INLINE

Beyond Data Protection: Shaping the Ethical Use of Data in the UK

INLINE

Big data presents policy challenges beyond privacy rights

Thanks to the advances in computing power in recent years, **innovative data-driven business models are increasingly being adopted** across all kinds of sectors and industries. Businesses now have the ability to analyse larger volumes of data more quickly and more regularly, applying new tools and techniques powered by automated machine processing or artificial intelligence.

The sheer explosion of data being generated is driven on multiple fronts – from **online marketplaces**, **internet search platforms** and **social media** to new **communication services** and **Internet of Things** devices. According to some estimates, more than 90 per cent of all data in existence has been generated over the last two years alone. Every day, the world produces around 2.5 quintillion bytes of data.

In response, policymakers have worked intensively to update data protection legislation so that the privacy rights of individuals remain protected. The sharing of data in the UK now largely operates under two key pieces of legislation, the **EU General Data Protection Regulation** and the **Data Protection Act 2018**, with the forthcoming **ePrivacy Regulation** on the horizon further guiding the use of online personal communications and data.

Yet despite all this progress, the adoption of transformative data-driven innovations continues to present new challenges beyond data protection. For example, a perceived lack of transparency or highly complexed technology engender a **distrust between the user and the provider**, while input data that contains flaws or social bias can compromise the **integrity of technology**.

EU GENERAL DATA PROTECTION REGULATION (GDPR)

The EU General Data Protection Regulation (GDPR) is a keystone regulation that seeks to protect individuals against the misuse of data. It came into effect on 25 May 2018.

GDPR covers personal data, which is information that relates to an identified or identifiable individual. It places specific legal obligations on organisations that use data, requiring them to demonstrate a legal basis for processing data – e.g. consent, contractual, or legitimate interest.

The regulation also gives an individual the right to: be informed as to how its data is used; access to data held on the subject; rectify or erase information where there are reasonable grounds for such action; and restrict certain types of processing and sharing of data.

E-PRIVACY REGULATION

The ePrivacy Regulation, which will replace the EU Privacy and Electronic Communications Directive 2002, will increase the security of traffic and location data held by telecommunications companies and internet service providers.

The updated ePrivacy Regulation seeks to include 'over the top' (OTT) services (e.g. Skype, Whatsapp), introducing rules on tracking technologies (such as cookies); privacy consent at the level of browser settings; protections against unsolicited communications (spam); and collection and storage of traffic data.

The ePrivacy Regulation has not been adopted yet and is at 'trilogue' stage in the negotiations, i.e. where the European Parliament, Commission and Council seek to agree on the final details of the legislation before it is voted on at Parliament and Council-level.

Policymakers shift their focus toward data ethics

Data ethics has therefore emerged as the next big test for regulators. In essence, it describes the value judgements and approaches businesses and organisations should consider when generating, analysing and disseminating data. Policymakers are increasingly taking a **holistic approach to incorporating good practice** in data sharing and information gathering techniques, devising a future-proof set of guiding principles by which these problems should be viewed and addressed.

In that context, UK Prime Minister Theresa May directed the Department for Digital, Culture, Media & Sport to produce a

National Data Strategy for the UK in June this year. The Strategy seeks to implement two key objectives: enable more effective use of data to the benefit of the economy and government; and build public confidence in greater and more diverse uses of data.

It will incorporate elements of government policy already trailed, including a new body looking at the ethics of data sharing (**Centre for Data Ethics and Innovation**), and bring together data initiatives under a cohesive plan that encourages a thriving data economy, worth over £70 billion to the UK economy annually.

DATA PROTECTION ACT 2018

The Data Protection Act is the implementing legislation in the UK allowing for GDPR to take full effective from 25 May 2018. Alongside supporting GDPR, it included additional data protection rules and clarified derogations, where Member States can exercise discretion over how certain provisions will apply, within GDPR.

The Act sets the age from which parental consent is not needed to process data online at 13; provides a bespoke regime for law enforcement; confers additional powers for the Information Commissioner; and includes exemptions across a wide range of areas including taxation, immigration control, parliamentary privilege, legal proceedings, journalism, research and statistics, and archiving.

Current UK data initiatives

The new norms and standards that will guide the greater use of data sharing will be shaped by a whole **range of different data initiatives**, covering new codes of practice, consumer protection reviews, and sector specific rules. These workstreams originate from a variety of government departments, bodies and regulators, including:

- **Centre for Data Ethics and Innovation:** a new body to advise and propose guidelines, codes of practice or regulation to ensure the ethical uses of data and AI.

- **Data Sharing Code of Practice:** provides 'good practice' guidance for organisations that share personal data.

- **Code of Conduct for Data-Driven Health and Care Technology:** a code outlining the key principles that should be applied for the safe and effective use of data in the health and care system by service providers.

- **Smart Data Review:** a cross-government review considering the use of new data-driven technologies and data portability of customers' data in regulated markets.

- **Sharing Central Government Data:** ensuring government departments are making non-sensitive data available through effective channels, as part of the Government Transformation Strategy.

- **Direct Marketing Code of Practice:** rules which businesses must follow when processing personal data for marketing practices.

- **Geospatial Commission:** a new government body tasked with setting the UK's National Geospatial Strategy and opening up public and private location information.

- **Monitoring of Big Data Markets:** the role of tech companies in gathering large volumes of data possibly resulting in market distortion, is being closely monitored by the Competition and Markets Authority.

We explore each policy agenda and initiative in turn below, highlighting the scope of each, and the impact on certain sections of the data economy and on particular types of data.

Centre for Data Ethics and Innovation

LEAD BODY	**Department for Digital, Culture, Media & Sport (DCMS).** The Centre has the support of the **Council for AI** (consisting of industry and academia stakeholders that will provide strategic advice) and the **Office for AI** (secretariat for the Council, made up of civil servants).
SCOPE OF THE INITIATIVE	A DCMS led initiative, the Centre seeks to keep government policy and regulation in pace with the increasing range of data usage, in particular with regard to the adoption of artificial intelligence (AI). Through research and analysis, the Centre will be asked to advise and **propose guidelines, codes of practice or regulation** both in general terms and within certain sectors, to ensure the **effective and ethical uses of data and AI**. This includes the development and overseeing of 'data trusts' – a framework that allows organisations access to a store of data where parties are compliant with predefined standards and obligations.
TYPE OF DATA	A **wide range of datasets** will come under the Centre's remit. It will principally cover personal data but also the use of open data, non-sensitive data and metadata. **Personal data** must be used in line with the EU General Data Protection Regulation (**GDPR**) and the UK Data Protection Act (**DPA**) 2018. It is defined as any information relating to an identified or identifiable living individual, such as a name, an identification number, location data or an online identifier; and specific to the physical, genetic, economic, cultural or social identity of the individual.
TIMELINE	**Q4 2018**: The consultation on the formation of the Centre closed in September 2018 and the government is due to publish its final report before the end of the year. This will detail the terms under which the Centre will operate and outline next steps, including where it should focus its priorities. The Centre will also be placed on a statutory footing "as soon as possible", strengthening its independence and authority to investigate data practices.
REGULATORY OUTCOME	As is proposed, the Centre has the potential to have enormous scope to influence various data-driven sectors. Its mandate to identify the measures needed to strengthen and **improve the way data and AI are regulated,** and advising government on how to address potential gaps in regulation, means it is likely to play a substantial role in how future regulation is shaped.
OPPORTUNITY FOR BUSINESS	The Centre will be expected to **engage extensively** with the business community in order to remain up to speed with the complex, fast moving and far reaching innovations that are being developed across many technology-intensive sectors. This information will in turn feed back into the priority areas it will look at.

Data Sharing Code of Practice

LEAD BODY	**Department for Digital, Culture, Media & Sport (DCMS)** and the **Information Commissioner's Office (ICO)**
SCOPE OF THE INITIATIVE	As outlined in the DPA 2018, the ICO is mandated to update its data sharing code of practice to explain and advise on changes to data protection legislation, **where these changes are relevant to data sharing**. It will address key aspects of the new legislation including transparency, lawful bases for processing, the new accountability principle and the requirement to record processing activities. Any data controller who is involved in the sharing of personal data is encouraged to use this code to help them **adopt good practice**. Much of the good practice advice will be applicable to public, private and third sector organisations. Some parts of the code are necessarily focused on sector-specific issues. However, the majority of the code will apply to all data sharing regardless of its scale and context. The code covers sharing both between organisations and within organisations. The two main types of data sharing covered in the code are: • **systematic**, routine data sharing where the same data sets are shared between the same organisations for an established purpose; and • **exceptional**, one-off decisions to share data for any of a range of purposes.
TYPE OF DATA	**Personal data,** as defined in GDPR (see page 6, the Centre for Data Ethics and Innovation for definition).
TIMELINE	**Q4 2018:** The ICO has already run a call for evidence among industry actors to gather information and opinions on the what should be included in the updated code. This consultation ran over summer and concluded in October 2018. It will now consult with the Secretary of State before publishing the final code, which is expected to be published before the end of the year.
REGULATORY OUTCOME	This code is the ICO's interpretation of what GDPR and the DPA 2018 requires when sharing personal data. The code **does not impose additional legal obligations** nor is it an authoritative statement of the law. However, the code can be used in evidence in any legal proceedings, not just proceedings under the DPA. The ICO cannot take enforcement action over a failure to adopt good practice or to act on the recommendations set out in this code unless this in itself constitutes a breach of legislation.
OPPORTUNITY FOR BUSINESS	Similar to the ICO's Direct Marketing Code of Practice, this initiative is meant to provide data controllers and data processors with guidance on what **lawful and 'best practice' data sharing** looks like. It is a definitive interpretation of the GDPR and DPA 2018, which businesses can follow when sharing data. Going forward, the Code will be under review and will be inevitably shaped by new emerging businesses processes in data-intensive industries. In this respect, the data sharing code of practice will be **subject to further discussion** until the final version is published and beyond.

Code of Conduct for Data-Driven Health and Care Technology

LEAD BODY	Department of Health & Social Care
SCOPE OF THE INITIATIVE	This voluntary code outlines key principles that should be applied for the safe and effective **use of data in the health and care system**. It also includes commitments from the government to ensure that the health and care system is in a position to adopt new and innovative technology at scale. Under the key principles detailed in the proposed code, the Department of Health and Social Care outlines steps businesses need to take, from a legal and technical standpoint, to operate in the health sector. For example, data-driven tech firms should: • Create a **data flow map** recording the actual exchanges of data and the legal basis for each transfer. • Compile a data protection impact assessment (**DPIA**) evaluating the degree of risk. • Allow patients to **opt-out** if they do not want confidential patient data used beyond direct care. • Institute continuous data **anomaly detection** procedures. • Meet the **OWASP** Application Security Verification Standard - tests developers must run to certify a secure application. • Show a clear standard operating procedure (**SOP**) for how any algorithm will be implemented and how it reaches decisions.
TYPE OF DATA	**Medical Information**: this is categorised as personal data and patient records. This is data that is processed for approved medical purposes, from a verified health service body. As defined by the **DPA 2018**, this data can include biometric data; genetic data; data used for any health or social care purposes; medical diagnosis, medical research, the provision of treatment and the management of healthcare services.
TIMELINE	**End of 2018 / early 2019**: The Department of Health and Social Care has published its initial code of conduct and is inviting comments on this draft version. A final version is expected in December 2018. The UK Government will then publicise the code and promote service providers that sign up to the key principles.
REGULATORY OUTCOME	This code represents the first step in implementing a more rigorous and trusted approval **(Kitemark) scheme** for digital health and care products that rely on data. At an initial stage the code is voluntary but as it becomes more established it is likely to be placed on a more formal, or even a statutory, footing.
OPPORTUNITY FOR BUSINESS	The code is the key guide that data-driven tech service providers should follow to enable new innovations to enter and scale up within the health and care system, which often still upholds substantial legacy barriers to entry. Through this code the government has already committed to compiling fully electronic patient data – starting with Greater Manchester, London, Wessex, Yorkshire and Humber, and Thames Valley and Surrey regions – with opportunities to allow tech companies to integrate this data into its services in a test-bed environment.

Smart Data Review

LEAD BODY	**Department for Digital, Culture, Media & Sport (DCMS)** and **Department for Business, Energy & the Industrial Strategy (BEIS)**
SCOPE OF THE INITIATIVE	A cross-government review will consider how to promote the use of new data-driven technologies and **data portability** to improve the consumer experience in regulated markets (e.g. financial services, telecoms, energy). Ultimately, the review aims to lay the foundations for enabling companies a greater and more efficient **access to consumer data**, where they are providing an intermediary service. It will advise how government can: • Accelerate the development of innovative intermediaries. • Ensure that a wide range of consumers can benefit from these innovative services. • Establish a regulatory and policy framework, while addressing any undue barriers to roll out. Regulated markets are those markets which are partially controlled by the government and where, at the direction of the government, independent regulators exercise oversight. In the UK these include energy, water, telecoms, banking, and public transport sectors.
TYPE OF DATA	**Personal data,** as defined in GDPR (see page 6, the Centre for Data Ethics and Innovation for definition).
TIMELINE	**Q1/2 2019**: The review (led by BEIS) will report to the newly established **Consumer Forum**. This Forum is a joint-regulator body comprising of senior representatives from across government and regulators. The government will then announce the conclusions of the review and next steps in the first half of 2019.
REGULATORY OUTCOME	Since consumer markets have a high degree of regulatory oversight, any recommendations from this review, which are detailed in the government's response next year, are likely to be **delegated to the relevant regulatory body**. Under the guidelines as laid out by government, individual regulators from different sectors may be asked to push through changes which would establish a framework to achieve its aim to help innovative intermediaries roll out at scale.
OPPORTUNITY FOR BUSINESS	For data-driven intermediaries, this review has the potential to lead to **more effective data analytics** which can support more advanced customer service products. In the first instance, the review has suggested doing this by mandating data controllers within these markets to adopt a minimum standard for data to be held in a machine-readable format. More long-term, any regulatory changes proposed either through the review or from the Consumer Forum will seek feedback from the industry, allowing data-focused intermediaries to highlight specific issues and barriers to growth.

Sharing Central Government Data

LEAD BODY	**Cabinet Office** and **Government Digital Service (GDS)**
SCOPE OF THE INITIATIVE	One strand of the UK Government Transformation Strategy 2017-20 is dedicated to ensuring that **government data** is properly managed, protected and (where non-sensitive) made available and shared effectively. The strategy aims to open up government services (including **44 government registries**) internally and externally through the use of APIs. These registries include governmental departments and independent governmental bodies (e.g. Ofsted, NHS Business Services Authority, Companies House). Implementation of these measures are underpinned by the Technology Code of Practice (a set of criteria to help government design, build and buy better technology). For example, the **Land Registry** has launched its Beta API programme which allows companies to access and adopt public datasets it has compiled. Information can cover location, tenure, price paid or property type over a defined period of time.
TYPE OF DATA	The **public data** that is accessible through the roll out of this strategy is non-personal or non-sensitive data covering a wide-range of government services. The Re-Use of Public Sector Information Regulation 2015 followed an update to an EU Directive on the practice. It covers digital, as well as analogue information – print, audio and digital – and forms the basis for the overhaul of public records to enable more accessibility and use of the information.
TIMELINE	**2018-21**: Most of the current major transformation projects are scheduled to be complete by 2021. Overseen by the Cabinet Office, each department is mandated to lead on projects within their remit and follow dedicated timelines depending on extent of work required.
REGULATORY OUTCOME	This is current UK Government policy that is underpinned by the Re-Use of Public Sector Information Regulation and aims to, as far as possible, open up non-sensitive data. However, the Cabinet Office is looking at how to continue transforming government services and the way government operates, in line with the policy priorities of the government post 2020 and remains open to **revisiting any regulatory barriers** which may impinge on the strategy in the long-term.
OPPORTUNITY FOR BUSINESS	The strategy allows tech companies to **partner with different bodies within the UK Government** to tackle cross cutting policy and operational issues, to deliver predictive models that inform and provide a stronger evidence base to new public policy. Likewise, the increasing availability and organisation of public datasets offers tech firms the opportunity to **enrich the wider UK data infrastructure** as well as the UK statistics system, facilitating better, more well-informed decision making, more efficient data collection, processing and dissemination, and automated processing.

Direct Marketing Code of Practice

INLINE

LEAD BODY	**Department for Digital, Culture, Media & Sport (DCMS)** and the **Information Commissioner's Office (ICO)**
SCOPE OF THE INITIATIVE	The ICO is mandated to produce a Direct Marketing Code of Practice, which will be enshrined in law. The code details the rules under GDPR and the DPA 2018 which must be followed when **processing personal data for marketing practices.** The code also takes into account the EU Privacy and Electronic Communications Directive 2002 as it is currently the applicable law relating to certain online direct marketing activity. However, with the **impending adoption of the new ePrivacy Regulation**, this will need to be further updated in due course.
TYPE OF DATA	**Customer data**: data used in marketing practices, including personal data as defined in GDPR (see page 6, the Centre for Data Ethics and Innovation for definition).
TIMELINE	**Q4 2018/Q1 2019**: The ICO is expected to publish its draft Code of Practice this year or early next year. The ICO must consult on the code before DCMS tables it in the UK Parliament so it can be placed on a statutory footing. The work builds on the current 'voluntary' Code of Practice (last updated May 2016) and will primarily incorporate the new rules which are finalised in the guidance on different GDPR implementation challenges.
REGULATORY OUTCOME	This code will be placed on a **statutory footing**. This means it will be formally enshrined in law, supporting the DPA 2018 that places legally enforceable obligations on organisations. It can be cited in the court of law but should only be an interpretation of the DPA 2018 and should not introduce any new legal obligations.
OPPORTUNITY FOR BUSINESS	As part of the publication of the Code of Practice, the ICO must **consult with the direct marketing** sector. Although the ICO will be reluctant to reopen old debates from when it initially implemented GDPR, the consultation gives businesses opportunities to raise issues they may be still facing in regard to data sharing, and also issues facing the sector more generally. The ICO views the code as an explicit guide for direct marketers to overcome any barriers they may be facing and consequently it will form part of **wider conversation between the regulator and business** over how data can and should be used in marketing and advertising campaigns.

Geospatial Commission

LEAD BODY	**Cabinet Office**
SCOPE OF THE INITIATIVE	When fully operational, the Geospatial Commission will be a body within the Cabinet Office, tasked with setting the **UK's National Geospatial Strategy**. Activities are likely to include building information management by using geospatial and earth observation data, in order to inform decision-making and build a well of data to assist wider public and private innovations. The Commission will be tasked with opening up government held data, including that which is held by the Ordinance Survey. It will also work with the Digital Framework Task Group (DFTG) to **access the information held in the private sector** to ensure a complete picture of geospatial data. The Commission will be an **advocate for the sector**, to make sure that the regulatory framework is adapting to assist the geospatial sector. At an initial phase, the Commission will be tasked with understanding from the market how to support development of geospatial innovations. In particular, the Commission is interested in engaging with **Satellite-derived Earth Observation (EO)** and highlights two challenges with EO: providing analysis-ready data to allow a wider range of analysts to use this with other geospatial data; and how to store and archive data due to its size and volume.
TYPE OF DATA	• **Geospatial data:** Information where place is a key feature of its source and/or purpose for which it is used. • **Positional data:** Groups of individual datasets that usually have location as a secondary purpose, and which describes activity or physical assets grounded in a particular place. • **Geospatial identifiers:** Data that provides the means of anchoring positional data to core geospatial data. • **Geospatial services:** Higher-level insights and products, often involving layers of various types of spatial information.
TIMELINE	**Q1/2 2019**: The Government is inviting interested parties to submit comments and opinions on the make-up of the Commission after which it will publish its first annual plan in spring 2019. A longer term National Geospatial Strategy will follow in the course of 2019.
REGULATORY OUTCOME	The Commission will make private recommendations to the Cabinet Office for **new policy and strategy initiatives**. Reports by the Commission challenging existing government policy, the implementation of decisions in line with its agreed strategy, or the behaviour of private sector actors will not require prior clearance from the Cabinet Office and will be placed on public record inviting a response from government, the regulator or industry.
OPPORTUNITY FOR BUSINESS	Increased mapping of data across geographical space allows for reduced search time and unplanned delay; process automation; logistical and route-optimisation; and reduced error rates in construction. It **cuts across numerous sectors** and plays an increasing role in driving new tech solutions. For instance, geospatial data supports better location-based advertising; e-conveyancing, location aware insurance and digital surveying; optimal route locations for new pipelines, generators or power lines; use of unmanned drones; automating farming equipment, autonomous exploration and remote monitoring.

Monitoring of Big Data Markets

LEAD BODY	The Competition and Markets Authority (CMA)
SCOPE OF THE INITIATIVE	The CMA, in its 2018/19 Annual Plan, highlighted the **role of tech companies in gathering large volumes of data** and the possible market distortion this causes. The CMA has stated that it will be "particularly interested in how companies use online data and the growth of algorithms in business decision-making, including price discrimination". The competition authority recognises that **complexities around data technology** have increasingly become integral to a number of recent merger and market investigations, and greater awareness and oversight of the market is required. The CMA's focus on 'big tech' can cover individual companies, a collection of companies, a particular sector or particularly practices across a range of sectors.
TYPE OF DATA	The CMA is likely to concentrate efforts exploring any anti-competitive practices in regard to the retention of **personal data** by 'big tech' as this is more prone to causing market distortion through service and price differentials.
TIMELINE	The CMA's current annual plan and priorities cover the period until the end of March 2019. After the CMA has gathered enough information on the practices of the 'big data' market, it will be in a **position to announce a formal investigation** of the market if it believes the practices are distorting the market and consumer pricing.
REGULATORY OUTCOME	The CMA has the power to demand information from any actor in order to conduct market studies. On the back of market studies, the CMA can also **require certain actors to make immediate remedial action**, where necessary. The CMA has already **undertaken two market projects** into this area, including Commercial Use of Consumer Data and Digital Comparison Tools. Both of these reviews led to general policy recommendations in 2015. However, the CMA has powers to go further and greatly influence the market. It's investigation into breaches in the online secondary tickets market has led to enforcement action against certain platforms and subsequent legal action where rulings are not enforced by the platform.
OPPORTUNITY FOR BUSINESS	The **newly established digital, data and technology team** within the CMA affords tech companies the opportunity to participate in the research conducted by the CMA, seeking to: • Understand how firms use data and algorithms, the interactions between consumer issues and data ownership and what implications this might have for consumers and competition. • Link into the tech business and research communities in the UK and internationally. • Build a relationship with the Information Commissioner's Office, other relevant regulators and the growing government data community.

We hope you find this a helpful overview of the latest UK data initiatives. If you would like more information about the issues affecting you, or to discuss the political and regulatory challenges your business faces, then please get in touch.

CONOR BRENNAN

ACCOUNT MANAGER

conor.brennan@inlinepolicy.com
@conor_fbrennan

OLAF CRAMME

MANAGING PARTNER

olaf.cramme@inlinepolicy.com
@olafcramme

INLINE

Inline Policy are the specialists in politics and regulation for the tech sector

We work at the heart of London and Brussels to provide some of the world's most innovative companies with:

➢ Policy analysis and intelligence across the EU

➢ Advocacy campaigns to influence policy makers

➢ Profile raising and reputation management

inlinepolicy.com

INLINE

The specialists in politics and regulation for the tech sector

www.inlinepolicy.com

Inline Policy Ltd, 310 Vox Studios, London SE11 5JH

Inline Policy Sprl, Avenue Marnix 17, 1000 Brussels