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BILETA Response to DCMS Call for views on the General Data Protection Regulation derogations

This is a collaborative submission from a group of academics based in the UK with expertise in Information technology law and related areas. The preparation of the response has been funded by the British and Irish Law Education Law and Technology Association (BILETA). This submission is prepared by Dr Karen Mc Cullagh (non-practising Solicitor). Dr Karen Mc Cullagh is Course Director of the LLM in Media Law, Policy & Practice at the University of East Anglia. Her research specialism is Information Rights - encompassing both Data Protection and Freedom of Information.

This response has been approved by the Executive of BILETA (the British and Irish Law, Education and Technology Association http://www.bileta.ac.uk/default.aspx) and is therefore submitted on behalf of BILETA.

In addition, this response is submitted by the following individuals:

University of Aberdeen

UEA Law School

University of Birmingham

University of Hertfordshire

Theme 5 - Archiving and Research

Under Directive 95/46/EC, Universities could rely on 'legitimate interests' as a lawful basis for processing personal data when conducting research. However, Art 6(1)(f) GDPR stipulates that this basis can only be relied upon by private bodies, so UK Universities (public authorities) will have to rely on alternative processing conditions such as public interest (Art 6 (1)(e) or consent, Art 6 (1)(a), unless a derogation is introduced.

Recommendations:
(1) the Government legislate to either (a) classify Universities as hybrid bodies or (b) provide a mandate for Universities to continue to use 'legitimate interests' as a lawful basis for processing. This would provide legal clarity and certainty for UK-based researchers, and facilitate transnational research with European university partners (Recital 41, Art 89).[1 & 2] (2) ICO issue guidance on how the GDPR fits with common law and ethical approval frameworks e.g. Confidentiality Advisory Group, E&W.
[1] Stevens, L. The Proposed Data Protection Regulation and Its Potential Impact on Social Sciences Research in the UK; [2] Wellcome Trust, Analysis: Research and the General Data Protection Regulation.

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

Art 8 GDPR allows member states to determine what age between 13 and 16 to set as the digital "age of consent" for Information Society Services (ISSs). Currently, many ISSs do not allow u13s to register prompting many children to lie about their age. The effect: children are vulnerable to abuse, cyber bullying, grooming and exposure advertising aimed at adults.

Recommendations: (1) the **Government should** (a) **conduct an impact assessment and sponsor independent research into children's interaction with and capacity to understand** privacy notices and information regarding profiling, advertising and advergames (b) use the findings to set the threshold age to reflect the capacity of children; (2) The UK Council for Child Internet Safety and ICO should be tasked with (a) providing materials so that **all teachers are trained in delivering internet safety education** and **(b)** develop **public education programmes targeting parents** to address low levels of parental digital literacy (Art. 57(1)(b), Art 40).[2]
[2] Mc Cullagh, K. (2016) The General Data Protection Regulation: A Partial Success for Children on Social Network Sites?, ISBN 978-951-51-2530-9

Theme 11 - Freedom of Expression in the Media

Article 85 enables Member States to provide derogations for academic expression. Some types of research conducted at Universities does not fit into

the research model envisioned in Article 89, for example, arts and humanities research including politics, modern history and law.
Recommendation: the Government legislates to implement Article 85 that facilitates research in the arts and humanities**.** [3]
[3] Erdos, D. (2015) From the Scylla of Restriction to the Charybdis of Licence? Exploring the scope of the "special purposes" freedom of expression shield in European data protection, *Common Market Law Review*, Vol. 52 (1), pp. 119-153