

# Teneo / DCMS Data Consultation Roundtable Readout

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## Chapter One – Reducing Barriers to Responsible Innovation

**Ollie Buckley**

Managing Director  
ollie.buckley@teneo.com

DCMS opened the discussion by explaining the Government's objective is to secure a pro-growth and trusted data regime in their consultation on data reform - Data: A new direction. Proposals deliberately build on the foundations set by the UK General Data Protection Regulation (UK GDPR). Continuity with respect to principles, legal bases for processing and data rights means that the Government intends on maintaining high standards of data protection but DCMS is also looking at whether it is possible to reduce friction in the data protection regime to support innovation.

The consultation has the following objectives:

- Cement the UK's position as a scientific superpower by simplifying data use by researchers, and developers of AI and other cutting-edge technologies.

- Build on the high watermark for data use during Covid-19 that saw the public and private sectors collaborate to use data responsibly to tackle the pandemic.
  - Secure the UK's status as a global hub for the free flow of personal data globally and across borders, complementing our ambitious agenda for new trade deals and new data adequacy agreements with some of the fastest growing economies.
  - Reinforce the responsibility of businesses to keep personal data safe and encourage investment in compliance activities that reflect how they operate and their users' expectations.
  - Ensure that the ICO remains a world-leading regulator, empowered to protect personal data while ensuring organisations can use personal data responsibly to achieve economic and social goals.
- However, although broadly in agreement with the overall objective, one participant warned of the potential pitfall of less prescriptive rules as they put more onus on companies to interpret them (so what is acceptable vs not in a particular circumstance may be less clear).
  - It would be useful to revisit the definition of data anonymisation, as some organisations are facing challenges combining differing definitions of 'anonymisation' across jurisdictions.
  - Relating to anonymisation – the US definition is liberal whereas the EU GDPR is stringent.
  - There should be a middle ground, built around what is the reasonable risk of someone being reidentified. This doesn't have to go as far as the EU definition, and equally shouldn't be as liberal as the US approach, but there should be a more moderate position.
  - In the scientific ecosystem, there's already a mature approach to pseudonymisation and masking, and the law should recognise that.
  - Ideally, there would be as borderless a world as possible where data can be moved around for international research, without damaging the data adequacy status of the UK.

DCMS explained that an overarching objective is to establish a regime that is focused on outcomes rather than bureaucratic processes, and to create a framework which is less prescriptive about how an organisation achieves those outcomes.

The consultation is a mix of white and green papers, with some concrete proposals, and more open questions in other areas. DCMS are trying to hear from as many organisations at the coalface of using the data regime as possible during the consultation period.

### ***Discussion on proposals – points made by participants***

#### ***Reuse of Data for Research***

- Some participants felt that the legal burden is on a researcher seeking consent to use data for a purpose that is slightly different to the one it was originally intended for and welcomed DCMS's effort to enable innovation while maintaining data standards.

#### ***Legitimate Interests***

Creating greater certainty about when it is possible to rely on lawful grounds of legitimate interests vs consent was welcomed by most participants but the risk of taking away people's control was also highlighted. There was recognition that getting the balance between an organisations' needs and data subjects rights is difficult.

- It was observed that while there isn't always an easy answer on what constitutes a legitimate interest, there needs to be a proper framework and mechanism for transparency, as well as categorisation of risk.
- There was also discussion on fraud prevention, and whether there needs to be a legitimate interest test on a wider range of actions.

### ***AI & Machine Learning***

- Following from the discussion on legitimate interests, participants had significant interest in Article 22 (EU GDPR) and how this relates to AI governance.
- It was highlighted that there is no distinction made between when an algorithm is used for one off decision-making vs deployed software and the level of risk is not defined helpfully.
- Automated processes can have an impact on an individual's life, but the risk profile of these automated decisions can vary widely. The current legislative framework does not take this into account sufficiently.
- The importance of AI standards regarding Article 22 was also raised. Participants were interested in how standards will be developed and whether these will overlap with the Government's proposed AI White Paper.
- There was a suggestion that the focus should be on 'high-risk AI' and that this needs to be defined sensibly. If 'high risk' is defined too broadly, e.g. deeming all health applications as high risk, then it may include those which are actually lower risk e.g. health admin related tasks.

## **Chapter Two – Reducing Burdens on Businesses and Delivering Better Outcomes for People**

DCMS opened the discussion by outlining how they want to reduce burdens and prescriptive requirements for organisations, moving away from bureaucratic processes and strengthening the existing accountability principles. The objective is to maintain outcomes of data protection but give organisations more discretion over how they achieve these outcomes. The chapter proposes obligations for senior management oversight over data protection; the right policies and processes, including risk assessment and the right people and skills in place.

DCMS also invited views on proposals to amend the subject access requests (SARs) regime. The Government is proposing the introduction of a cost ceiling and a request threshold, akin to the Freedom of Information (FOI) regime which includes a cost limit

### ***Discussion on proposals – points made by participants***

#### ***Accountability Framework***

- One participant observed that most companies shouldn't fear approaching the ICO for guidance, given the relatively small number of enforcement actions.
- The challenge for the Government and the ICO is providing support for SMEs while not creating too many issues for larger, international companies.
- Introducing a UK-specific privacy framework is not necessarily helpful for multinationals as they design their privacy management programmes to cover all jurisdictions. They already spend a lot of time tweaking their privacy programmes to ensure all jurisdictions' requirements are covered, so introducing a UK-specific program doesn't add huge value.

There was concern over how to re-educate people who have only recently become used to the UK GDPR requirements – investing in education and guidance will be critical.

### **Subject Access Requests**

- Participants questioned whether any consideration had been given to introducing a token fee for Subject Access Requests, similar to the system used pre-UK GDPR. It was confirmed that the consultation did seek views on this alternative and noted that the ICO response had not been in favour of this approach.

## **Chapter Three – Boosting Trade and Reducing Barriers to Data Flows**

DCMS opened the discussion with an overview of plans for international transfers. The Government's objective is to maintain high outcomes of data protection when their data is transferred to other jurisdictions. A list of countries that the UK wants to strike deals with has been published already, which includes some of the world's fastest growing economies. The UK will operate a risk-based and proportionate adequacy framework. Stability will be at the forefront of UK adequacy deals, not least given recent disruption of court cases to the EU's network of deals. We also want to look at alternative transfer mechanisms that can be adaptable over time and more scalable/usable for businesses.

### **Discussion on proposals – points made by participants on DCMS proposals**

#### **Adequacy**

- Maintaining adequacy was seen as a priority, while welcoming attempts to make the regulation less burdensome. Multinationals would lose significantly on EU-UK transfers compared to what would be gained via UK to rest of world.

- It was noted that the EU recognises a number of countries as adequate that don't replicate EU GDPR in their own legislation.
- DCMS confirmed that given this consultation builds on GDPR as its foundation, it should position the UK well in any future adequacy discussions.

### **Alternative Transfer Mechanisms**

- The ability to establish good standards on data transfers was seen as important, as the majority of data transferred is business data for large firms.
- There was a question on how the proposed reforms in the UK deal with foreign government access to private data held by corporations.
- It was suggested that pseudonymisation can reduce the risk arising from international data transfers.
- It was highlighted that the EU Data Protection Board Guidance recognises that masking, as an effective control, mitigated some of the risks related to data use and transfer. It would be welcomed if this could be implemented.

## **AOB**

### **ICO Reform**

- The role and remit of the ICO has grown considerably since it was set up in the 1980s. Decisions on personal data use affect outcomes in digital markets, such as innovation and competition.
- DCMS is looking at a strategic framework for the ICO, giving them a set of objectives and creating an independent board, with a chair, mirroring the set-up of similar regulators.

- This would mean that the ICO can give more time to upstream data protection rather than investigatory work by putting onus on individuals and businesses to come to agreement before reporting to the ICO.
- DCMS is engaging with the Office for AI on the AI White Paper and will share all relevant data consultation responses with the Office for AI to inform their thinking.

### **Conclusion**

- The consultation closes on the 19th November. Following that, process of analysing responses and then publication of Government response in Spring next year.



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