

HMG Response to the House of Lords Communications and Digital Select Committee's Report on Digital Regulation

Department for Digital, Culture, Media and Sport, March 2022

Introduction

1. The Government welcomes the Committee's recent inquiry into digital regulation and subsequent report, "Digital regulation: joined-up and accountable".
2. We strongly agree with the Committee regarding the scale of the opportunities and the challenges posed by digital innovation, as well as the importance of ensuring that our regulatory system keeps pace with developments in digital technologies and markets.
3. We also agree with the Committee that progress has been made in the period since they published their 2019 report, "Regulating in the Digital World". Since then the government has set out its overarching vision for governing digital technologies¹, developed ground-breaking proposals for a new pro-competition regime and reforms to the data protection regime, and introduced our pioneering Online Safety Bill. At the same time, the Digital Regulation Cooperation Forum (DRCF) has been established to facilitate coordination and knowledge exchange by our key digital regulators, providing a model for regulatory coordination that has attracted widespread international interest. Collectively these initiatives have placed the UK at the forefront of the global debate about how we regulate digital technologies and markets.
4. Nevertheless we recognise there is more work to be done. As digital innovations continue to transform our society and economy, our approach will need to continue to evolve. That is why we are taking action in a number of key areas highlighted by the Committee. This includes our proposals for new statutory coordination measures between digital regulators; our ongoing work with the DRCF to ensure greater join up and enhanced coordination across the wider regulatory landscape; and our plans to ensure enhanced parliamentary scrutiny of the upcoming regulatory reforms. The Secretary of State for Digital, Culture, Media and Sport also wrote to the DRCF on 8 March and set out our priorities for the digital regulatory landscape - addressing a number of the issues highlighted by the Committee in their report (see Annex A).²
5. Our response, however, must be proportionate and evidence-based. Premature changes to our regulatory landscape risks creating confusion and stifling innovation. For this reason we will not be taking forward the Committee's recommendation for a Digital Regulation Board at this stage although we agree with many of the report's wider recommendations.
6. The report itself has only made a small number of recommendations that are directly for the government to consider, which we have addressed immediately below. We have also offered our views on the report's wider recommendations relating to the operation of the DRCF and parliamentary scrutiny.

¹ H.M. Government, 2021. [Plan for Digital Regulation](#).

² H.M. Government 2022. [Letter from DCMS SoS to DRCF](#).

Recommendations for statutory coordination

1. Introduction of statutory coordination measures

We recommend that the DRCF's current approach to cooperation between members be formalised, with the introduction of statutory measures such as new duties to consult and the creation of statutory information sharing mechanisms to facilitate joint work between. (Paragraph 44)

We recommend that statutory duties be introduced on regulators in the DRCF to cooperate and consult with each other, allowing them to share their powers and jointly regulate (Paragraph 63).

7. We agree with the Committee on the need to ensure there is strong coordination in place across the digital regulatory landscape. As set out in the Plan for Digital Regulation, we are committed to exploring how we can best ensure regulators are able to share resources and expertise in order to maximise efficiencies, coordinate closely to avoid unnecessary regulatory burdens on industry, and improve the overall coherence and effectiveness of regulatory interventions.
8. Non-statutory forms of coordination have an important role to play in delivering on these objectives. The work of the Digital Regulation Cooperation Forum demonstrates the rapid progress that can be made through voluntary cooperation. The ICO and CMA's joint statement on data and privacy has likewise demonstrated the degree of join-up that is possible without introducing further legislative measures. Memoranda of Understanding are also a well-established way of clarifying when and how regulators work together, such as the one between Ofcom and the ICO.
9. However we recognise there are situations where statutory coordination measures may be needed to tackle legal barriers to cooperation and to clarify the deep interactions between new regulatory regimes. In our consultation on the new pro-competition regime we set out the importance of coordination in cross-cutting digital markets and sought views on a range of mechanisms for achieving it. We also proposed new information sharing provisions between the Digital Markets Unit and select regulators. A new duty to cooperate and consult with other regulators was also proposed for the ICO in the consultation on our proposed reforms to the data protection regime. We will shortly publish our response to the pro-competition and data consultations, including our approach to statutory coordination measures. We are also introducing provisions in the Online Safety Bill to support Ofcom and the ICO to work together to ensure that services have appropriate privacy safeguards in place.

2. Digital Regulation Board

We recommend that the DRCF be placed on a statutory footing, with the power to resolve conflicts by directing its members. To underscore the status and permanence of this body, we recommend renaming it the Digital Regulation Board. (Paragraph 62)

We recommend that a well-respected non-executive, independent chair, with proven ability to lead effectively, be appointed to resolve regulatory conflicts and be accountable to Parliament. They should be joined on the board by other non-executive, independent members. (Paragraph 64)

10. We agree with the Committee that the DRCF has a central role to play in the digital regulatory landscape and provides the framework and foundations that will be needed for future coordination.
11. As the landscape continues to evolve we recognise that the DRCF will also need to adapt, but we have significant concerns about establishing the DRCF as a statutory 'Digital Regulation Board' with powers to oversee and direct regulators - as we have previously discussed in relation to the proposal for a 'Digital Authority'. While the proposed 'Digital Regulation Board' addresses some of the concerns we had in relation to the Authority, the most significant of these continue to apply. Above all, we are concerned that the creation of a statutory coordination body with powers to direct regulators would confuse issues of regulator independence and accountability, and would inappropriately delegate power to manage trade-offs between regulators and conflicts in remit that should properly be addressed by the government working with the legislature.
12. While we are therefore not intending to take forward the Committee's recommendation, we are committed to working with the DRCF to maximise its efficacy. Given the fast-evolving nature of the regulatory landscape we think the priority now is how to exploit the agility and opportunities afforded by the Digital Regulation Cooperation Forum in its non-statutory form. As part of this, it is important there is sufficient clarity and transparency around the DRCF's ways of working - for example, in their work plan and organisational charter. These points are addressed in more detail below and in the attached letter from the Secretary of State for Digital to the DRCF (Annex A).

Recommendations relating to the DRCF

1. Expanding DRCF membership

As soon as possible, full DRCF membership should be extended to statutory regulators with significant interests and expertise in the digital sphere. Building on the DRCF's initial work in engaging a broader range of regulators, partial membership should also be extended to non-statutory regulators and advisory bodies with subject-specific knowledge to participate on issues particular to their remits. (Paragraph 45)

13. We strongly agree with the Committee on the importance of ensuring there is effective join up across the wider digital regulatory landscape and highlighted this as a key priority through the Plan for Digital Regulation as well as in the Secretary of State's letter (see Annex A). The establishment of the DRCF marks an important step forward in improving coordination between key digital regulators but we recognise that a wider range of regulators - beyond the CMA, Ofcom, ICO and FCA - also play an important role. As the digital regulatory landscape evolves, it is therefore critical to consider how best to ensure ongoing coordination across a broader range of regulators.

14. Alongside this, we recognise the need for the DRCF to strike a balance between the depth and breadth of the projects it undertakes - particularly as it establishes itself - and to be proportionate and targeted in the way it involves other regulators on specific issues. We welcome the steps that the DRCF has already taken in this space - including early engagement with regulators such as the Gambling Commission, Bank of England, Payment Systems Regulator, Advertising Standards Authority, British Board of Film Classification, Intellectual Property Office, and the Electoral Commission. As set out in the Secretary of State's letter, we welcome further details from the DRCF regarding their future engagement strategy with other regulators through their 2022/23 work plan.

2. Strengthen coordination on horizon scanning

Mindful of the limitations individual regulators and the DRCF face in building up their own horizon scanning capacity, the DRCF should strengthen and formalise links with industry and academia. (Paragraph 46)

15. We agree with the Committee that greater consolidation and join-up is needed to maximise the insights generated within government, regulators, industry and academia.
16. We note the important steps the DRCF has already taken in this regard, through the launch of their technology horizon scanning programme, which is explicitly designed to enable join up with UK SMEs, start-ups and academia, and the call for evidence they announced at the G7 Future Tech Forum. Under this new programme, the DRCF has announced it will shortly launch a research portal to help regulators and wider stakeholders access existing knowledge about topical issues and identify gaps where further research is needed.
17. Ultimately, effective horizon scanning will be essential in enabling regulators to identify new or accelerating issues and adapt their response and capabilities where needed. As the Secretary of State for Digital made clear in her letter to the DRCF, the insights captured through this work can also play an important role in supporting the development of digital regulatory policy more generally. We therefore welcome the commitments the DRCF has shown to jointly horizon scan to identify future areas for cooperation, as well as the work individual regulators have already undertaken to improve the evidence base within specific areas of digital regulation. We will need to keep monitoring this ecosystem to ensure it can keep up to date with developments in the real world.

3. International coordination and information sharing

The DRCF should explore further mechanisms for information sharing and coordination with international partners, and take responsibility for establishing appropriate procedures and safeguards. (Paragraph 47)

18. Through the Plan for Digital Regulation, we set out a commitment to fully exploit opportunities and address challenges in the international arena. The borderless nature of digital technologies means that international collaboration will be key to an effective regulatory approach.

19. We therefore welcome the steps the DRCF has taken to build engagement with international partners. This includes their recent panel event at the Future Tech Forum where they facilitated a frank and future-facing exchange on the developments of the digital technology ecosystem with international partners. The DRCF has also focused on building the regulatory dialogue through bilateral relationships - such as with the Dutch Digital Regulation Cooperation Platform, comprising the Netherlands' Authority for Consumers and Markets, Authority for the Financial Markets, Dutch Media Authority, and Data Protection Authority.
20. It builds on the important work that UK regulators are already leading with their international counterparts, in bilateral and multilateral settings. For example, under the UK's G7 Presidency the CMA hosted a summit of heads of G7 competition authorities to discuss and agree how to deepen cooperation. The CMA also recently signed 'collective statements of intent' with competition authorities in Australia, New Zealand, Canada and the United States in order to more effectively share information between competition authorities.
21. It will be increasingly important for the UK regulators and government to take a joined-up approach to international regulatory cooperation to support the work of the independent regulators.

Recommendations relating to parliament

A joint committee of both Houses of Parliament should be established to oversee digital regulation. (Paragraph 80)

It would be for the two Houses to determine the precise remit of a Joint Committee on Digital Regulation. We recommend that it should be:

- *To scrutinise the effectiveness and appropriateness of regulators' exercise of their statutory powers in relation to the digital world, particularly in the case of broad or novel powers—such as in relation to online safety—as well as relevant secondary legislation*
- *To assess the coherence of regulators' work and their coordinated horizon scanning through scrutiny of the Digital Regulation Cooperation Forum if, as we recommend, it is put on a statutory footing as the 'Digital Regulation Board'*
- *To scrutinise the effectiveness of the Government's cross departmental work on digital regulation*
- *To make recommendations on where regulators powers need to be amended. (Paragraph 81)*
- *It would be for each House to determine which of its members to appoint to a joint committee. To ensure coherence and draw on the full range of expertise in Parliament, we invite the relevant selection committees to consider nominating to a Joint Committee on Digital Regulation members of other select committees which consider issues relating to digital regulation. (Paragraph 82)*

22. We agree that effective parliamentary oversight has an important role to play in scrutinising the development of digital regulation. We welcome the contributions that have been made by the House of Lords Communications and Digital Committee, the DCMS Select Committee and its Sub-Committee on Online Harms and Disinformation, and the Joint Committee on the Draft Online Safety Bill.
23. In particular, we recognise the value of accessing the expertise of both houses to scrutinise new regulatory reforms. We intend to work with Parliament to support scrutiny of the Online Safety Act in a way that utilises the skills and expertise in both Houses. However, we see real risks of duplication in creating a Joint Committee focused on digital regulation more broadly. Such a committee would cut across the work of existing parliamentary Committees that are already well placed to scrutinise digital regulation and for this reason we do not support the recommendation.

Annex A: Letter from DCMS SoS to the DRCF

Rt Hon Nadine Dorries MP
Secretary of State for Digital
Culture, Media and Sport
4th Floor
100 Parliament Street
London
SW1A 2BQ
8 March 2022

MC2022/03553/DC

Dear Andrea, John, Melanie, Nikhil, Gill,

Delivering the UK pro-innovation approach to digital regulation

Last Summer, the government published its Plan for Digital Regulation, which set out our commitment to developing a strategic, pro-innovation approach to digital regulation. Now that we are outside the EU, we have the flexibility to design our regulatory approach in a way that unlocks innovation, delivers the full benefits of the digital economy, and promotes UK leadership on the world stage.

The DRCF has a vital role to play in delivering on this vision through its work to create a more coherent regulatory ecosystem. I therefore wanted to highlight the government's priorities for the digital regulatory landscape, as well as cross-cutting policy areas relevant to the DRCF's work, for your consideration as you finalise the DRCF's work plan for 2022/23. There are a number of areas where the government thinks the DRCF can make a vital contribution, whether in terms of strengthening industry and consumer confidence, or in sharing its expertise and research.

Joining up the regulatory landscape

The Plan for Digital Regulation emphasised the crucial role that join up between regulators will play in enhancing the overall effectiveness of regulatory interventions. As innovations in technology continue to defy traditional definitions, and blur regulatory boundaries, closer coordination will be needed across the regulatory landscape - for example, to enable effective data sharing across sectors by intermediaries or to deal with the cross-cutting challenges of digitised sectors such as online advertising or gambling. Going forward, sharing expertise, developing common capabilities, maximising efficiencies in the way regulators operate, and minimising unnecessary burdens on business will be paramount. I appreciate the initial steps the DRCF has taken to engage with other regulators over the past year. I would welcome a further update on how the DRCF intends to deepen and expand this critical engagement.

Flexible and innovative approach to regulation engagement and transparency

Making sure diverse and cutting-edge expertise underpins our regulatory approach will be vital to its success. Through the Plan for Digital Regulation and the recent House of Lords Communications and Digital Select Committee inquiry, the government heard from a range of stakeholders that are keen to collaborate and actively inform our regulatory approach to digital technologies. Respondents highlighted this could lead to better outcomes for the quality of policy design and implementation and democratic processes. Several stakeholders expressed an interest in more clarity around how the DRCF members work together, and how you come to collective decisions.

I would therefore welcome an update from the DRCF regarding how it intends to engage and leverage insights from industry, consumers, civil society, academia and Parliament through its 2022/23 workplan. I also welcome the commitments from the DRCF in its evidence to the Lords Inquiry to keep Parliament updated on its activities.

Coordination on horizon scanning

The UK needs to be able to anticipate new regulatory challenges to ensure we stay ahead of the curve and adapt our regulatory response and capabilities effectively. New digital innovations such as the emergence of Web3 or the metaverse could raise questions about the way our regulatory landscape should look and function in the future.

The DRCF's recently-launched technology horizon scanning programme has a vital role to play in this context, alongside the work the Forum's member regulators have already undertaken to improve their evidence base. I would welcome an update on the insights the DRCF has secured through this programme - particularly the call for evidence launched at the Future Tech Forum in December 2021. As a priority, I would also be keen to hear the DRCF's early insights on what you think are the greatest opportunities emerging from innovation related to Web3, how the public sector might best support innovation in this area, and what regulatory issues will need to be considered in order to achieve maximum benefit for the public.

Going forward, I am also keen to understand how the DRCF proposes to use its horizon scanning capabilities to support the government and wider regulatory community in identifying the key regulatory questions we will face in future years - including how we regulate, how our regulators may need to adapt, and how the regulatory landscape itself may need to be evolve and change.

Cross-cutting policy priorities

2022 will be a crucial year for the government's digital regulation agenda as we introduce key legislation and next steps on a range of vital policy issues. The government is committed to working closely with the DRCF during this critical period and - where possible and appropriate in the context of the Forum member regulators' independence - sharing insights that can improve the design and implementation of regulatory policies. The government has already benefited greatly from the outputs that the DRCF produced as part of your inaugural work plan - for example, the focus on interactions between privacy and competition regulation.

As the DRCF finalises its work plan for 2022/23, I wanted to flag some specific areas of cross-cutting digital policy that may intersect with the DRCF's priorities. In particular, I would be interested to understand whether there are complementarities and opportunities for collaboration in the following areas: AI governance; online advertising; supporting the government's ongoing implementation of the National Data Strategy, particularly in relation to data availability for the economy and society; and ensuring cooperation and coherent regulatory approaches on online safety, data, and competition policy.

Looking ahead

Over the coming months, the government intends to publish more detailed thinking on the pro-innovation approach we outlined in the Plan for Digital Regulation, responding to the views of stakeholders and the recommendations from the House of Lords Select Committee's recent inquiry. The fast moving nature of digital technologies means that our regulatory approach must continue to evolve, and I am clear that we are still only at the early stages of laying the foundations of a regulatory regime for the digital economy. It will be critical for us to continue working closely together to make sure the UK's regulatory approach is fully coordinated, streamlined and coherent.

I welcome your continued collaboration as we drive forward a pro-innovation approach to regulating digital technologies.

Rt Hon Nadine Dorries MP
Secretary of State for Digital, Culture, Media and Sport