



Section 1:

Introduction

This section sets out the purpose and structure of this MRS Data Protection Guidance 2018 and defines key terms in the GDPR.

1.1 Purpose of document

The purpose of this document is to provide guidance for MRS members and Company Partners to help ensure compliance with the new data protection framework introduced by the EU General Data Protection Regulation (GDPR)¹ and the UK Data Protection Act 2018 (DPA 2018).² The new requirements work with the provisions in the MRS Code of Conduct and provide an overarching ethical and legal framework for research.³

Market research, which includes social and opinion research, is the systematic gathering and interpretation of information about individuals or organisations using the statistical and analytical methods and techniques of the applied social sciences to gain insight or support decision making. Research itself does not seek to change or influence opinions or behaviour and is not used to take decisions or actions regarding a specific individual. The approach in this Guidance differs from earlier [MRS Data Protection Guidance](#) which places data collection projects into different categories (Categories 1 to 6), to differentiate the boundaries between classic research and projects conducted for other purposes. In the new guidance this has been replaced by a primary distinction between research and non-research.

Regulatory guidance is integral to effective compliance with the DPA 2018. This Guidance details the requirements of the GDPR and reflects published draft and final guidance as well as ongoing discussions between MRS and the Information Commissioner's Office (ICO) on the application of data protection rules. The MRS Data Protection Guidance will be periodically updated in line with data protection guidance and any additional clarifications issued by the UK ICO and the group of EU regulators, the European Data Protection Board (EDPB).

At the time of publication of this edition of the MRS Data Protection Guidance (v0418), the Data Protection Bill was making its way through the UK's House of Parliament. For ease of reading, references in this Guidance to the DPA 2018 are references to the provisions as set out in the Data Protection Bill introduced to the House of Lords on 13 September 2017. References in this Guidance will be updated on passage of the Bill into the DPA 2018.

MRS is providing this data protection guidance as general information for research practitioners. It is not legal advice and should not be relied upon as such. Specific legal advice should be taken in relation to any specific legal problems or matters.

¹ The text of the GDPR can be found here: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0679&from=en>
² The text of the Data Protection Bill can be found here: https://publications.parliament.uk/pa/bills/lbill/2017-2019/0066/lbill_2017-20190066_en_1.htm

³ The text of the MRS Code of Conduct can be found here: <https://www.mrs.org.uk/pdf/mrs%20code%20of%20conduct%202014.pdf>



1.2 Structure of document

The Guidance is divided into ten sections. Each section provides a general overview of the specific topic area, highlights the key points and discusses the application to research data collection and processing exercises.

Part 1 of the Guidance - Sections 1 to 5 provide an overview of the new data protection framework and discusses core data protection principles and concepts as well as the legal grounds for processing personal data in the context of research activities.

Part 2 of the Guidance - Sections 6 to 10 set out the rights of data subjects as research participants and discusses issues related to specific types of research, international research and organisational data governance measures. (Forthcoming July 2018)

1.3 Key terms

Anonymous Data

Anonymous data is "information which does not relate to an identified or identifiable natural person or to data rendered anonymous in such a way that the data subject is not or no longer identifiable." Anonymous data is no longer personal data, and the data protection rules do not apply. It is increasingly difficult to properly anonymise personal data. Focus is generally placed not on the absolute impossibility of identification but the likelihood of re-identification occurring. In determining whether the data has been anonymised consideration must be given to "all the reasonable means likely to be used" taking into account factors such as cost, available technology and amount of time. (Recital 26 GDPR)

Data Controller

Data controllers determine the purposes and means of the processing of personal data. The concept of joint data controllers is formally recognised in the GDPR and applies where controllers jointly determine the purposes and means. (Article 4 GDPR)

Organisations must understand whether they are acting as a data controller or data processor on a project in order to determine which specific legal obligations under the GDPR are applicable and to reflect these in the contract between parties.

Data Processor

Data processors process personal data on behalf of controller(s). In a research context an organisation is likely to be a data processor where it is processing personal data solely on the client's behalf such as transcription, processing, coding, analysing and translation activities. (Article 4 GDPR)

Data Protection Impact Assessment (DPIA)

DPIA is a process designed to help organisations identify and mitigate data protection risks of a project. (Article 35)

Data Subjects

Data subjects are identified or identifiable living individuals to whom the personal data that is held relates. (Recital 26 GDPR)

Personal Data

Personal data is information relating to an identified or identifiable natural person; who can be identified



directly or indirectly by that data on its own or together with other data. This includes identifiers such as a name, an identification number, location data, device identifiers, cookie IDs, IP addresses and relates to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that person.

To determine whether a person is identifiable, account should be taken of all the means reasonably likely to be used, such as singling out, either by a data controller or by any other person to identify an individual directly or indirectly. (Article 4 GDPR)

Personal data breach

Personal data breach is a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed. (Article 4 (12) GDPR)

Processing

Processing means any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction. (Article 4(2) GDPR)

Profiling

Profiling means any form of automated processing of personal data consisting of the use of personal data to evaluate certain personal aspects relating to a natural person, in particular to analyse or predict aspects concerning that natural person's performance at work, economic situation, health, personal preferences, interests, reliability, behaviour, location or movements. (Article 4(4) GDPR)

Pseudonymisation

Pseudonymisation is the processing of personal data in such a manner that the personal data can no longer be attributed to a specific data subject without the use of additional information, provided that such additional information is kept separately and is subject to technical and organisational measures to ensure that the personal data are not attributed to an identified or identifiable natural person. (Article 4(5) GDPR)

Special Category Data (previously referred to as Sensitive Personal Data)

Personal data categorised as special category data is data on:

- religious or philosophical beliefs
- health
- racial or ethnic origin
- trade union membership
- political beliefs
- sex life or sexual orientation
- genetic data
- biometric data (including photos when used for the purpose of uniquely identifying a natural person) of data subjects. (Article 9 GDPR; Sched. 1 DPA)

The collection and use of special category data is subject to greater restrictions than other types of personal data particularly regarding additional legal grounds for processing and considerations of risk in processing of personal data.



Personal data relating to **criminal convictions and offences** is not included in special category data, but extra safeguards also apply to processing this data. (Article 10 GDPR; Sched. 1 DPA)

Research

Research is the collection, use, or analysis of information about individuals or organisations intended to establish facts, acquire knowledge or reach conclusions. (MRS Code of Conduct)

Scientific research

Scientific research is not defined in the GDPR but the GDPR makes it clear that scientific research purposes should be interpreted in a broad manner, including for example technological development and demonstration, fundamental research, applied research and privately funded research. Scientific research will include both privately and publically funded research that is set up and conducted in line with relevant appropriate methodological and recognised ethical standards. Additionally, the DPA 2018 makes it clear that scientific research must be carried out in the public interest in order to be used as a processing ground for special category data. (Recital 159 GDPR; Section 18 DPA 2018)

Statistical research

Statistical research is not defined in the GDPR but statistical research purposes are “any operation of collection and processing of personal data necessary for statistical surveys or for the production of statistical results.” Research that results in aggregate data that is not used to support measures or decisions regarding an individual is statistical research. The outputs of statistical research can also be further used for other purposes including scientific research. (Recital 162 GDPR; Section 18 DPA 2018)