



Department for
Digital, Culture
Media & Sport

Data Protection Bill - Equality Impact Assessment

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1. INTRODUCTION TO THE BILL

The Data Protection Bill will repeal and replace the Data Protection Act 1998 to:

- Make our data protection laws fit for the digital age in which an ever increasing amount of data is being processed;
- Empower people to take control of their data;
- Support UK businesses and organisations through the change; and
- Ensure that the UK is prepared for the future after it has left the EU.

Data protection is needed to protect “personal data” – data relating to a living individual who can be identified. The current law on data protection is found in the Data Protection Act 1998, which regulates the processing of personal data. The 1998 Act protects the rights of individuals whom the data is about. The new data protection framework will update these rights to make them easier to exercise and to ensure they continue to be relevant with the advent of more advanced data processing that today’s technology is capable of.

Personal data is increasingly stored, processed and exchanged on the internet and as such often exists in an environment which knows no borders. It is therefore necessary for data protection standards to be negotiated and agreed at an international level. The UK’s data protection laws, therefore, need to interlock with international data protection arrangements. The 1998 Act implemented the European Data Protection Directive (Directive 95/46/EC). On 25 May 2018 the Directive will be replaced when the General Data Protection Regulation (the Regulation) applies. For personal data processed by competent authorities for law enforcement purposes the Bill transposes Directive 2016/680 (the Directive) into domestic legislation.

On 23 June 2016, the EU referendum took place and the people of the UK voted to leave the EU. Until exit negotiations are concluded, the UK remains a full member of the EU and all the rights and obligations of EU membership remain in force. During this period the government has stated that it will continue to negotiate, implement and apply EU legislation, including ensuring that the Regulation is able to operate compatibly with domestic law. When the UK leaves the EU the Regulation will be incorporated into the UK’s domestic law under the European Union (Withdrawal) Bill, currently before Parliament.

The Data Protection Bill will replace the 1998 Act to provide a comprehensive legal framework for data protection in the UK, supplemented by the Regulation until the UK leaves the EU. In addition to data processing within the scope of the Regulation, the Bill also makes provision for data processing for law enforcement purposes, and for national security and other purposes outside the scope of EU law.

On 12 April 2017 the government published a Call for Views, available here <https://www.gov.uk/government/consultations/general-data-protection-regulation-call-for-views>, on the exercise of the Regulation derogations.

Workshops have also been conducted with key law enforcement bodies to ensure the Directive is transposed into domestic legislation in a way that best meets the needs of the UK. In addition to these workshops, law enforcement stakeholders were sent a questionnaire to provide their views on the impacts of the Directive. On 7 August 2017 the responses received to the April Call for Views were published, together with a Statement of Intent, available here <https://www.gov.uk/government/news/government-to-strengthen-uk-data-protection-law>. This has formed the basis of the Data Protection Bill.

2. PUBLIC SECTOR EQUALITY DUTY

This document is the Equality Impact Assessment for the Data Protection Bill.

Section 149 of the Equality Act 2010 imposes a legal duty, known as the Public Sector Duty (Equality Duty), on all public bodies, to consider the impact on equalities in all policy and decision making.

The Equality Duty requires a public authority, in the exercise of its functions, to:

- consider the need to eliminate unlawful (direct or indirect) discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010;
- advance equality of opportunity between people who share a protected characteristic and those who do not share it; and
- foster good relations between people with a protected characteristic and those who do not share it.

The Public Sector Equality Duty came into force across Great Britain on 5 April 2011. It means that public bodies have to consider all individuals when carrying out their day-to-day work – in shaping policy, in delivering services and in relation to their own employees. The Equality Duty is not an obligation to achieve a particular result, but rather a mechanism to eliminate unlawful discrimination or to promote equality of opportunity and good relations between persons of different protected groups. It is a duty to have due regard to the need to achieve these goals.

The decision-maker must consciously take this need into account, and in deciding how much weight to accord to the need, have due regard to it. Due regard is the regard that is appropriate in all the circumstances. The choice on how much weight to attach to the countervailing factors is a matter for the decision-maker. If adverse impacts upon the three matters identified in section 149(1) (listed at paragraph 2 above) are met, the decisionmaker should consider whether to adopt measures to mitigate or remove that impact, but is not required to do so provided they have had due regard to the need in question.

Equality Impact Assessments are an important framework for demonstrating due regard through considering evidence and analysis to help identify the likely positive and negative impacts that policy proposals may have.

The relevant protected characteristics are: age, disability, gender re-assignment, Marriage and Civil Partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

Any queries about this initial Equality Analysis should be addressed to:
dataprotectionbill@culture.gov.uk

3. BACKGROUND

The Bill will provide for three data processing regimes. The first regime concerns personal data that is processed for a range of general purposes and supplements the Regulation. The new data protection framework will ensure processing is lawful, for example on the basis of clear and freely given consent. Data controllers must embed data protection ‘by design and default’, for example by producing data protection impact assessments for high risk processing to ensure adequate protections are in place and by notifying individuals affected by any breach that is likely to result in a high risk to their rights and freedoms. It will empower individuals giving them free access to their personal data, the right to move their personal data between controllers and to request deletion of it.

The second regime applies to personal data processing by competent authorities for law enforcement purposes (i.e. the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security). It strengthens the rights of data subjects whilst ensuring operational law enforcement needs are met. This regime will, in particular, ensure that the personal data of victims, witnesses and suspects of crime are duly protected and will facilitate cross-border judicial and police cooperation in the fight against crime. It will apply both to trans-national data sharing and domestic processing for law enforcement purposes, ensuring that all data processing for such purposes can be undertaken in accordance with a single unified scheme.

The third regime concerns the processing of personal data by the intelligence services. The processing of personal data by agencies or units dealing with national security issues is not within scope of the Regulation or the Directive. The Bill, therefore, will establish a new scheme for the intelligence services which is in line with recognised international standards as set out in the draft modernised Council of Europe Convention for the Protection of Individuals with Regard to Automated Processing of Personal Data (“Convention 108”).

4. ASSESSMENT

The Data Protection Bill will apply to all data controllers, processors and data subjects irrespective of age, disability, gender re-assignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. Drafts of the data protection package (the Regulation and the Directive) were published in 2012 by the EU. The Ministry of Justice produced an Equality Impact Assessment in 2012, available here <https://consult.justice.gov.uk/digital-communications/data-protection-proposals-cfe/results/eu-data-protection-reg-impact-assessment.pdf>, on the proposed package and found that there would be a minimal impact on Equality. Since 2012 the UK has been significantly involved in the negotiations leading to the final package. This has helped feed into the policy developments needed in respect of the provisions for the Bill. In setting out the required exemptions and safeguards in the Bill, consideration has been given to each protected characteristic to address any possible circumstances that may lead to discrimination and to promote equality.

There is reason to believe that the cross-cutting provisions of the new data protection law will serve to promote equality. For example, data subjects will benefit from strengthened rights to access personal data held about them, and for the first time this must be provided at no charge. Data subjects will continue to benefit from the ability to confirm personal data is accurately recorded, including by correcting inaccurate or outdated information, and backed by increased sanctions and penalties available to the Information Commissioner. There is some anecdotal evidence to suggest that existing data subject access rights have had a positive impact on individuals who believe they may have been discriminated against because it enables them to access information for use in discrimination complaints or litigation (for example discrimination relating to employment, an organisation's decision making process or consumer issues).

AGE

There is no identifiable impact on adults as a result of the new data protection framework. In recent times with the emergence of technological advancements, online threats and other environmental the need to reform the safeguards in place for children has been highlighted. Children will benefit from specific protection with regard to their personal data, as they may be less aware of the risks, consequences and safeguards concerned and their

rights in relation to the processing of personal data. Such specific protection will, in particular, apply to the use of personal data of children for the purposes of marketing or creating personality or user profiles and the collection of personal data with regard to children when using services offered directly to a child.

In addition, online services will need to gain parental consent where they process the personal data of individuals below a certain age. The Information Commissioner has issued a code of practice on the processing of personal information online¹ which states that, under current law, some form of parental agreement would normally be required before collecting personal data from children under 12 years of age.

The government proposes to use the Bill to set the age below which parental consent to online services is required at 13. This approach complements the additional overarching protection standards which children will benefit from (e.g. the right for individuals to be told the data controller's purpose in processing their personal data and to whom it is transferred onwards).

RELIGION OR BELIEF

The new data protection framework protects personal data regarding 'religious or philosophical beliefs' as a 'special category of data' (in the case of Part 2) and processing of it as 'sensitive processing' (in the case of Parts 3 and 4). As a result, any processing of personal data concerning religious or philosophical beliefs must now satisfy at least one of the narrowly defined circumstances (as set out in Article 9 of the GDPR, and Parts 3 and 4 of the Bill, as applicable).

Where these circumstances arise in many places the Bill provides additional safeguards. The overall effect is that the grounds for processing sensitive personal data are broadly comparable to the 1998 Act.

An existing condition, which allows certain categories of sensitive personal data to be processed 'for the purpose of identifying or keeping under review the existence or absence of equality of opportunity', including data revealing religious or philosophical beliefs, is retained. This is intended to help promote

¹ The Information Commissioner Personal information online code of practice can be found on the following website: https://ico.org.uk/media/1591/personal_information_online_cop.pdf

equality of opportunity between those who share these protected characteristics and those who do not.

DISABILITY

As with religion or belief, the new data protection framework protects personal data 'concerning health' as a 'special category of data' (in the case of Part 2) and processing of it as 'sensitive processing' (in the case of Parts 3 and 4). As noted above, additional safeguards are provided throughout the new data protection framework, for example processing of health data by health workers and social workers, and where a data subject is legally incapable of giving consent the processing is necessary to protect their vital interests. Where these circumstances arise in many places the Bill provides additional safeguards. The overall effect is that the grounds for processing sensitive personal data are broadly comparable to the 1998 Act. The existing condition for processing health data 'for the purpose of identifying or keeping under review the existence or absence of equality of opportunity' is retained. This is intended to help promote equality of opportunity between those who share these protected characteristics and those who do not.

One of the conditions commonly relied upon to process personal data, including health data, is consent. The standards of consent will be higher under the new framework than under the 1998 Act. The government recognises that there may be an impact on those incapable of giving consent which is 'freely given, specific, informed and unambiguous', such as those who have a learning disability. However, in such cases consent to process personal data can be given legally by another with a lasting power of attorney or through the Court of Protection.

GENDER RE-ASSIGNMENT

The Gender Recognition Act 2004 provides individuals with legal recognition in their acquired gender. Section 7 of the Equality Act 2010 enshrines gender re-assignment as a protected characteristic. Neither the 1998 Act nor the Regulation specify particular methods for addressing gender re-assignment in a data protection context. The Bill creates a comprehensive legal framework for data protection, which is applicable to everyone. The Bill seeks to work in harmony with existing rights for individuals. Furthermore it does not specify particular rights for a certain gender and should provide reassurance to individuals that have or may wish to clarify their preferences in the future. The Bill has no identifiable impact on individuals with this particular characteristic.

MARRIAGE AND CIVIL PARTNERSHIP

Neither the 1998 Act nor the Regulation specify particular methods for addressing marriage and civil partnership in a data protection context. The Bill creates a comprehensive legal framework for data protection, which is applicable to everyone. The Bill seeks to work in harmony with existing rights for individuals. The Bill has no identifiable impact on individuals with this particular characteristic.

PREGNANCY AND MATERNITY

As with religion or belief, the new data protection framework protects personal data 'concerning health' as a 'special category of data' (in the case of Part 2) and processing of it as 'sensitive processing' (in the case of Parts 3 and 4). As noted above, additional safeguards are provided throughout the new data protection framework, for example processing of health data by health workers and social workers, and where a data subject is legally incapable of giving consent the processing is necessary to protect their vital interests. Where these circumstances arise in many places the Bill provides additional safeguards. The overall effect is that the grounds for processing sensitive personal data are broadly comparable to the 1998 Act. The existing condition for processing health data 'for the purpose of identifying or keeping under review the existence or absence of equality of opportunity' is retained. This is intended to help promote equality of opportunity between those who share these protected characteristics and those who do not.

RACE

Race encompasses colour, nationality, and ethnic and national origins. As with religion or belief, the new data protection framework protects personal data 'revealing racial or ethnic origin' as a 'special category of data' (in the case of Part 2) and processing of it as 'sensitive processing' (in the case of Parts 3 and 4). As noted above, the overall effect is that the grounds for processing sensitive personal data are broadly comparable to the 1998 Act. The existing condition for processing personal data revealing racial or ethnic origin 'for the purpose of identifying or keeping under review the existence or absence of equality of opportunity' is retained. This is intended to help promote equality of opportunity between those who share these protected characteristics and those who do not.

SEX

Neither the 1998 Act nor the Regulation specify particular methods for addressing sex in a data protection context. The Bill creates a comprehensive legal framework for data protection, which is applicable to everyone. The Bill seeks to work in harmony with existing rights for individuals.

SEXUAL ORIENTATION

As with religion or belief, the new data protection framework protects personal data 'concerning sex life and sexual orientation' as a 'special category of data' (in the case of Part 2) and processing of it as 'sensitive processing' (in the case of Parts 3 and 4). As noted above, the overall effect is that the grounds for processing sensitive personal data are broadly comparable to the 1998 Act. The existing condition for processing personal data 'for the purpose of identifying or keeping under review the existence or absence of equality of opportunity' is newly expanded to include personal data concerning an individual's sexual orientation. This is intended to help promote equality of opportunity between those who share these protected characteristics and those who do not.

OVERALL IMPACT OF THE DATA PROTECTION BILL

The new data protection framework maintains the strong protections that currently exist to protect individuals and the processing of personal data that would reveal protected characteristics. There have been a number of news articles on the data protection package and we anticipate further coverage as the Bill progresses through the Parliamentary process. This will help to promote awareness with data subjects, as will the new, clear and unambiguous, processing notices and the requirements for consent to be explicitly given.

For the reasons set out above, the government believes, overall, that this Bill helps to protect and promote equality of opportunity between those who share protected characteristics and those who do not and helps to eliminate unlawful discrimination.

The government considers that the Bill does not harm or create barriers to good relations between individuals who share protected characteristics and those who do not.