

Explanatory Framework for Adequacy Discussions

Section C: The UK's Legislative Framework

Overview

This section briefly sets out the key pieces of the UK's legislative framework, and their relationship to one another.

Section C: Legislative Framework

Introduction

On 25 May 2018, the EU's General Data Protection Regulation (EU GDPR) began to apply in the UK. The EU GDPR applied to "general" data processing that is within the scope of EU law.

Although it was a directly applicable EU regulation, domestic legislation was required to supplement the provisions of the EU GDPR, e.g. clarifying certain terms for domestic purposes, exercising a number of restrictions permitted by the EU GDPR, as well as implementing the separate Law Enforcement Directive (LED). This was achieved via the Data Protection Act 2018 (DPA 2018)¹.

As part of preparations for EU exit, the UK Government enacted the following two pieces of legislation.

The **European Union (Withdrawal) Act 2018 ("EUWA")** incorporates directly applicable EU legislation into UK law. This includes the GDPR and is called "retained EU law." Under the EUWA, Ministers have the power to introduce secondary legislation, via statutory instruments, to prevent or remedy any deficiencies in retained EU law that result from the UK's withdrawal from the EU.²

The **Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (known as "the DPPEC Regulations")** exercise this power. They amend the GDPR as brought in through EUWA, the DPA 2018, and other data protection legislation so that the UK's data protection framework continues to be operable in a domestic context. Key changes are:

- Renaming of the GDPR as the "**UK GDPR**"³;
- Replacement of EU terminology, such as "Member State", "Union law", and "supervisory authority" with UK equivalents;
- Repatriation of certain powers from the EU bodies to the Secretary of State or ICO.

The UK's main data protection legislation therefore consists of:

1. The **UK GDPR**, as incorporated under EUWA and amended by the DPPEC Regulations;
2. The **DPA 2018**, as enacted in May 2018 and amended by the DPPEC Regulations.

The structure of both is outlined below.

The UK GDPR

¹ The Data Protection Act 2018 (DPA 2018) is also referred to as the "2018 Act".

² The use, and process, of secondary legislation is outlined in Section J3.

³ The UK GDPR also covers certain general processing activities that were outside the scope of EU law.

Section C: Legislative Framework

The UK GDPR follows the structure of the EU GDPR but with Chapter VII (Cooperation and Consistency) and Chapter X (Delegated and Implementing Acts) removed. Some chapters within the UK GDPR are supplemented by the Data Protection Act 2018. The chapters are as follows:

Chapter I - General provisions

The first chapter of the UK GDPR covers general provisions. This includes the subject-matter, objectives, material scope and definitions of the main concepts and terms.

Chapter II - Principles

The second chapter of the UK GDPR outlines the key principles, the legal bases, and the conditions of consent for personal data processing. In addition, the chapter focuses on sensitive data and the rules surrounding special category data processing.

Chapter III - Rights of the data subject

Chapter III covers the various 'data subject rights' that the UK GDPR affords individuals whose data is processed. These include such rights as the right to information, right of access to personal data, the right to restrict processing, the right to object, the right to erasure and other rights.

Chapter IV - Controller and processor

Chapter IV focuses on the roles of the data controller ("controller") and data processor ("processor"), including their responsibilities and obligations, such as record keeping, ensuring the security of processing, the designation of a data protection officer, and the need for codes of conduct.

Chapter V - Transfers of personal data to third countries or international organisations

Chapter V governs the transfer of personal data to third countries or international organisations. It sets out the UK's international transfer mechanisms, such as adequacy regulations made by the Secretary of State, standard data protection clauses, and specific circumstances. It also provides a basis for cooperation between the Information Commissioner and data protection authorities in other jurisdictions.

Chapter VI - The Commissioner

Chapter VI sets out the responsibility of the Information Commissioner for monitoring the application of the UK GDPR, as well as their duties and powers. These include, among others, monitoring and enforcement of the UK GDPR, informing controllers and processors of their obligations, raising public awareness, and conducting investigations on behalf of data subjects.

Chapter VIII - Remedies, liability and penalties

Section C: Legislative Framework

Chapter VIII sets out the various rights, procedures, and conditions for remedies, liability, and penalties. Rights include: the right to lodge a complaint with the Commissioner; the right to an effective judicial remedy against the Commissioner; the right to an effective judicial remedy against a controller or processor; and the right to compensation and liability. Additionally, it stipulates fines and the conditions under which they might be levied.

Chapter IX - Provisions relating to specific processing situations

Chapter IX focuses on specific types of processing that require special rules, safeguards and/or exemptions. These include, but are not limited to, processing in relation to freedom of expression such as for journalistic, academic, artistic or literary purposes, public access to official documents, and processing for national security and defence purposes.

Chapter XI- Final provisions

Chapter XI sets out final provisions and clarifies how the UK GDPR interacts with other pieces of legislation, for example the Privacy and Electronic Communications (EC Directive) Regulations 2003 (S.I. 2003/2426), which concerns the processing of personal data and the protection of privacy in the electronic communications sector.

As noted above, [Section D](#) (Adequacy Referential) provides detail on the key elements of the UK GDPR (as supplemented by the DPA 2018 below) in comparison to the benchmarks established by the European Data Protection Board's Adequacy Referential.

The Data Protection Act 2018

The Data Protection Act 2018 (DPA) is split into seven parts. Some sections within the Act are supplemented by provision in the Schedules.

Part 1 - Preliminary

Part 1 provides an overview of what provision is made within the Act. It also provides definitions for key terms used throughout the Act, which are broadly the same as those found at Article 4 of the UK GDPR.

Part 2 - General Processing

Part 2 covers general processing of personal data. It sets out the lawfulness of processing under the UK GDPR and exercises a number of available restrictions within it.

Part 3 - Law Enforcement Processing

Part 3 transposed the Law Enforcement Directive (2016/680) into UK law and provides a bespoke framework for law enforcement processing, tailored to the needs of the police, prosecutors, and others (referred to in the DPA 2018 as "competent authorities").

Part 4 - Intelligence Service Processing

Section C: Legislative Framework

Part 4 provides a specific data protection regime for the processing of personal data by the intelligence services.

Part 5 - The Information Commissioner

Part 5 sets out the role of the Information Commissioner as the UK's independent supervisory authority. It details the Information Commissioner's functions and duties, including powers to create codes of practice and issue guidance. It also provides information about the international responsibilities of the Commissioner.

Part 6 - Enforcement

Part 6 sets out the enforcement regime and provides the offences for breaching data protection legislation.

Part 7

Part 7 sets out additional provisions e.g. relating to offences, definitions, and territorial application.

Schedules 1 to 18

The Schedules support specific sections in the Act, e.g. the conditions for the processing of sensitive and criminal convictions data; exemptions from the UK GDPR and ICO enforcement powers. Schedule 6 has been removed by the DPPEC Regulations 2019. The remaining schedules are as follows:

- Schedule 1: Conditions for processing sensitive and criminal convictions' data;
- Schedules 2-4: Restriction to Data Subject rights and other provisions;
- Schedule 5: Accreditation of certification providers. This sets out the processes and conditions for reviews and appeals;
- Schedule 7: Competent authorities. This sets out a list of competent authorities as defined by Part 3 of the Act (Law Enforcement processing);
- Schedule 8: Conditions for sensitive processing under Part 3 (Law Enforcement processing);
- Schedule 9: Conditions for processing under Part 4 (intelligence services' processing);
- Schedule 10: Conditions for sensitive processing under Part 4 (intelligence services' processing);
- Schedule 11: Other exemptions under Part 4 (intelligence services' processing);

Section C: Legislative Framework

- Schedule 12: The Information Commissioner. This includes provisions for appointment, pay and pensions;
- Schedule 13: Other general functions of the Commissioner. This sets out functions such as promoting awareness, conducting investigations on Part 3 and Part 4, and monitoring developments that impact on the processing of personal data;
- Schedule 14: Cooperation and mutual assistance. This covers cooperation between the ICO and foreign designated authorities;
- Schedule 15: Powers of entry and inspection for the Information Commissioner. This includes conditions for issuing warrants;
- Schedule 16: Penalties. This sets out processes and conditions for penalties imposed by the ICO;
- Schedule 17: Review of processing of personal data for the purposes of journalism;
- Schedule 18: Relevant records. This defines what a relevant record is for the purpose of the offence in Section 184 around requiring certain employees or contractors to produce relevant records as a condition of their employment or contract;
- Schedule 19: Minor and consequential amendments, including amendments to other legislation;
- Schedule 20: Transitional provisions, including preserving certain parts of the DPA 1998;
- Schedule 21: Further transitional provisions, including recognising existing Commission adequacy decisions.

Other Legislation

Other sections make reference to various sectoral provisions. These are listed in Section J2.