



Department  
for Culture  
Media & Sport

# **Call for views on the General Data Protection Regulation derogations**

12 April 2017

# Foreword

## **The General Data Protection Regulation**

The EU General Data Protection Regulation (GDPR) will apply in the UK from 25 May 2018. The UK remains a member of the European Union until we leave and the full rights and obligations of membership will apply until then, which includes an obligation to implement the GDPR.

As the GDPR is a regulation, there is limited scope for flexibility in its application. However, the UK pressed hard throughout negotiations to ensure that the GDPR does not place unnecessary burdens on business. There are also derogations (exemptions) within the GDPR where the UK can exercise discretion over how certain provisions will apply.

For all derogations, stakeholders are encouraged to submit their views through the online 'Call for Views'. This exercise will capture views on the flexibilities permitted within the GDPR. This consultation approach is an opportunity to inform our derogations policy and is complemented by discussions we are already having with a range stakeholders.

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## 1. How To Respond

We welcome your views. To help us analyse the responses please use the online system wherever possible. Visit the Department's online tool [here](#) to submit your response. Hard copy responses can be sent to:

**Data Protection Team**  
**Department for Culture, Media & Sport**  
**4<sup>th</sup> Floor**  
**100 Parliament Street**  
**London**  
**SW1A 2BQ**

The closing date for responses is 10<sup>th</sup> May 2017.

When providing your response, please also provide contact details - we may seek further information or clarification of your views.

This document is also provided in a Welsh language version. Should you require access to the consultation in another format (e.g. Braille, large font or audio) please contact us on 020 7211 6000 or [GDPRCallforViews@culture.gov.uk](mailto:GDPRCallforViews@culture.gov.uk)

Copies of responses, in full or in summary, may be published after the consultation closing date on the Department's [website](#).

### **Freedom of Information**

Information provided in the course of this consultation, including personal information, may be published or disclosed in accordance with access to information regimes, primarily the Freedom of Information Act 2000 (FOIA) and the Data Protection Act 1998 (DPA).

If you want the information you provide to be treated confidentially, please be aware that, in accordance with the FOIA, public authorities are required to comply with a statutory code of practice which deals, amongst other things, with obligations of confidence. In view of this, it would be helpful if you could explain to us why you wish that information to be treated confidentially. If we receive a request for disclosure of that information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances.

The Department for Culture, Media and Sport will process your personal data in accordance with the DPA and, in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties. This consultation follows the UK government's [consultation principles](#).

## 2. Background to the General Data Protection Regulation

The rapid growth of the digital economy over the last decade has resulted in an enormous increase in the volume of exchanges of personal data. Delivery of services and content on the internet is often linked to the collection of information about users and their habits and preferences, and automated decision-making both in public and private sectors is rising. These developments have raised issues around the need to strengthen the rights of individuals and protection of personal data online.

The 1995 EU Data Protection Directive (95/46/EC) established a harmonised framework for the processing of personal data and for the free movement of such data within the EU. The UK implemented the Directive through the Data Protection Act 1998 (DPA) which is the main piece of legislation that governs the protection of personal data in the UK today.

In response to the increased level of data processing, the need for greater protection of personal data, better enforcement and the harmonisation of the rules, the EU Commission published proposals for the reform of data protection legislation in 2012.

In April 2016, the GDPR, which repeals and updates the EU Data Protection Directive (95/46/EC), was formally agreed. It is directly applicable legislation and hence automatically will become part of UK law from 25 May 2018.

For further information on the GDPR please see the Information Commissioner's Office website.

### 3. Questions

The call for views is split into themes which are listed in the table of contents.

You do not have to provide a response to all of the questions - you can answer as many or as few as you wish.

#### Theme 1 - Supervisory Authority

##### Supervisory authority

Article 51 - Supervisory Authority

Article 53 - General conditions for the members of the supervisory authority

Article 54 - Rules on the establishment of the supervisory authority

Article 58 - Powers

Article 59 - Activity reports

Article 62 - Joint operations of supervisory authorities

Article 90 - Obligations of secrecy

Government would welcome your views on the derogations contained in the articles above. Please ensure that you refer to specific articles/derogations.

If you have any further information to support your views, please email:  
GDPRCallforViews@culture.gov.uk

#### Theme 2 - Sanctions

##### Sanctions

The derogations relating to sanctions include articles:

Article 36 - Prior consultation

Article 58 - Powers

Article 83 - General conditions for imposing administrative fines

Article 84 - Penalties

Government would welcome your views on the derogations contained in the articles above. Please ensure that you refer to specific articles/derogations.

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### **Theme 3 - Demonstrating Compliance**

#### Demonstrating compliance

The derogations relating to compliance include articles:

- Article 40 - Codes of conduct
- Article 42 - Certification
- Article 43 - Certification bodies

Government would welcome your views on the derogations contained in the articles above. Please ensure that you refer to specific articles/derogations.

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### **Theme 4 - Data Protection Officers**

#### Data Protection Officers

The derogations relating to data protection officers include articles:

- Article 4 - Definitions
- Article 37 - Designation of the data protection officer
- Article 38 - Position of the data protection officer

Government would welcome your views on the derogations contained in the articles above. Please ensure that you refer to specific articles/derogations.

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## Theme 5 - Archiving and Research

The derogations related to archiving and research include articles:

Article 89 - Safeguards and derogations relating to processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes

Government would welcome your views on the derogations contained in the articles above. Please ensure that you refer to specific articles/derogations.

If you have any further information to support your views, please email:  
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## Theme 6 - Third Country Transfers

Third Country Transfers

The derogations related to third country transfers include articles:

Article 49 - Derogations for specific situations

Government would welcome your views on the derogations contained in the articles above. Please ensure that you refer to specific articles/derogations.

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## Theme 7 - Sensitive personal data and exceptions

Sensitive personal data and exceptions

The derogations related to Sensitive Personal Data and Exceptions include articles:

Article 9 - Processing of special categories of personal data

Government would welcome your views on the derogations contained in the articles above. Please ensure that you refer to specific articles/derogations.

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GDPRCallforViews@culture.gov.uk

## **Theme 8 - Criminal Convictions**

### Criminal Convictions

The derogations related to criminal convictions include articles:

Article 10 - Processing of personal data relating to criminal convictions and offences

Government would welcome your views on the derogations contained in the articles above. Please ensure that you refer to specific articles/derogations.

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## **Theme 9 - Rights and Remedies**

### Rights and Remedies

The derogations related to Rights and Remedies include articles:

Article 17 - Right to erasure ('right to be forgotten')

Article 22 - Automated individual decision-making, including profiling

Article 26 - Joint controllers

Article 80 - representation of data subjects

Government would welcome your views on the derogations contained in the articles above. Please ensure that you refer to specific articles/derogations.

If you have any further information to support your views, please email:  
GDPRCallforViews@culture.gov.uk

## **Theme 10 - Processing of Children's Personal Data by Online Services**

### Processing of Children's Personal Data by Online Services

The derogation related to the processing of Children's Personal Data by Online Services include articles:

Article 8 - Conditions applicable to child's consent in relation to information society services.

Government would welcome your views on the derogations contained in the articles above. Please ensure that you refer to specific articles/derogations.

If you have any further information to support your views, please email: [GDPRCallforViews@culture.gov.uk](mailto:GDPRCallforViews@culture.gov.uk)

## **Theme 11 - Freedom of Expression in the Media**

### Freedom of Expression in the Media

The derogations related to Freedom of Expression in the Media include articles:

Article 85 - Processing and freedom of expression and information

Government would welcome your views on the derogations contained in the articles above. Please ensure that you refer to specific articles/derogations.

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## **Theme 12 - Processing of Data**

### Processing of Data

The derogations related to processing of data include articles:

Article 6 - Lawfulness of processing

Article 18 - Right to restriction of processing

Article 28 - Processor

Article 29 - Processing under the authority of the controller or processor

Article 32 - Security of processing

Article 35 - Data protection impact assessment

Article 37 - Designation of the data protection officer  
Article 86 - Processing and public access to official documents  
Article 87 - Processing of the national identification number  
Article 88 - Processing in the context of employment

Government would welcome your views on the derogations contained in the articles above. Please ensure that you refer to specific articles/derogations.

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### **Theme 13 - Restrictions**

#### Restrictions

Article 23 permits member states to legislate domestically measures which restrict the application of various rights and duties under the Regulation. The restrictions may apply to all of the individual rights in articles 12-22, and to the data protection principles in article 5 in so far as they correspond to the Article 12-22 rights. The scope of Article 23 effectively continues similar restrictions that exist under the Current Directive and which were used in the Data Protection Act 1998 (DPA) to shape appropriate exemptions from the requirements of the DPA where that was permissible.

The derogations related to restrictions include articles:

Article 23 - Restrictions

Government would welcome your views on the derogations contained in the articles above. Please ensure that you refer to specific articles/derogations.

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### **Theme 14 - Rules surrounding Churches and Religious Associations**

#### Rules surrounding Churches and Religious Associations

The derogations related to Rules surrounding Churches and Religious associations include articles:

Article 91 - Existing data protection rules of churches and religious associations

Government would welcome your views on the derogations contained in the articles above. Please ensure that you refer to specific articles/derogations.

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**Additional question – cost impact**

In the context of the derogations above, what steps should the Government take to minimise the cost or burden to business of the GDPR?

If you have further information to support your views, please email to: [GDPRCallforViews@culture.gov.uk](mailto:GDPRCallforViews@culture.gov.uk)



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