

**Edgar A. Whitley**

## Submission to the House of Lords Constitution Committee Inquiry into "Legislative Process: Stage 1: Preparing legislation for introduction in Parliament"

### Documentation

**Original citation:**

Whitley, Edgar A. (2016) Submission to the House of Lords Constitution Committee Inquiry into "Legislative Process: Stage 1: Preparing legislation for introduction in Parliament". LEG0023. UK, Parliament, London, UK.

Reuse of this item is permitted through licensing under the Creative Commons:

© 2016 The Author  
CC BY NC 4.0

This version available at: <http://eprints.lse.ac.uk/68256/>  
Available in LSE Research Online: November 2016

LSE has developed LSE Research Online so that users may access research output of the School. Copyright © and Moral Rights for the papers on this site are retained by the individual authors and/or other copyright owners. You may freely distribute the URL (<http://eprints.lse.ac.uk>) of the LSE Research Online website.

**Dr Edgar A. Whitley, Associate Professor (Reader) in Information Systems, London School of Economics and Political Science. Member of the Quality Assurance Group for the Consultation on Better use of data in government, part of the Open Policy Making Process—Written evidence (LEG0023) PART 2**

Executive summary

1. This submission responds questions 8–10, and draws on my experiences with the Open Policy–Making (OPM) process associated with the data sharing provisions that then formed part of the Digital Economy Bill. It also draws on my experiences as a member of the OPM “Quality Assurance” group for the analysis of responses to the consultation about the proposal.
2. The evidence presents my own views on the issues and not those of members of the QA Group. Nevertheless it is inspired by, and reflects on, conversations amongst the group.
3. I am supportive of the use of the OPM process for developing policy but identify significant operational concerns with the way the resulting consultation on the proposals was undertaken and analysed.
4. I make a series of suggestions for addressing these concerns.

Involve and the Open Policy–Making process

5. An innovative feature of the broad discussions around data sharing in government was the decision to facilitate an “Open Policy–Making process” (henceforth OPM process). As noted in the 2016 consultation on the resulting proposals<sup>1</sup>: “In response to repeated calls from public authorities to review the data legislative landscape as well as the Administrative Data Taskforce recommendation specifically to improve researchers’ access to data, officials within the Cabinet Office began work on developing new policy in 2013” (§15).
6. “An open policy–making approach provided the opportunity to ensure that the views of those outside of government could shape the development of policy in an iterative way at an earlier stage” (§ 16).
7. “Involve, a not for profit organisation established to improve government engagement with the public, helped facilitate an open policy–making process and external engagement. The open policy–making process was open to any interested organisations to join and was designed to ensure that all voices were heard from the outset. Groups engaged in the process included those with a specific interest in individual privacy and rights, academics, statisticians, researchers and their funders, charities, government officials and some private sector organisations. The strength of the open policy process has been to identify areas of consensus, but also to better understand areas of disagreement. As such, the groups and individuals who have participated in the process have helped to significantly shape a number of the proposals. Where there was a divergence of views, these have been factored into the consultation questions. The whole process was transparent, with key information and updates posted on [www.datasharing.org.uk](http://www.datasharing.org.uk), a non-government website, to act as a repository and audit trail of the work” (§17).

---

<sup>1</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/503905/29-02-16\\_Data\\_Legislation\\_Proposals\\_-\\_Con\\_Doc\\_-\\_final\\_\\_3\\_.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/503905/29-02-16_Data_Legislation_Proposals_-_Con_Doc_-_final__3_.pdf)

8. This work occurred between April 2014 and March 2015 in the run up to the general election. The OPM process looked at the suitability of data sharing for three purposes:
  - enhancing the availability of high quality research and statistics from administrative data;
  - preventing fraud and helping citizens manage the debt they have with government; and
  - ensuring the right services are offered to the right person at the right time<sup>2</sup>.
9. Given my role in the Cabinet Office Privacy and Consumer Advisory Group and my general academic research interests in this area, I participated in a number of the OPM meetings.
10. After the 2015 General Election, the Cabinet Office continued to develop the proposals “in the spirit of what was agreed” and announced their intention to go to public consultation in late January / February 2016. They held two further meetings in January 2016 to present the policy updates.

The Better use of data in government consultation and the “Quality Assurance” process

11. The consultation<sup>3</sup> was launched on 29 February 2016 and consisted of 20 questions covering the three high level policy areas that would finally be found in Part 5 of the Digital Economy Bill: Improving public service, tackling debt and fraud, allowing use of data for research and for official statistics. The closing date for responses was 22 April 2016.
12. In the spirit of the OPM process, Involve were asked to create an external Quality Assurance (QA) Group of individuals from civil society and academia to review the government’s analysis of responses to the consultation. It is believed that this is the first time this part of the process has been opened up.
13. The Terms of Reference of the QA Group were published<sup>4</sup> and shared with participants in the OPM process. This included a proposed timeline for the work of the group:
  - 13th April to 18th April 2016: Review and comment on government’s proposed approach to analysing responses
  - 18 April 2016: Agreement on proposed approach to analysing responses by Quality Assurance Group and Cabinet Office?
  - 28 April 2016: Quality Assurance group to receive consultation analysis (in person)
  - 28 April 2016: Quality Assurance session and collaborative review of consultation analysis
  - w/c 2nd May 2016: Quality Assurance review to be drafted by Involve
  - w/c 2nd May 2016: Revision and comment on draft Quality Assurance Review report
  - w/c 2nd May 2016: Final version of report shared with Cabinet Office
  - Tbc May 2016: Publication of government’s analysis and Quality Assurance report
14. I nominated myself for the group and was invited to join the group on 14 April 2016. The full membership list is available in the final report of the group<sup>5</sup>.

---

<sup>2</sup> <http://datasharing.org.uk/>

<sup>3</sup> <https://www.gov.uk/government/consultations/better-use-of-data-in-government>

<sup>4</sup> <https://docs.google.com/document/d/1u6pWerRMvt0KMdo8aPt10JjsDZWvfgCPWN4Ykn9h0JQ/edit>

<sup>5</sup> <http://datasharing.org.uk/wp-content/uploads/sites/2/2016/07/External-Advisory-Group-Report->

15. The first meeting of the group was scheduled for 28 April 2016 however on 26 April 2016 we were informed that the meeting needed to be postponed. “At the middle of last week, we had received less than 30 responses and were on track to upload and analyse in line with our proposed approach. By consultation close on Friday we had received over 280 responses, with a large number not using the format of form/questions we posed in the consultation document. This means that our initial triage and analysis is taking a lot longer than anticipated and unlikely to be ready for Thursday” (Email from Sue Bateman, Cabinet Office, 26 April 2016).
16. The rescheduled meeting took place on 9 May 2016. As the QA Group’s report notes, by this time “The Cabinet Office team had only been able to collate the responses, carry out an initial coding of the answers, and carry out a preliminary thematic analysis of the data presented”.
17. It was therefore not possible for us to undertake a detailed examination of the analysis in terms of Quality Assurance and the Terms of Reference of the Group were therefore adapted to reflect what we were able to assist with. In particular, we took on more of an advisory role and provided a set of key recommendations on how the full analysis should be approached, rather than undertaking a Quality Assurance review of the analysis.
18. A major problem that the analysis team faced was, as noted above, that many of the responses did not use the format of the questions presented in the consultation document. It soon became apparent that in many cases this was because of problems with the wording of the consultation questions. In particular, the QA Group noted that analysis would be more difficult for:
  - Questions that assume assent or do not ask the question that people want to answer (Questions 11, 14, 18);
  - Compound questions, where two or more questions are asked but only one answer is allowed (Questions 15, 5, 16);
  - Questions where the interesting results will be in the free text rather than the yes / no response, for example where suggestions were asked for (Questions 7,1, 2, 10); and
  - Complex questions that the respondent may have difficulty in understanding or answering, but where their answer will shed light on their views about this issues within the consultation (Question 9).
19. These problems would appear to have arisen because the consultation brought together a wide ranging set of proposals from across government and no attempt had been made to standardise the questions. In addition, it was clear that no pre-testing of the consultation questions with a small group of likely respondents had been undertaken. Both of these measures would have resulted in questions whose responses could be analysed with greater ease.
20. Such poorly designed consultation questions may also have affected the quality of submissions. A poorly designed set of consultation questions suggests limited competence in survey design and, by implication, limited competence in survey analysis.

21. The Government has published principles about effective consultations<sup>6</sup>. In the context of this inquiry, it may be worth supplementing these principles with specific guidelines about the practicalities of consultation design and analysis.
22. A non-exhaustive list would include:
- Most consultation responses are received on / near the deadline.
    - It should not come as a surprise that only 30 out of a final 280+ submissions were received a few days before the deadline.
  - There is value in government sharing experiences about the volume of responses to different consultations. This is likely to vary according to the scope and contentiousness of the consultation content. This will allow for proper resource planning for the consultation analysis.
  - Consultations need clarity as to whether they are seeking to determine a general sense of support or dissent for proposals (whereby Yes / No or quantitative measures might be most appropriate) or whether the purpose of the consultation is to draw on the expertise and insights of respondents.
    - In this case, given the two year OPM process, one might have expected that most insights should have already been gathered and so most questions could have been drafted to minimise the need for qualitative analysis of free text.
  - There need to be clear rules on late submission handling (A Monday 23.59 deadline is suggested)
    - This consultation concluded on a Friday. It is not clear if any responses that might have been received over the weekend were included in the analysis.
  - All consultation responses potentially contain useful contributions. No proper responses should be discarded
    - This consultation noted that “we will therefore only consider your response if you complete the information page”
  - There is merit in separating distinct topics into separate “mini-consultations”
    - In this consultation, for example, a large number of responses from individuals related only to the proposals about sharing civil registration data but the whole of the consultation response (by default an 11 page document) needed to be checked for any responses to other sections.
  - There is an obvious need for capacity building in survey design and survey analysis. This skill is widely taught in Universities so support for this is readily available, as are commercial survey organisations.
    - I have suggested this consultation to colleagues at LSE who teach survey design as an exemplar of how not to write survey questions.
  - There is a need to pre-test questions before the consultation is sent out. Failure to do this wastes the time of respondents as well as making the analysis of the consultation process either more time consuming than necessary and may hamper the full elicitation of insights from the consultation.

Further specific concerns with the Data sharing consultation.

---

6

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/492132/20160111\\_Consultation\\_principles\\_final.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/492132/20160111_Consultation_principles_final.pdf)

23. Despite the consultation being the culmination of a two year OPM process, two sets of proposals were added to the consultation (and resulting legislation) at a very late stage. Government is, of course, able to introduce any legislative proposals it wishes and it makes sense to consult about them. Nevertheless, given the spirit of the OPM process, such late additions are unfortunate.
24. The first meeting in early January 2016 introduced some new proposals from the General Registrar's Office (GRO) and a second, follow up, meeting was held on 15 January 2016 to present the proposals in more detail including "areas that were not comprehensively covered in the session on the 6<sup>th</sup> [January 2016]". Fuller details of the GRO proposals were circulated on 14 January 2016.
25. Members of the OPM process expressed surprise at the introduction of new proposals and Involve responded: "We continue to emphasise the importance of giving civil society time to understand proposals and respond to them; we have made it clear through-out this phase our concerns about the speed and volume of new proposals, as you would expect. As part of this we have made clear the risks to the process overall of moving forward with new proposals in limited time. At this point the government wants to spend a bit of extra time looking at this proposal in particular because they feel that it wasn't well understood last week. I would expect them to take any concerns about either the proposal itself or the process seriously, and we will continue to emphasise the different views that we are aware of" [Email from Simon Burrall, Involve, 11 January 2016].
26. I was able to attend the meeting that discussed the GRO proposals in more detail and I shared my concerns that the proposals were still at a very early stage of development (and detail) compared to other proposals.
27. The consultation also included proposals about data sharing to address fuel poverty. The consultation notes that this proposal from the Department of Energy and Climate Change (DECC) "was not part of the open policy process". The data sharing to address fuel poverty proposals are, however, remarkably similar to proposals that were shared with the Cabinet Office Privacy and Consumer Advisory Group (PCAG) in December 2013. It is not clear why they were not included in the OPM process.
28. Given all the issues that the analysis of the consultation responses was going to face, including the large number of responses (the published responses to the consultation consists of 1134 pages—although this figure is affected by the size of the initial consultation response document (11 pages)), the proper analysis of this data would be a significant amount of work.
29. The QA Group meeting with the Cabinet Office was held on Monday 9 May 2016. The data sharing provisions were included in the details of the Digital Economy Bill<sup>7</sup> which was announced in the Queens speech<sup>8</sup> on Wednesday 18 May 2016. Given that Ministerial sign off of the consultation response was presumably needed before the proposals were included in the Queens speech, this suggests a very limited period for the detailed analysis to be undertaken. A short and / or rushed analysis of the consultation responses before the Queens speech raises concerns about the use of the consultation response in the scrutiny process<sup>9</sup> of the Digital Economy Bill. It is

---

7

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/524040/Queen\\_s\\_Speech\\_2016\\_background\\_notes\\_.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/524040/Queen_s_Speech_2016_background_notes_.pdf) Page 15.

<sup>8</sup> <https://www.gov.uk/government/speeches/queens-speech-2016>

unclear whether further analysis of the consultation responses was undertaken before the Government summary was published on 5 July 2016.

#### Specific inquiry questions

30. Q8) *To what extent, and how effectively, are the public and stakeholders involved in this stage of the legislative process?*

31. As a process, I believe that the OPM process worked well. I was able to participate in a number of meetings and felt that the process was performing as intended. Civil servants were made aware of and listened to a range of concerns about a wide range of issues around the data sharing proposals being considered. It was instructive to see where various government departments saw the problems with effective data sharing as well as the assumptions that were driving different policy agendas. I believe that it is a model to be copied for appropriate pieces of legislation.

32. Q9). *What factors inhibit effective engagement?*

33. As noted above, I have concerns about the quality of the resulting public consultation and the analysis of the consultation responses. Thus, much of the good work (and good will) generated by the OPM process is affected by poorly designed and implemented later stages.

34. Q10). *What mechanisms could be used to increase or improve engagement with the public and stakeholders?*

35. See recommendations above. In addition, as noted in my related submission to this inquiry about technology neutral policy, there is a strong case for undertaking technical “discovery” work alongside the broader discussion of policy objectives and concerns.

21 October 2016

---

<sup>9</sup> For example, Nigel Huddleston: “There were 282 responses to that consultation, with the majority of them being broadly supportive. You have raised quite a few perfectly valid concerns, but do you accept that there is broad public support for the sharing of data when there is a clear social upside?” [https://hansard.parliament.uk/commons/2016-10-11/debates/cc664aca-a5c4-4a4b-b174-0b448660a979/DigitalEconomyBill\(SecondSitting\)](https://hansard.parliament.uk/commons/2016-10-11/debates/cc664aca-a5c4-4a4b-b174-0b448660a979/DigitalEconomyBill(SecondSitting))