without consent as defined, may be compliant with the Act if the processing is in the legitimate interests of the data controller.

Stewardship

Sharing or providing access to data for statistical purposes is a risk management exercise. Stewardship of the arrangements is necessary. The stewardship arrangements will vary according to the scale and permanency of the arrangements, and the data involved, but a minimum requirement is documentation specific to each instance of data access or sharing.

A data access agreement should be completed formally stating the terms under which access has been granted. The security of the data whilst in transit must be ensured possibly by using agreed privacy enhancing techniques such as encryption. The data supplier needs to be sure that computer system holding the data they supply is adequately secure. Additionally that if the data is only to be retained for a specified period satisfactory destruction/return procedures are in place.

Typically a data access agreement should cover:

- Details of the data access being granted and whether this is a one off or on-going arrangement. The organisation/Data Owner granting access to the data and the Responsible Statistician/Data Owner's representative within that organisation who has care of the data.
- The organisation/Data Beneficiary who is being granted access and the Responsible Statistician/Data Beneficiary's representative within that organisation responsible for the data whilst being accessed by that organisation.
- The name of the main contact overseeing the statistical research - the source manager
- The statistical purpose or outputs that necessitate access to the data
- A description of the arrangements by which the data access agreement is to be reviewed.
- Details of any legal constraints on the processing of the data once access has been granted
- Details of any ethics or steering committee that will oversee the access
- Procedures to be followed if the accessed data is to be matched to another data source.
- Any intended duplication of the data
- The process that will be followed to resolve any disputes
- When the specified access will end and how the data must be returned or destroyed.

A format for a data access agreement can be found in Annex B of the National Statistics Code of Practice - Protocol on Data Access and Confidentiality

http://www.statistics.gov.uk/about/national_statistics/cop/protocols_published.asp

Under the National Statistics Code of Practice, and the Freedom of Information Act, the details of the data access agreement, and the compliance statements for the lawfulness of the exercise, should be available on request to any member of the public.

National Statistics - Code of Practice

The processing of data used to produce a National Statistic must comply with the National Statistics Code of Practice. There are 12 supporting protocols, covering in more detail the practices and procedures that need to be followed in order to comply with the principles for National Statistics. These cover, among other things, release practices, revisions, data management, quality, statistical integration, and data access and confidentiality.

Summary of Principles

The knowledge that advances the government, business and people of the United Kingdom will be founded on National Statistics of quality and integrity, available when needed.

National Statistics will be valued for -

- Relevance
- Integrity
- Quality
- Accessibility

- produced in the interests of all citizens by

- Protecting confidentiality
- Balancing the needs of users against the burden on providers

- enhanced through

- Integration, accumulation and innovation
- Efficiency in costs, fairness in prices

Protocol on Data Access and Confidentiality

The protocol covers policies for protecting confidentiality when processing statistical data and publishing outputs. The conditions and procedures which govern access to data, including access for research purposes, are set out, together with appropriate action in the event of unauthorised data disclosure. All statistical data that are required to be kept confidential are covered, including those collected from persons, households and businesses, whether from surveys or administrative sources.

The National Statistics Confidentiality Guarantee

Statistical disclosure control methods may modify the data or the design of the statistic, or a combination of both. They will be judged sufficient when the guarantee of confidentiality can be maintained, taking account of information likely to be available to third parties, either from other sources or as previously released National Statistics outputs, against the following standard:

It would take a disproportionate amount of time, effort and expertise for an intruder to identify a statistical unit to others, or to reveal information about that unit not already in the public domain.

Protocol on Data Matching

This protocol deals specifically with the data access and confidentiality issues surrounding the combining different dataset with different owners to produce a new enhanced dataset.

Matching data involved identify the records in each dataset that relate to the same individual (person, household, business etc) and then bringing some or all of it together in the new dataset. A data matching exercise is therefore potentially highly disclosive. Clear responsibility for the resultant dataset must be established prior to its creation and this is detailed in the protocol together with additional information which should be included in the data access agreement.

The Protocol on Data Matching can be found at

http://www.statistics.gov.uk/about/national_statistics/cop/protocols_published.asp

Annex A – Explanation of terms and concepts

Common law: The unwritten law developed primarily from judicial case decisions based on custom and precedent. More information is available in the DCA's Public Sector Data Sharing: Guidance on law <http://www.dca.gov.uk/foi/sharing/toolkit/lawguide.htm#part4><http://www.crimereduction.co.uk/infossharing22.htm>

Consent: The voluntary agreement of a person or group to participate in research. This should be obtained in conjunction with the person or group being given adequate information which has to be fully understood by the subjects; hence 'informed consent'.

There are no UK statutes setting out the general principles of consent. Common law has established that consent must be given by a competent person, acting voluntarily, who is informed in broad terms about the nature and purpose of the procedure. Parents can give such consent for their children under 18 years, although children over 16 years, and younger children with the necessary competence and understanding, can give their own consent.

According to the Office of the Information Commissioner, consent consists of three parts. It must be informed, there must be an indication that it has been given, and it must be possible to refuse it without unreasonable repercussions. Separately, the Commissioner points out that 'consent is not particularly easy to achieve.'

Crown Ministry: A crown ministry is government department headed by a minister of the crown, which is to say a secretary of state, a member of the Cabinet. It can derive its powers to act, either express or implied, from royal prerogative, common law or statute.

Data Access: The process by which one organisation can use data collected by a different organisation.

Data Matching: The act of combining two or more datasets to create a new enhanced dataset containing more information about individual data subjects.

Data Sharing: Where partners to a statistical inquiry or administrative sources have joint ownership but different uses for the data.

Data Subject: The individual, household, business or organisation to which the data relate.

Delegated legislation: Often called Secondary Legislation, it usually takes the form of Statutory Instruments (SIs) and is used to allow the administrative details of legislation to be added or changed without having to change the original Act.

Expressed statutory power: An expressed statutory power arises when the authority to carry out a certain act is specified in statute. The power may be very specific or broad. For example, in the Road Vehicles (Registration and Licensing) Regulations 2002 that regulate the keeping of the vehicle registration register it is provided that:

The Secretary of State may make any particulars contained in the register available for use-

- a. by a local authority for any purpose connected with the investigation of an offence or of a decriminalised parking contravention;
- b. by a chief officer of police;
- c. by a member of the Police Service of Northern Ireland;
- d. by an officer of Customs and Excise in Northern Ireland; or
- e. **by any person who can show to the satisfaction of the Secretary of State that he has reasonable cause for wanting the particulars to be made available to him.** (Regulation 27)

For further information see the DCA's Public Sector Data Sharing: Guidance on law <http://www.dca.gov.uk/foi/sharing/toolkit/lawguide.htm#part4>

Implied statutory power: Implied powers exist primarily because it would be impossible to specify every detail of a given provision within a statute. It could therefore be said in a given situation where implied powers are claimed that the exercise of a function is incidental to that which is spelt out in statute. For further information see the DCA's Public Sector Data Sharing: Guidance on law <http://www.dca.gov.uk/foi/sharing/toolkit/lawguide.htm#part4>

Intra Vires: within the legal power or authority of a person or official or body etc

Ministerial body: see Crown Ministry

Public Domain: A term used to refer to the availability of information to a typical member of the public. Whether or not information is in the public domain is a matter of judgement. An item can be published but, because of difficulties of access, it may not be considered to be in the public domain. However, criminal convictions, and indeed anything that is said in open court, are automatically in the public domain, though information of this sort can be hard to obtain in practice.

Responsible Statistician: A term used in the National Statistics Code of Practice and its accompanying protocols. A Responsible Statistician is the person who ultimately determines statistical decisions made in relation to a National Statistics statistical resource. They are legally responsible and publicly accountable for the confidentiality of data and information relating to statistical units during statistical processing. Responsible Statisticians can only be drawn from the most senior level of the Government Statistical Service, the National Statistician, Heads of Profession or Chief Statisticians. The Responsible Statistician must be named in any data access agreement.

Source Manager: The Source Manager is a senior statistician who acts on behalf of the Responsible Statistician/Data Owner to ensure that the policy, procedures and people involved in the management of any statistical resource are sufficient to meet the terms of the data access agreement. Additionally within National Statistics the Source Manager is responsible for maintaining the confidentiality guarantee. The Source Manager may be an individual or a committee and must be named in the data access agreement.

Statutory body: An organisation set up in law i.e. by statute.

Tort - a wrongful act of infringement of a right (other than under contract) leading to legal liability

Ultra vires - outside the legal power or authority of a person or official or body etc

Annex B – Associated Legislation

Data Protection Act 1998

The Data Protection Act 1998 is the keystone in UK information law. The act is about regulating the uses of data, not about confidentiality and privacy as such. The act applies to data relating to 'living individuals' and does not affect confidential or private material that may relate to households, businesses (except sole traders) or organisations.

Some of the main points of the Data Protection Act are detailed below. For more information see <http://www.informationcommissioner.gov.uk/eventual.aspx?id=34>

Types of data

The act specifies two types of data, personal data and sensitive personal data. Personal data relate to a living individual who can be identified from those data, or from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller. Sensitive personal data describe ethnic origin, political opinions, religious beliefs, trade union membership, health, sexual life and allegations or records of criminal offences. Tighter conditions apply to the processing of sensitive personal data.

Processing

Within the context of the Data Protection Act processing means the obtaining, recording or holding of data, or the carrying out of any operation including organisation, alteration, retrieval, consultation, disclosure, transmission, dissemination or destruction.

Data Controller

The Data Controller is a person who (either alone or jointly) determines the purposes for which and the manner in which any personal data are, or are to be, processed.

The eight Data Protection Principles

- Personal data shall be processed fairly and lawfully
- Personal data shall be obtained only for one or more specified and lawful purposes. It shall not be further processed in any manner that is incompatible with the purpose(s) for which it was originally obtained.
- Personal data shall be adequate and not excessive to the purposes for which they are processed.
- Personal data shall be accurate and, where necessary, kept up to date.
- Personal data processed for any purpose shall not be kept longer than is necessary
- Personal data shall be processed in accordance with the rights of data subjects under this (Data Protection) Act
- Appropriate measures, both technical and organisational, shall be taken against unauthorised or unlawful processing of personal data and against the accidental loss or destruction of, or damage to, personal data.
- Personal data shall not be transferred to a country or territory outside the European Economic Area unless that country or territory ensures an adequate level of protection for the rights and freedoms of data subjects.

Fair Processing Information

For the processing of personal data to be deemed fair the following information should be made 'readily available' to the data subject –

- The identity of the data controller or any nominated representative
- The purpose or purposes for which the data are intended to be processed
- Any further information necessary to enable the processing to be fair.

Conditions of Processing

There are two sets of conditions which must be met before processing is legal. The first set applies to all processing; the second only applies to sensitive personal information.

Meeting any one condition in the first set is sufficient, all are of equal validity. The conditions are:

- The data subject has given consent
- The processing is necessary for -
 - the performance of a contract to which the data subject is a party
 - compliance with a legal obligation (other than a contract)
 - the vital interest of the data subject
 - the pursuit of government purposes
 - the legitimate interest of the data controller, without infringing the rights of the data subject.

The second set of conditions relates to the processing of sensitive information and adds various safeguards, such as, for example, the need for 'explicit consent'. For more information please refer to the document mentioned at the start of this section.

Research, History and Statistics (Section33)

Personal data when processed only for statistical purposes -

- is not to be regarded as incompatible with the original purposes for which they were obtained
- may be kept indefinitely
- are exempt from data subject access rights

Section 33 only applies where the processing does not result in actions affecting particular individuals, or is carried out in such a way that is like to cause any data subject substantial damage or distress.

Human Rights Act 1998

Article 8.1 of the European Convention on Human Rights states that 'Everyone has the right to respect for his family and private life, his home and his correspondence'. Whilst this right is not absolute and infringement of it must be justified. In order to justify interference a public authority must be able to show that it is:

- in accordance with the law
- for a legitimate aim and
- necessary in a democratic society.

Therefore for data sharing not to infringe the Human Rights Act (HRA) there must be a legal basis that permits it to happen. This legal basis can vary legislation, delegated legislation, common law or the rules of a professional body could suffice. The act details what are legitimate aims in article 8(2)

<http://www.dca.gov.uk/hract/hramenu.htm>

In deciding if the sharing of data is necessary in a democratic society judgement is required. Courts have to consider if the sharing was necessary, whether adequate safeguards were in place and if the aims were legitimate and sufficiently defined.

The European Court of Human Rights has considered a number of cases involving the disclosure of personal data by public authorities. Their judgements on data collection cases have highlighted the fact that even when an obligation to provide information is enshrined in statute, it is still necessary to show that the interference is necessary in a democratic society, and that the aim of the collection of information is the legitimate one of serving the economic well-being of the country. The need to comply with the three criteria listed above when sharing data should not therefore be regarded lightly.

Health and Social Care Act 2001

Healthcare is increasingly reliant on information. People not directly involved in care also need patient information for reason such as epidemiological research, monitoring drug reactions, planning and service level agreements. Whilst much of this work can be done with aggregated or anonymised data sometimes more detailed information is required in order to maximise the benefits gained from research.

All health related data is classed as 'sensitive' under the terms of the Data Protection Act. This, together with the proliferation of electronic data in the 1990s, and compounded with the decision by the NHS to move away from paper record keeping lead to a need for a comprehensive review of practices. The process began with the Caldicott Report in 1997, the recommendations of which were adopted as policy and incorporated in the Health and Social Care Act 2001.

Statistics under 'Section 60'

Sections 60 and 61 of the Health and Social Care Act 2001 are intended as transitional measures. Their purpose is to allow important services in the health sector to continue - especially epidemiological registers -while progress is made toward improving the mechanisms to either obtain the informed consent of the patients involved or to develop ways of anonymising data. Eventually, consent or anonymisation will be the only routes to the use of patient identifiable information.

Section 60 defines the areas for which regulations requiring disclosure of patient information can be created. It includes prevention, diagnosis, research, provision of care and treatment and the management of health and social services. But it sets limits on the approval process and on what regulations can do. Section 60 cannot be used to make regulations that would require exemptions to the Data Protection Act 1998. Regulatory proposals must be submitted to the Patient Information Advisory Group (see below) before being brought to parliament, where they need to be approved by both houses.

The scope of information eligible to be regulated under Section 60 is also widely defined. Confidential information is anything that identifies the statistical unit, either in itself or in combination with other information in the possession or likely to come into the possession of the recipient. It also includes information obtained in confidence. However, non-confidential information can also be brought into the scope of Section 60, defined as anything that relates to the health, diagnosis or treatment of an individual, or information derived from it, regardless of whether or not the information is identifying. Pseudonymised data can therefore be included unless or until it is fully anonymised.

Each regulation made under Section 60 has to be reviewed every year to ensure that there are no alternatives other than disclosure. Regulations cannot be made to share confidential patient information to determine the treatment of particular individuals. Applications for use of disclosive health data are made through the Patient Information Advisory Group, created under Section 61 of the act, which also conducts the annual review of each case, including the need to be seen to be making progress toward consent or anonymisation.

Section 60 Regulations

Specific regulations have been made under Section 60 to cover reporting of cancer and communicable diseases. There is further provision to allow sharing of health data for research purposes where it is approved by both a research ethics committee and the Secretary of State. In this case, anyone reviewing confidential health data for the purpose of determining its research use needs to be registered for that purpose. Data can only be processed under the general provision where as much identifying data as possible is removed and where the information is kept in controlled and secure conditions.

The regulations define the circumstances in which the general provisions for access to disclosive data for research can be used. These are processing to make information less identifying, where processing is for geographic mapping of instances of diseases or medical conditions, where it is for the purpose of obtaining consent or for given statistical requirements, including validation, linking and quality assurance. Approvals can also be given in order to audit, monitor or analyse the provision of care given by a health authority.

For further information see

http://www.dh.gov.uk/PolicyAndGuidance/OrganisationPolicy/Modernisation/HealthImprovementModernisationPlans/HealthImprovementModernisationPlansArticle/fs/en?CONTENT_ID=4000523&chk=I2365x

http://www.dh.gov.uk/PublicationsAndStatistics/Publications/PublicationsLegislation/PublicationsLegislationArticle/fs/en?CONTENT_ID=4010071&chk=ilqoYA

Crime and Disorder Act 1998

The Crime and Disorder Act (CDA) was a path breaker in data sharing legislation being one of the first modern pieces of law to treat data sharing as a positive benefit.

The CDA established a duty on police and local authorities to form partnerships for the purpose of preventing and reducing crime and disorder. They are expected to obtain the cooperation of other public services such as health and probation, and to invite participation from a variety of organisations including social landlords, Victim Support and the Crown Prosecution Services.

The police have a common law power to disclose in their duty to prevent and detect crime. Section 115 of the CDA gave other authorities involved in Crime and Disorder Partnerships the power, if they did not already have it, to share information, in the context of the partnerships.

For further information see <http://www.crimereduction.gov.uk/cdact1.htm>

Annex C – Examples of good practice

The Office for National Statistics Microdata Release Procedure

The procedures developed within the Office for National Statistics (ONS) for controlling the release of microdata to other organisations involves a microdata release panel. This panel meets quarterly to consider issues relating to the implementation of data access policy. It also authorises all releases of microdata dealing with these matters electronically.

The panel acts with the authority of the National Statistician assessing the evidence provided against predetermined criteria. The decisions of the Panel form a body of case law that helps inform future decisions and provides a reference tool for business areas. The decisions are also published quarterly on the National Statistics website.

The Panel is comprised on two distinct parts; the Main Panel and the Registration & Health Sub-group. Each has the same role and is organised in the same way. Each panel, which comprise of 5 members and the Chair, meets regularly to consider issues relating to data access policy and separately considers proposals for access to ONS microdata. The only difference between the groups is the source of the microdata. The Main Panel considers all issues pertaining to proposals for the release of survey data, i.e. data collected from social surveys, business surveys and business data provided under the Statistics of Trade Act.

The Registration & Health Sub-group considers requests for the release of administrative data collected under statute and arising from the registering of life events. This includes registration information and health and care data. **However**, where a request for data is for medical research purposes, the request will be considered by Medical Research and Confidentiality Branch. The request is subject to robust scrutiny and approval processes and is dealt with outside the MRP procedure. A report of data released for medical research purposes is provided to the MRP.

The criteria used to assess requests for data release are:

- is the proposal technically sound
- is it legal
- is it practical
- is it ethical

Additionally the following points are considered:

- is releasing the microdata 'compatible with the aims of National Statistics'
- the recipient of the microdata will be able to maintain the conditions of the agreement between the parties
- once the specified research has been completed the disclosive microdata will be returned or destroyed
- the type of microdata accessed are appropriate to the needs and the status of the microdata recipient
- the confidentiality procedures are appropriate with respect to the microdata recipient and the microdata type
- the recipient will process the microdata according to the requirements of the National Statistics Code of Practice and Protocols, national and European law
- the status of the microdata in law and according to the National Statistics Code of Practice is agreed
- any products and publications satisfy the minimum standards of disclosure control specifies for the microdata
- arrangements for restricting access to disclosive data and safeguarding its physical security are subject to audit and comply with the security guidelines produced by the Information Management Division of ONS
- an assessment of disclosure risk is made by the business area and that both the risk and the possible impact on ONS are acceptable
- access to disclosive microdata is approved by Heads of Profession or equivalent and in accordance with accepted procedures.

Readers of this guide who have access to the GSS intranet (Statnet) can find more information on the microdata release panel at

<http://www.knowledgenetwork.gsi.gov.uk/statnet/statnet.nsf/RefDocs/SCWE-65GMLN?OpenDocument>

The Department for Constitutional Affairs toolkit

To assist those wishing to share data the Department for Constitutional Affairs have produced a tool kit. The tools kit covers the legal considerations and case studies showing how the legal considerations have been applied in real life. Within the toolkit there is a section about the need to formalise the arrangements under which data sharing occurs and outlines the areas that should be covered by any formal agreement.

Granting data access to others may also give rise to complaints. The toolkit contains a section aimed at identifying what is a genuine complaint and providing guidance on how to respond to it.

Finally the toolkit's Data Sharing Library provides examples and information on how data sharing is currently being carried out in a variety of situations.

The toolkit can be accessed via <http://www.dca.gov.uk/foi/sharing/toolkit/library.htm>

Crime and Disorder Act Partnerships

The partnerships set up as a result of the Crime and Disorder Act (CDA) 1998 are required to carry out a review of crime in their area, analyse the results and publish a report for public consultation. One reason the scheme has succeeded is that from an early stage care was taken to ensure that data was shared lawfully and appropriately. The Home Office worked with the Office of the Information Commissioner to produce guidelines on how to share data for the purposes of the CDA. An Information Sharing Network was established, run by a team at the Home Office, to disseminate advice, guidance and news. The importance of written agreements was also stressed, with model data sharing protocols produced.

The CDA does not require or impose a duty to share data. It provides the power - the *vires*- to do so, which is necessary to meet the Data Protection Act's requirement that processing of personal data should be lawful.

The CDA allows information to be disclosed within a partnership where it is 'necessary or expedient for the purposes of any provision of this act'. Disclosure must not be generalised, but targeted at the objectives of the CDA, the prevention and detection of crime, and wherever possible, information should be anonymised. Where an authority has obtained information for another purpose, a housing application, for example, they will need to consider whether sharing the data within the crime reduction partnership is compatible with the purpose for which the data was originally made available. Agencies will also need to take care of what individuals are told at the time of providing personal data, as under the DPA's requirement for fair processing information, they need to be told the purposes to which it might be put.

The common law duty of confidentiality must also still be borne in mind. Where information has been obtained in circumstances giving rise to an expectation of confidence, agencies will need to consider returning to the individual for their consent before it is shared. This is clearly important in the case of victims and witnesses. Where consent is not appropriate, agencies need to be clear about whether there is an 'overriding public interest', and precisely what that interest is. If the overriding interest is the prevention or detection of a crime, then it must be possible to show how that interest would have been affected by a failure to share the information.

The Caldicott Guardians

The Caldicott Report in 1997 looked at the way data was managed and exchanged within the healthcare sector. Partly as a result of this report the Caldicott Guardians were established to safeguard confidentiality within the healthcare sector. The Guardians enable flexibility and variety without compromising rigour, or in the word of the report itself, to allow "a degree of performance management.....responsibility for safeguarding confidentiality of data flows needs to be attributable to a named individual in each organisation."

The concept of guardians has the advantage of recognising the relativity of identification - two surnames or street names can be identifying to different degrees and in different ways. The more identifiers included in and information flow the more the issues of relativity and unintended consequences need to be considered. It is unlikely that any automated systems could effectively work through the subtleties of these kind of situations. It requires the judgement of a senior and experienced individual. In addition to ensuring there is scope for local flexibility, the Caldicott Guardian ensures the principles of good practice and security are met, that procedures are robust and justifiable and that identifying information is used minimally.

For further information see www.dh.gov.uk/assetRoot/04/06/81/36/04068136.pdf

Annex D - ONS submission to DCA

1.0 Ministerial interest in Data Sharing

This report examines the changes in law, culture and technical matters that would allow the GSS to produce more accurate, reliable, timely and cost efficient National Statistics. Greater inter-departmental co-operation in the sharing of unit record information with identifiers would enable the ONS and the GSS to deliver National Statistics as a factual background to government decision making and public service delivery.

1.1 Data sharing for better statistics - Gershon perspective:

Increased co-operation across government would meet the requirements of the Gershon Review. Gershon identifies that efficiencies can be achieved by making best use of the resources available for the provision of public services. This review has defined as 'efficiencies' those reforms to delivery processes and resource (including workforce) utilisation that achieve:

- reduced numbers of inputs (e.g. people or assets), whilst maintaining the same level of service provision; or
- lower prices for the resources needed to provide public services; or
- additional outputs, such as enhanced quality or quantity of service, for the same level of inputs; or
- improved ratios of output per unit cost of input; or
- changing the balance between different outputs aimed at delivering a similar overall objective in a way which achieves a greater overall output for the same inputs ("allocative efficiency").⁶

Quite clearly it can be shown that enhanced data sharing capabilities and better sharing of knowledge and experiences will allow for the efficiencies highlighted by Gershon to be met.

1.2 Data sharing for better statistics - Allsopp perspective:

The Allsopp Review of Statistics for Economic Policymaking was an independent review commissioned by the Chancellor of the Exchequer. The Final Report, published on 31 March 2004, put forward recommendations for improving the provision of economic statistics. The 2004 Spending Review provided the ONS with resources to fully implement the recommendations by 2009. Recommendation 40 states that: "administrative data appear to offer opportunities to increase the quality and analytical power of key national statistics, as well as reducing costs. More generally, within the important constraints of adequate protection for sensitive information and limiting use to solely statistical purposes we believe there is considerable scope for the government to make better use of the information it holds. The ONS and the government should explore the extent to which tax and other administrative sources could replace business survey data. They should propose the necessary action to overcome legal and other barriers where information is held within government that is of sufficient quality to improve statistical provision, or where quality can be increased to meet statistical needs, while maintaining adequate safeguards of confidentiality."⁷

This is a clear indication that ONS and relevant government departments need to change the current usage of both administrative sources and tax data. If the implementation of the recommendations of Allsopp in the creation of regional offices is to achieve its desired aims then enhanced data sharing capabilities need to be a major priority. Failure to achieve this could arguably lead to the status quo being maintained where we retain: "...a statistical system that does not provide all of the data needed to support regional economic policy."⁸

1.3 Data sharing for better statistics - Neighbourhood Renewal

A National Strategy Action Plan was launched by the Prime Minister on 15 January 2001 to "...[narrow] the gap between deprived neighbourhoods and the rest of the country, ...to:

- deliver economic prosperity;
- safe communities;
- high quality education;
- decent housing;
- better health to the poorest parts of the country."

⁶ Releasing Resources to the Front Line: Independent Review of Public Sector Efficiency: Sir Peter Gershon 2004

⁷ Recommendation 40; Review of Statistics for Economic Policymaking; Final Report to the Chancellor of the Exchequer, the Governor of the Bank of England and The National Statistician; Christopher Allsopp; March 2004.

⁸ Review of Statistics for Economic Policymaking; Final Report to the Chancellor of the Exchequer, the Governor of the Bank of England and The National Statistician; Christopher Allsopp; March 2004, Page 5.

Prior to the launch of the Neighbourhood Renewal Strategy, 18 Policy Action Teams (PAT) were set up by the Prime Minister's Delivery Unit to provide the basis for the implementation of the Neighbourhood Renewal Strategy. PAT 18 was charged specifically with '...investigate[ing] what information [would be] needed for measuring neighbourhood conditions, the problems in getting it, and what need[ed] to change.'

The report emphasised the need for accurate and specific up to date data to enable policy makers to pin point and target areas of poverty effectively, in particular crime, health, and education, and to understand the differences between communities and neighbourhoods which might explain why disparities exist. It identified a number of problems with the current use of available information across government, all of which supported the need to provide statisticians with the means of accessing information they need to support strategies like Neighbourhood renewal. The PAT 18 report found that:

'...some information is available only at a national and LA level. Often it cannot be broken down to smaller area levels such as wards, let alone neighbourhoods;
...a large amount of information is collected, but because it is not shared, no-one has a comprehensive picture of what is available, and from whom...;
...information is often collected as part of an administrative process, such as delivering welfare benefits or health services. The statistics that this produces are therefore a by-product of another process, rather than a resource in their own right; the potential of this data for wider usage can often go unrecognised; and
...information can often go unused because of difficulties in accessing it. There is also a lack of understanding about what information is collected, what is available for others to use and how it can be obtained.'

The PAT 18 report identified the following pit falls if information needs were not met, and the consequences for effective government policy should statistical information fail to provide an accurate picture at the neighbourhood level:

- mistargeted policies due to insufficient information on issues being addressed and issues being overlooked;
- communities unable to make government accountable for the provision of services as they do not have the information to compare the quality of services provided in their area with other areas or a national average;
- no evaluation of policies or lessons learnt – misallocation of resources
- no basis upon which to guide the improvement of policies and how they are delivered.

The PAT 18 report recognised the need for better data sharing across government departments to facilitate the production of data that were fit for the purposes of informing and measuring policies linked with the Neighbourhood renewal strategy. The ONS was charged with producing the data to inform the Neighbourhood Renewal Strategy. The Neighbourhood Statistics would have the capacity to produce better local level and longitudinal statistics if it had access to individual unit level data, rather than the aggregate data it currently receives from other government departments.

1.4 Data sharing for better statistics - Atkinson perspective

Work currently being undertaken will result in the compilation of the Atkinson Review of Measurement of Government Output, due in January 2005. The National Statistician set up this review with the aim "...to advance the methodologies for the measure of government outputs productivity and associated price indices in the context of National Accounts."⁹ The working party on this review in their preliminary findings have identified that to enhance the outputs of the National Accounts will require the provision of timely and accurate data from administrative sources across government.

2.0 ONS interest in data sharing between Government Departments

There are three key business areas in ONS that would benefit from better access to individual unit level data held in other government departments. These key areas are regional and national accounts, population census, and neighbourhood statistics.

⁹ Atkinson Review of Measurement of Government Output and Productivity for the UK National Accounts; Presentation by Phillip Lee; ONS September 30th 2004.

2.1.1 Benefits of data sharing

Access to micro-data would bring the following benefits for National Statistics, users, and suppliers of data:

i. *benefits to National Statistics:*

- ONS would be able to use micro-data about individuals and business to replace some survey data, making the production of official statistics more cost-effective;
- micro-data could be used to enable National Statistics to respond much more flexibly to emerging user needs and changes in what is being measured;
- government statisticians would have greater capacity to produce up-to-date small area statistics. To capture changes at local area levels through statistics, micro-data about tax and benefits for example, must be linked and matched to statistics with a postcode base. It is impossible to provide such statistics with aggregated data sources, as the matching keys are lost;
- micro-data could be used for mapping and other quality checks on survey data;
- micro-data could be used as an alternative to less accurate respondent estimates, or as a check on them. It would be particularly useful in areas where a respondent is not asked for information because of doubts about their ability to supply it e.g. benefits in kind, particularly company car and fuel benefit, and National Insurance employer contributions;
- surveys and censuses could be targeted more effectively using micro-data held in administrative records as these data could be used to predict types of households and geographical areas where response to ONS surveys is likely to be lowest;
- micro-data could be used to fill gaps in data collected through surveys as a result of non-response. This would facilitate the production of more complete, accurate and local level statistics, which could be updated more frequently. What administrative records can often not do is understand hierarchical structures in the data, for example household and family composition so surveys and administrative records need to be used in conjunction and integrated with each other;
- the value to survey data could be enhanced by linking these survey data with micro-data from the department thus avoiding the need to include additional questions in surveys in order to provide more detailed statistics;
- micro-data could be used to develop an understanding of the relationships between issues such as crime and education and health at a range of geographical levels as well as many other issues. Without linkage, one is restricted to the information available on each individual dataset.

ii. *benefits to users:*

- users of official statistics will have access to more detailed, powerful and timely statistics at the local level;
- statistics would be more relevant to the purposes for which they were being used;
- statistics would be updated more regularly and would be more reliable;
- users would benefit from a more flexible statistical system and statistical source base to understand relationships between data and understand policy implementation and developments more quickly and thoroughly.

iii. *Benefits to suppliers of data:*

- accessing micro-data for statistics would reduce current compliance burdens as suppliers of data would only need to supply information once to government, rather than having to respond to different departmental statistical surveys as well as providing the same information via departmental administrative processes.

3.0 Barriers to data sharing for statistics

The ONS provides a leadership role for the Government Statistical Service and in the production of National Statistics. A key feature of National Statistics is that they represent a truly interdepartmental public service - a joined-up statistical service to government, industry and the public.

Research commissioned by DCA shows that the public expects data sharing to take place where to do so improves compatible public services and reduces burden. ONS believes that the National Statistics initiative is precisely the sort of public service that the public expects to benefit from sharing data across departmental boundaries.

Unfortunately there has been no significant change in the legal and regulatory framework since the introduction of National Statistics. ONS and the GSS are faced with the same legal, cultural and technical barriers that were there before the development of the inter-departmental brand.

3.1 Barriers to data sharing: Administrative powers

It is rare indeed for any statute to specify a disclosure of data to ONS for the production of statistics. Attempts to include data sharing gateways in new Bills being introduced where there is scope to include a clause have not been successful. The key has been convincing Ministers of the value of including a data sharing clause. Current experience has shown that Ministers are reluctant to agree to the inclusion of data sharing clauses in bills due to the complexities and uncertainties associated with these clauses, which can threaten to lengthen the time it takes for the bill to be accepted. **Ministers could ensure that provisions for sharing data for National Statistics are included, on the advice of ONS, in all relevant new legislation.**

DCA have published guidance to data sharing and the law. The guidance acknowledges there is a marked reluctance in departments to use implied administrative powers to enable data sharing. We therefore rely upon departments using common law or implied powers to share data with us. Despite the DCA guidance, ONS has not noticed a change in departments' willingness to use unwritten legal powers to provide data for statistics. **Ministers could instruct their departments to audit their powers to share data with ONS for statistical purposes, and make the outcome of such audits available across the GSS.**

3.2 Barriers to data sharing: Common law duty of confidence

It is not current practice to obtain consent from users of administrative public services for disclosure of their information to ONS. Quite reasonably, this is not usually a function of the information provided to a new claimant for a benefit or tax-credit, for example. Without consent as a means to overcome the duty of confidence, ONS must rely upon other departments either having a statutory gateway, or rely upon them concluding that the disclosure is in the substantial public interest. Case law suggests that preventing crime and fraud is in the substantial public interest. **ONS would argue, and seeks Ministerial support, that good quality National Statistics are fundamental to the effective government of the country and the delivery of public services, and disclosure to ONS is therefore in the substantial public interest.**

3.3 Barriers to data sharing: Data Protection Act

ONS would welcome any amendments to the Act that assists the sharing of data for statistics. In particular, ONS would want statistical purposes to get similar recognition as some other special purposes (e.g. journalism) do in the Act. The Act does not distinguish statistics produced by government departments from statistics and research performed by non-public sector organisations. There is a public interest consideration for Official and National Statistics which in the opinion of ONS should be reflected in the Act.

ONS contends that:

- the processing of personal information for statistical purposes is always 'fair' under the 1st Principle, as long as the necessary conditions for statistics are met absolutely (i.e. further use for statistical purposes only, and a guarantee of confidentiality in any published products)
- the further processing of administrative data for statistics does not need to be a 'specified purpose' at the time of the original collection, as required by the 2nd Principle.
- The further processing of administrative data for official statistics is in the public interest, removing the need to meet a schedule II or III condition in the 1st Principle, and the common law duty of confidence element of the 'lawful' consideration also in the 1st Principle.

ONS would welcome the introduction of penalties under section 55 of the DPA for the use of data shared under the above conditions for any non-statistical purposes, or in breach of a confidentiality guarantee.

The implementation of the Data Protection Act from the European Directive led to several missed opportunities to have special considerations for official statistics. For example, the Project Group on implementing the European Directive recognised the fact that processing for statistical purposes of personal data collected for non-statistical purposes was not incompatible with the purposes for which the data were originally collected. The implementation group went further; to state that in order to avoid the collection of the same data again *personal data collected for non-statistical purposes should also be processed for statistical purposes where it is necessary for the performance of a task carried out in the public interest or in the exercise of official authority*. These recommendations of the implementation group were apparently not carried into the UK's Data Protection Act. However, the discrepancies between the intention of the Directive and the Data Protection Act may be the result of interpretation problems by government lawyers and the ICO. **ONS would like Ministers to either request an amendment to the DPA making these provisions explicit, or to instruct their officials to apply the intended interpretation of the Directive.**

3.4 Barriers to data sharing: Cultural and technological

Legislation that governs the sharing of data across departments for statistical purposes was developed at a time when the technology to link and match data had not been envisaged. The legislation reflects this. Technology however has advanced to the extent that much more can be achieved with data than was previously the case. To take advantage of this change, cultural practices and systems within departments need to shift in order to reflect what is now technically possible, rather than the status quo being maintained. While new primary legislation is required if the potential of these technological advancements are to be realised fully, there are changes in departmental practices that can be made that will enable better use of data held in departments for statistical purposes.

To assist in this the ONS is currently undergoing a modernisation programme across its statistical functions, this modernisation programme has been funded from central government. Both the Allsopp review and the Atkinson review set about modernising the processes and systems required ensuring that the statistical outputs of the ONS maintain our commitment towards the production of world class statistics. Furthermore ONS has recently undergone a process of re-categorising the metadata that it holds which has led to a standardisation across the whole of ONS to ensure that all divisions are consistent in their outputs and supporting evidence.

What is required also is a shift within departments that makes data sharing for statistics the norm rather than an exceptional practice. **When Parliament says that sharing data to improve Official Statistics is appropriate, then it is likely that departments will be more ready to use existing implied powers to share data and to overcome the softer common law and regulatory barriers.**

4.0 ONS Role in Implementing Change

The Allsopp Review concluded that the present statistical system is not capable of supplying the data needed to conduct effective economic and regional policy. However it further recognised that the range of information already held by government can be used to increase the quality and the compliance and the cost efficiency of economic statistics, while safeguarding its confidentiality.¹⁰

Beyond economic statistics the issue is the same - within government there exists the necessary unit level information to help in delivering both the cost effective, high quality, world class statistics.

The ONS would request that Ministers encourage the examination of primary legislation with an attitude that the default position should be to make data available to ONS for statistics, unless there is a very good reason for the data not to be available. This would be the reverse of the current situation, where ONS is obliged to make a full business case for each and every clause in new legislation, and access is the exception, not the norm. Changes to legislation can be achieved in two ways:

- i. *piggy-backing new bills*: In the short term, one option is to include clauses setting up data sharing gateways in new bills where the scope of the bills is such that including such a clause is appropriate. This would strengthen bi-lateral gateways between ONS and other government departments as opportunities arise;
- ii. *a UK Statistics Act*: Piggy-backing new bills will strengthen data sharing practices, but will lead to an incoherent and confusing array of legislation governing data sharing, that will be open to different interpretations. A more ideal solution would be to follow the example of most other countries and introduce a Statistics Act in the UK. This would provide a single piece of legislation that would govern data sharing for statistics across government, creating a coherent environment for the use and protection of individual unit record data.

The Statistics Commission has produced a report recommending a UK Statistics Act to establish a statutory and governance and regulatory framework for National Statistics. Though of limited scope, the Commission's proposals are generally welcome. An Act to overcome the barriers to sharing data for statistics would make a step change in the quality, relevance and integrity of Official and National statistics.

¹⁰ Review of Statistics for Economic Policymaking; Final Report to the Chancellor of the Exchequer, the Governor of the Bank of England and The National Statistician; Christopher Allsopp; March 2004, Page 5

Annex E - Statement on Human Rights Act and ONS strategic business planning.

1. Key elements of the Act for ONS business.

1.1 ONS is the UK's primary survey and census data collection agency for government. The focus of its activity is collecting and analysing information on the number and condition of the population and on the state of the economy. The National Statistics ONS produces provide an accurate, up-to-date, comprehensive and meaningful description of the UK economy and society. The statistics support the formulation and development of economic and social policies by central and local government.

1.2 Statistics need a factual basis. Surveys are taken from members of the public, businesses and other organisations to provide information for analysis. Most surveys are voluntary. National legislation provides for a decennial census of the population and regular surveys of businesses and enterprises, and responses to these are compulsory. ONS also makes some use of information originally collected for the administrative functions of other public authorities, where this is permitted by law.

1.3 Article 8 of the HRA - the right to a family and private life - has a direct impact on statistical activities. In asking the public to take part in voluntary surveys, and in requiring the public and businesses to take part in censuses, ONS must demonstrate that this is i) lawful, and ii) that any interference with this right is proportionate and necessary in the interests of the economic well-being of the country.

2. Lawfulness.

2.1 The decennial census of the population and the compulsory surveys of businesses and enterprises are conducted under primary legislation. The Census Act (1920) and the Statistics of Trade Act (1947) both contain in schedules and orders the information that ONS is lawfully entitled to collect and analyse. Both Acts closely define the purposes of the collections, and have provisions which prohibit the unauthorised disclosure of individual data. These features are very highly valued by ONS as they provide a clear limitation on the necessary interference with privacy.

2.2 ONS conducts voluntary surveys under its administrative powers. The information collected is protected by the common law duty of confidence, and its use is regulated by the Data Protection Act. Reflecting HRA (8), the principles of the Data Protection Act require that processing is lawful and necessary, and that the data processed is adequate, but not excessive, for the purpose. ONS maintains a Data Protection Unit with suitably qualified and trained staff to ensure compliance with the Act in our statistical activities. The unit conducts training for all new entrants and new managers in ONS, and provides a series of seminars for all Survey Managers.

2.3 Some Government statistics are collected as required by European Regulations. EU Regulations have regard to the European Convention on Human Rights. European statistical regulations are proposed by the commission (Eurostat) for co-decision by Parliament and Council. As part of the legislative review process, the draft regulations are scrutinised by the Internal Market DG for compliance with Human Rights.

2.4 ONS maintains a Legal Coordination Unit (LCU) which ensures that new surveys, and new questions on existing surveys, are compliant with the law. Professional legal advice is sought by the LCU on a regular basis. This aspect of their work is closely linked with that of the Survey Control Unit, discussed below, and the seeking of legal advice is an integral part of the procedure for developing new or existing surveys.

3. Necessary interference with private and family life.

3.1 ONS and all other parts of the Government Statistical Service (GSS) are required to demonstrate that the information it collects on the private and family life of UK citizens is the minimum necessary for the legitimate functions of government in a democratic society. The GSS works within the National Statistics Code of Practice, and the Protocol on Respondent Burden.

Every survey and census conducted by ONS or the GSS must consider the costs of compliance. Costs must be planned, managed, and reported annually. Existing sources of information must not be duplicated, and ONS operates a Survey Control Unit for the Government Statistical Service to ensure that this potential for duplication is minimised across government. ONS is also committed to a continuous effort to minimise the burden on respondents. This is done in a number of ways, from qualitative testing to reduce 'form fatigue', through to seeking alternative sources for the information required. The LCU is consulted in the programme of reviews of business survey forms, led by Data Collection Methodology Unit, which ensures that the questions in business surveys remain valid, necessary, and proportionate for the purpose. Reviews of business survey questions also consider the Osmotherley guidance to ensure that the compliance burden is necessary and not disproportionate.

3.2 An example of where these review processes and consideration of necessity and proportionality is found in the decennial Survey of Children's Dental Health. In 1993 a periodontal probe was used on the children in that survey, a procedure that is necessary to derive certain statistics to underpin dental health policies. After consulting dental research experts, it was decided that although still necessary, the procedure was too intrusive, and therefore disproportionate to the benefit to statistics, dental research, and policy making. The procedure was dropped for the 2003 collection.

3.3 The UK is unusual in that much of its statistical activity is not framed by an explicit, single statistical law. ONS social surveys are voluntary, and we believe that this is a positive approach to conducting statistical inquiries and one that is consistent with Human Rights. It is necessary to conduct such surveys, but a compulsion to take part would in many cases be a disproportionate interference in private lives.

3.4 In 2001 parliament considered the inclusion of a religion question in the 2001 Census of the Population. Parliament determined that a religion question should be included on the forms, but that unlike all other questions it should be a voluntary question.

3.5 ONS enjoys Patients' Information Advisory Group support, under section 60 of the Health and Social Care Act, for the processing of health data without consent. This enables ONS to continue to benefit from 100% coverage of certain illnesses and to support medical research in these fields.

3.6 ONS engages in consultation with government departments, academia, users, and the public on the design of its data collections. These consultations have led to, amongst other things, an accepted design for ethnicity classifications in data collection. In this way ONS collects sensitive personal information in the least intrusive way for its legitimate purposes.

3.7 ONS welcomes opportunities to make much more use of administrative data held by other departments. We believe such access would reduce our interference with private and family lives, as we would gain access to information suitable for our purposes without any additional burden on the public from asking them to complete questions in surveys. The special nature of statistics requires an absolute commitment to confidentiality, and a limitation on the further use of information for statistical purposes only.

3.8 The UN Fundamental Principles provide a suitable framework for determining that data use and reuse for the purposes of Official Statistics constitutes a necessary interference with a private and family life. The United Nations Fundamental Principles of Official Statistics resolves that :

- i) Official statistics provide an indispensable element in the information system of a democratic society.
- ii) Citizens are entitled to access official statistics as public information.
- iii) Data for statistical purposes may be drawn from all types of sources, including administrative records,
- iv) Individual data collected for statistical compilation are to be strictly confidential and used exclusively for statistical purposes.

We believe these UN Principles are a particularly strong assertion of the necessity of the interference with private and family lives for statistical purposes.

3.9 The UN Principles are found in the National Statistics Code of Practice. The Code, and the Protocols that underpin it, provide the Government Statistical Service with a set of desk-top instructions to guide our work. If these principles and practices are followed, then we can be confident that statistical data collection and analysis in the UK is conducted in such a way as to minimise the necessary interference with the right to a private and family life.

3.10 The UN Principles and the Code require the Government Statistical Service to seek to reduce our interference by making better use of administrative sources. ONS is engaged in a statistical modernisation programme which in part will seek to make administrative datasets a key resource for ONS National Statistics. However, many of these administrative sources are unavailable to us due to common law duties of confidence owed to the data by the administrative department, and the Data Protection Act which often limits the purposes for which data may be processed. This lack of availability prevents ONS limiting its interference with private and family lives. With access to administrative data, it may be possible for ONS to reduce its reliance on survey and census data.

3.11 Many other European countries have a single comprehensive Statistics Act that makes administrative data sources available to the central statistics agency. These Acts also make explicit the interference with private and family life the legislatures deem acceptable in their democratic societies. In place of the existing topic-specific legislative framework for statistics, ONS considers that a single comprehensive UK Statistics Act would make compliance with Human Rights more explicit and more readily monitorable. ONS is actively considering such legislation.

4. Future work / forward look.

4.1 ONS will build into its New Employees and New Managers programmes explicit information and training about the Human Rights Act.

4.2 GSS benefits from a statisticians training, development and support unit that can be a vehicle for considering Article 8 implications in government statistical activities.

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