

Data Reform Bill

Lead department	Department for Digital, Culture, Media and Sport
Summary of proposal	The proposal seeks to update and simplify the UK's data protection framework and includes measures relating to areas such as digital identity and 'smart data'.
Submission type	Impact assessment (IA) – 13 June 2022
Legislation type	Primary legislation
Implementation date	tbc
Policy stage	Final
RPC reference	RPC-DCMS-5180(1)
Opinion type	Formal
Date of issue	7 July 2022

RPC opinion

Rating¹	RPC opinion
Fit for purpose	The IA's BIT classification, monetisation of direct impacts on business and assessment of impacts on SMBs is fit for purpose. Subject to better regulation framework requirements, further IAs supporting secondary legislation will need to be submitted to the RPC for validation of further EANDCB figures. On first submission the IA received an initial review notice (IRN) – see below for details.

Business impact target assessment

	Department assessment	RPC validated
Classification	Non-qualifying regulatory provision - pro-competition (initial) Qualifying regulatory provision - OUT (final)	Qualifying regulatory provision (OUT)
Equivalent annual net direct cost to business (EANDCB)	-£66.1 million	-£66.1 million (2019 prices, 2020 pv). Further IA(s), supporting secondary legislation, to be submitted to the RPC

¹ The RPC opinion rating is based only on the robustness of the EANDCB and quality of the SaMBA, as set out in the [Better Regulation Framework](#). RPC ratings are fit for purpose or not fit for purpose.

		for validation of further EANDCB figure(s).
Business impact target (BIT) score	-£330.5 million	-£330.5 million
Business net present value	£1,984.5 million	
Overall net present value	£4,656.9 million	

RPC summary

Category	Quality ²	RPC comments
EANDCB	Green	The IA's BIT classification is now appropriate and its classification of impacts into direct and indirect is in line with RPC guidance.
Small and micro business assessment (SaMBA)	Green	The proposal reduces compliance costs and the impacts on SMBs are therefore expected to be generally positive. The assessment of costs to SMB suppliers of IT to the health and care sectors has been strengthened significantly.
Rationale and options	Satisfactory	The IA's assessment of rationale has been strengthened significantly. The IA could discuss how the different measures in the Bill could potentially form different options.
Cost-benefit analysis	Satisfactory	The IA provides a significant monetised assessment of societal impacts for primary legislation stage. There remains significant uncertainty around some estimates, given the limited evidence and difficulties in assessing impacts.
Wider impacts	Satisfactory	The IA provides a reasonable assessment of competition and innovation impacts throughout, and a strengthened assessment of trade impacts.
Monitoring and evaluation plan	Satisfactory	The IA includes a monitoring and evaluation plan which sets out in some detail long-run impacts, how these will be measured and how evidence gaps will be filled.

² The RPC quality ratings are used to indicate the quality and robustness of the evidence used to support different analytical areas. Please find the definitions of the RPC quality ratings [here](#).

Response to initial review:

As originally submitted, the IA was not fit for purpose for two reasons:

1. it had classified the proposal as non-qualifying under the pro-competition exclusion without providing an assessment against the four criteria in the better regulation framework guidance; and
2. there was no indication of the potential scale of impact on business of the primary powers to require IT suppliers of products/services to the health and care system to meet specified open data architecture standards.

The Department has now:

1. reclassified the measure as qualifying against the BIT; and
2. provided an indication of the potential scale of direct impacts on IT suppliers to the health and social care sector and provided further qualitative analysis of indirect costs.

Summary of proposal

The proposal aims to update and simplify the UK's data protection framework and the role of the Information Commissioner's Office (ICO), while focusing on protecting individuals' data rights and generating societal, scientific, and economic benefits.

The IA groups the proposed measures into the following reform subheadings:

- a) Removing barriers to responsible innovation
- b) Reducing burdens on businesses and delivering better outcomes for people
- c) Boosting trade and removing barriers to data flows
- d) Delivering better public services
- e) Reform of the Information Commissioner's Office
- f) Public Safety and National Security
- g) Health and Social Care
- h) Digital Identity
- i) Smart Data
- j) Technical Reforms.
- k) Removing requirements on registrars to hold paper records of births and deaths.

The estimated direct cost savings to business fall under b) and reflect measures to reduce existing compliance costs, such as threshold changes for responding to subject access requests (SARs) under UK-GDPR. The IA presents an EANDCB figure of -£74.8m (-£66.1m in 2019 prices and 2020 present value base year). The main overall estimated impacts come from the Digital Identity measures (h), which allow public sector organisations to open their data for private sector use. The IA assesses potential uses in areas such as employee mobility, travel authorisation & ticketing, home buying and trusted financial transactions. This draws upon analysis commissioned by the Home Office. These impacts account for most of the impacts in the NPV and business NPV figures (£4.7bn and £2.0bn, respectively, 2019 prices and 2020 present value base year). The Bill includes powers relating to Smart Data (i) and the IA includes indicative analysis from a separate BEIS IA, with further assessment to be provided at secondary legislation stage.

The IA lists reforms in the bill that will be followed by secondary legislation, whether these are likely to include any direct costs or benefits to business and which department will be responsible for producing the secondary legislation IAs (table 11, page 42). Subject to better regulation framework requirements, the RPC expects to see these IAs for validation of EANDCB figures.

EANDCB

BIT classification

Following the RPC's initial review, the Department has reclassified the measures as qualifying against the BIT for the current Parliament on the basis that they do not satisfy the four pro-competitive criteria in the better regulation framework guidance. The Department's BIT classification appears to be appropriate.

Direct/indirect

The EANDCB figure is driven by business compliance cost savings, mainly through reduced burdens in responding to SARs (£59.1 million). Other benefits, such as enhanced productivity resulting from the proposals encouraging businesses to make better use of data, are treated as indirect. Costs and benefits to business related to Digital Identity (h) are treated as indirect because the proposal only gives government departments the option of opening their datasets to private sector use via digital identities. Business adoption of digital identity verification methods are therefore dependent on further actions by the public sector, businesses and consumers. Overall, the IA's classification of business impacts into direct and indirect is consistent with RPC guidance.

Assessment of impacts at primary legislation stage

The Department's assessment of impacts at primary legislation stage is consistent with RPC guidance.³ The RPC can validate an EANDCB figure for parts of the proposal at this stage; for other elements further IAs will need to be submitted for validation at the secondary legislation stage.

The Department has clarified its treatment of impacts of the primary powers to require IT suppliers of products/services to the health and care system to meet specified open data architecture standards. The IA now usefully provides descriptive material on the potential number of suppliers affected and information on business size. The IA correctly treats product/service reconfiguration costs to IT suppliers necessary to meet the new standards of the health and social care sectors as direct costs to business.

The IA includes an indication of the potential scale of these impacts (paragraphs 337 to 364, pages 108-114). The Department uses data from IAs on two measures (*midata* and pensions dashboard, which required changes in IT infrastructure to facilitate data mobility and transparency) to provide an indication of the potential scale of costs to business. The assessment would benefit from providing greater explanation for why the costs from these IAs can be taken to be reasonably indicative of the impact on IT suppliers here. The assessment would also benefit from providing consultation or other evidence from the suppliers potentially affected.

The IA notes that a “...*full and robust assessment of the impacts, including an EANDCB will be produced as part of commencement regulations and/or regulations (secondary legislation stage) once the details of how the powers will be used are finalised*” (paragraph 338, page 109). Subject to better regulation framework requirements, the RPC expects to see this IA for validation of an EANDCB figure.

The IA provides further qualitative analysis of indirect costs (paragraphs 406 to 414). The Department treats the impacts of business of the accreditation measure as indirect on the basis that businesses are not required to join the scheme. The IA would benefit from discussing whether membership of such a scheme could become a *de facto* requirement for IT suppliers to win contracts.

As noted above, the Department's EANDCB figure excludes impacts relating to enabling powers to improve interoperability across health and social care systems and those of other reforms in the bill to be followed by secondary legislation. Subject to better regulation framework requirements, the RPC would expect to see further IAs for validation of further EANDCB figures.

³ <https://www.gov.uk/government/publications/rpc-case-histories-primary-legislation-ias-august-2019>. The Department's assessment is consistent with 'scenario 1b' in the guidance.

SaMBA

The Department has added further detail to the SaMBA (paragraphs 478 to 482, pages 146-147). It is acknowledged that use of the primary power relating to IT suppliers could place smaller and newer suppliers at a competitive disadvantage. The IA has been strengthened by providing a breakdown of the number and approximate size of IT suppliers in the health and social care market. The assessment of potential impacts here would benefit from further strengthening at secondary legislation stage. Since the overall set of measures appears to change the competitive landscape, the IA would benefit from assessing the number and role of SMBs in other identifiable areas and explain whether and how competition and innovation impacts into account when developing the requirements for different businesses. The SaMBA could be expanded to take further account of the impact of the digital ID proposal on SMBs, perhaps drawing upon the EU IA's analysis of impacts on small businesses as both eID/trust service providers and end users.

Rationale and options

The rationale for intervention has been updated (paragraphs 31 to 40, pages 12 to 19) to address comments made during the initial RPC review, in particular around the IA's theme that the market (in data) fails as a result of the complexity of regulation (with the implication being that simplification would remedy the market failure). The IA now seeks to address more directly how 'complexity' contributes to market failures, why the issues could not be addressed by revised guidance and/or a suitable competent authority acting within the existing regulatory framework and how the proposals would remedy the market failures. The IA also now refers to market failure in different parts of data value chains.

The assessment would benefit from further discussion of the extent to which competition may be potentially inefficient in parts of the value chain (e.g. due to loss of scale/scope economies). The IA could further consider the potential for market failure in value chains linked to non-personal data. The IA could also discuss data 'de-personalisation' (through anonymisation, pseudonymisation, training of algorithms and synthetic data) and its potential for removing/easing some of the problems.

The Bill includes several measures in a variety of areas and the IA would benefit from discussing how different combinations of these could form different options.

Cost-benefit analysis

Evidence and data

The IA now presents sources and/or the bases for the assumed percentage of organisations affected and percentage reduction in compliance costs (mainly in the footnotes on pages 56-60). Whilst the sensitivity analysis on these assumptions is welcome, the evidence for the assumptions is limited and this is a particular area of uncertainty in the analysis. This would seem to be a priority area for the post-implementation review.

The IA would benefit from discussing the robustness of the cost estimates for responding to SARs, in particular the extent to which such costs and response speeds vary according to business processes and systems configuration.

Risks

The IA's section on risks has been usefully expanded, in particular to take account of risks associated with the reform of the accountability framework proposal. This could benefit from discussing interactions with the proposed threshold changes for responding to SARs. On Digital Identity, the IA draws extensively on research by Deloitte on benefits and operational costs. The IA would benefit from further discussion on risks in this area, particularly around inclusion of incorrect primary data or data processing results. The IA would benefit from discussing analysis and evidence produced by the EU in the context of the current European Digital Identity Framework and upcoming Data Act.

On the proposals under 'further processing' (of personal data), the IA would benefit from discussing risks to the availability and utility of voluntarily-supplied data (including for the compatible purposes for which consent was originally obtained) and of costly or deterrent uncertainty on firms engaged in the process as processors in their own right or as data controllers. The IA could discuss the role of clear definitions and/or an identified adjudicating authority and processes for transparency, appeal, etc in mitigating these risks.

The IA's position appears to be that personal data is a valuable, unutilised asset and that "unlocking" this generates large commercial and consumer benefit at little cost. An alternative view could be that such "unlocking" results in businesses gaining at the expense of consumers (for example, by enabling firms to identify individual consumers' willingness to pay for a particular product and to devise bespoke prices to take advantage). The IA would benefit from discussing such an alternative view and explicitly addressing why it is appropriate to treat the use of personal data as a net gain to society rather than a transfer from consumers to business.

On public sector organisations opening their data for private sector use, the IA could usefully discuss experience with previous initiatives (in the UK and the EU, due to the inclusion of the eIDAS - electronic identification and trust services - Regulation as retained EU law), in particular where there have been problems with publicly-held data originating from the private sector. The IA would benefit from setting out explicitly how eIDAS is treated in the counterfactual.

Wider impacts

On trade, the IA provides indicative analysis of the possible costs to business if the proposals resulted in the UK losing data adequacy status with the EU, for example costs of implementing Standard Contractual Clauses (SCCs) and potential lost export revenue. In response to RPC comments, the IA's coverage of this area has been strengthened, in particular through assessment of the impact on the NPV (table 55, page 161). The IA also provides greater description of the relationship between adequacy, financial services and the equivalence decision, and provides explanation of the lack of currently available evidence to assess how the potential loss of adequacy might affect trade with third parties (paragraphs 534 to 541, pages 159-161).

The IA provides significant discussion of competition and innovation impacts throughout. The IA could discuss technology impacts and their possible trade benefits, not just bilaterally but in global markets, further. Following RPC initial review, a discussion on AI ethics has been added at paragraphs 427-430. This is an area where assessments at secondary legislation IA stage will need to consider carefully behavioural responses (of citizens/data subjects and businesses) and the international dimension. This assessment will need to take account of initiatives elsewhere, including the AI code that took effect in China in May 2022, US and Canadian initiatives currently under development and, in particular, the EU's "AI Act".⁴ The IA could benefit from further discussing potential risks to data privacy of individuals and from easing the re-use of personal data for R&D and innovation

Monitoring and evaluation plan

The IA includes a thorough monitoring and evaluation plan (pages 186-194). The Department commits to a process and impact evaluation. This sets out a 'theory of change' (figure 5) and sets out in some detail long-run impacts, how these will be measured and how evidence gaps will be filled (tables 74 and 75). It discusses the role of other government departments, in particular BEIS in respect of Smart Data. Given the complexity of the area, the plan would benefit from discussing further the difficulties in assessing the additional impact of the proposal and how they will be addressed. The plan could also take further account of planned reforms of the Information Commissioner's Office and the expanded roles of OfCom and the CMA. In addition, given that the policy area will be taken forward across departments and in some cases following secondary legislation, it would be helpful to discuss further how the M&E will be brought together to form an overall picture of the effectiveness of data reform.

Regulatory Policy Committee

⁴ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021PC0206&from=EN>

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