

Data Protection and Digital Information (No. 2) 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) – 15 February 2023
Legislation type	Primary legislation
Implementation date	2024
Policy stage	Final
RPC reference	RPC-DCMS-5180(2)
Opinion type	Formal
Date of issue	10 March 2023

RPC opinion

Rating¹	RPC opinion
Fit for purpose	The IA updates the one used to support the original Bill, to take account of policy changes. It provides sufficient evidence and analysis for the RPC to be able to validate a revised EANDCB figure.

Business impact target assessment

	Department assessment	RPC validated
Classification	Qualifying regulatory provision (OUT)	Qualifying regulatory provision (OUT)
Equivalent annual net direct cost to business (EANDCB)	-£98.3 million	-£98.3 million (2019 prices, 2020 pv)
Business impact target (BIT) score	-£491.5 million	-£491.5 million
Business net present value	£2,235.5 million	
Overall net present value	£4,721.0 million	

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.

RPC summary

Category	Quality²	RPC comments
EANDCB	Green	The Department sets out clearly the assumptions, data, and calculations behind its estimates of the impact of the policy amendments. The IA's 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 Department has updated the SaMBA and included an assessment of impacts on medium-sized businesses.
Rationale and options	Satisfactory	As with the previous Bill's assessment, the IA provides a satisfactory discussion of rationale and options.
Cost-benefit analysis	Satisfactory	The assessment of societal impacts and risk analysis has been updated to take account of the policy amendments. The IA would benefit from further discussion of assumptions, risks and the robustness of some estimates.
Wider impacts	Satisfactory	The Department has expanded its assessment of trade impacts and updated its assessment of impacts on the public sector to take account of the policy amendments. The IA continues to provide significant discussion of competition and innovation impacts throughout.
Monitoring and evaluation plan	Satisfactory	The IA includes a monitoring and evaluation plan that sets out in some detail long-run impacts, how these will be measured and how evidence gaps will be filled. The plan would benefit from describing more explicitly how the policy amendments will be evaluated within this.

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](#).

Background

The RPC issued a ‘fit for purpose’ opinion (titled the ‘Data Reform Bill’³) on the impact assessment (IA) relating to the previous Bill introduced in July 2022. A revised Bill was introduced to Parliament on 8 March 2023. This Bill was introduced following a detailed co-design process with industry, business, privacy and consumer groups. The Bill has amendments in the following areas:

- i. Extending the exemptions from the regime when conducting scientific research to include research carried out as a commercial activity.
- ii. Reducing and simplifying record-keeping requirements for organisations that control or process low risk data.
- iii. Clarifying activities that fall under legitimate interests, by listing activities such as direct marketing or ensuring network and information security.
- iv. Ensuring that businesses can continue to use their existing transfer mechanisms without a requirement for further checks.
- v. Clarifying the circumstances in which safeguards apply to significant decisions that are taken about individuals on the basis of profiling.

The Department has submitted a revised IA for RPC scrutiny. Although the EANDCB figure validated here supersedes that in our previous opinion, the present RPC opinion focusses primarily on the changes to the IA and does not, therefore, entirely replace the previous opinion (which can be found at the footnote link).

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, 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 (incorporating amendments i), iii) and v) above).
- b) Reducing burdens on businesses and delivering better outcomes for people (incorporating amendment ii) above).
- c) Boosting trade and removing barriers to data flows (incorporating amendment iv) above).
- 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.

³ <https://www.gov.uk/government/publications/data-reform-bill-rpc-opinion> (7 July 2022).

- i) Smart Data.
- j) Technical Reforms.
- k) Removing requirements on registrars to hold paper records of births and deaths.

In the previous IA, the Department estimated an EANDCB figure of -£66.1 million (2019 prices and 2020 present value base year), driven primarily by savings from measures categorised under b) above, such as threshold changes for responding to subject access requests (SARs) under UK-GDPR. The current IA presents a revised EANDCB figure of -£98.3 million. Nearly all changes in the EANDCB are accounted for by compliance cost savings (net of any additional familiarisation costs) from a broadening of an exemption aimed at ensuring that only the minimum amount of information need be recorded by organisations that control or process low risk data (amendment ii) above).

The main overall impact (i.e. taking into account non-business and indirect effects) continues to 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 are reflected in the societal and business net present value figures of £4.7 billion and £2.2 billion, respectively. 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 for the related secondary legislation.

The IA lists reforms proposed 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

The Department has provided a very clear presentation of its estimates of impact resulting from the revisions made to the bill. The IA sets out clearly the assumptions, data, evidence and calculations behind its estimates of familiarisation costs and compliance cost savings. The approach to monetisation appears to be reasonable and proportionate, with the Department acknowledging uncertainties and demonstrating that its assumptions are conservative.

Direct/indirect

As previously, the IA's classification of business impacts into direct and indirect is in accordance with RPC guidance.⁴ The additional familiarisation costs (although these

⁴ <https://www.gov.uk/government/publications/rpc-case-histories-direct-and-indirect-impacts-march-2019>

could also be reduced as part of the simplifications in the proposal) and compliance cost savings from the amendments are correctly classified as direct impacts; the estimated productivity benefits, as businesses respond to the proposals by making better use of data, are correctly treated as indirect impacts.

Assessment of impacts at the primary legislation stage

The Department's assessment of impacts at the primary legislation stage is consistent with RPC guidance.⁵ The RPC can validate an EANDCB figure for parts of the proposals at this stage; for other elements further IAs for the related secondary legislation will need to be submitted for validation.

The EANDCB figure excludes impacts relating to enabling powers to improve interoperability across health and social care systems and the IA states 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 384, page 118). Subject to better regulation framework requirements, the RPC expects to see further IA(s) on this and the other reforms in the bill to be followed by secondary legislation for validation of further EANDCB figures.

The indicative assessment of impacts on IT suppliers to the health and social care sector would benefit from:

- discussing whether membership of the voluntary accreditation scheme could become a *de facto* requirement for IT suppliers to win contracts; and
- explaining why the costs from the *midata* and pensions dashboard IAs can be taken to be reasonably indicative of the impact on IT suppliers and whether there is evidence on likely impacts from the suppliers potentially affected.

SaMBA

The Department has satisfactorily updated its SaMBA to take account of the five areas of policy amendment (i.e. i) to v) above). This includes updated compliance cost savings and familiarisation costs by business size. Small businesses that process low-risk data are expected to benefit particularly from the record-keeping amendment and from clarification of requirements in other areas, such as ‘legitimate interests’.

Medium-sized business considerations

⁵ <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.

The IA usefully considers impacts on medium-sized businesses, in line with the Government's announcement of widening, to businesses with fewer than 500 employees, presumed exemption from regulation (page 157). This section provides a good discussion of the proportion of costs and benefits expected to accrue to medium-sized businesses. With these businesses expected to benefit overall, the assessment satisfactorily addresses why they should not be exempt.

Rationale and options

As with the previous Bill's assessment, the IA provides a satisfactory discussion of rationale and options. It would, however, benefit from addressing the comments in the 7 July 2022 RPC opinion around the potential for competition to be inefficient in parts of the value chain, market failure in value chains and any role for 'de-personalisation' (through anonymisation, pseudonymisation, training of algorithms and synthetic data) of data.

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

Definitions

The IA would benefit from providing clearer and more distinct definitions of 'low-risk data' and 'low-risk processing' and from discussing the potential impact of any uncertainties on costs and innovation. The IA would also benefit from clarifying the roles of data controllers, processors and joint controllers.

The IA would benefit from providing further detail on 'research in commercial contexts' and clarifying 'responsible innovation'. The latter could, for example, refer to the UK Research and Innovation's Responsible Research & Innovation Framework.

Assumptions

The IA assumes full compliance with existing regulatory requirements, in line with usual IA practice, but acknowledges that some businesses might not be fully compliant. Given this, and the acknowledgement that the complexity of current legislation in this area could be a barrier to compliance, the IA would benefit from discussing this area further, including how it could affect costs and benefits, including legal uncertainties and associated costs.

The IA makes a number of assumptions to estimate the costs and benefits of the five policy amendments. The IA would benefit from discussing the evidence base or explaining further the reasoning behind some of these, such as the assumed 25 per cent of legal costs being impacted.

The IA acknowledges that some businesses will continue to keep records regardless of now becoming exempt, for example to maintain levels of trust or to enable further and better use of data by documenting their provenance, re-use and other characteristics. This appears to be effectively allowed for in the 'conservative'

assumptions but the IA would benefit from discussing this more explicitly. This could include whether some businesses may choose not to take advantage of the reduced record retention requirements because of the need to meet higher requirements under the EU GDPR.

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. The IA could also discuss the possibility that the incidence of SARs might change; decrease as a result of greater clarity as to how data held will be used, or increase in response to the possibility that such (re-)use may generate revenues.

Risks

The IA's section on risks has been usefully expanded to take account of the potential risks to privacy associated with the amendments, particularly in relation to 'legitimate interests' (for example, pages 91-92 and 178). The IA would benefit from further discussion on the potential trade-off around loosening requirements on business and privacy concerns.

The IA includes discussion of a risk relating to businesses being able to continue to seamlessly use their existing transfer mechanisms. This risk was identified since the submission of the original IA and amendment iv) is designed to mitigate it. The current IA assumes that this mitigation is successful, resulting in no significant additional costs to business. However, the IA notes that this depends on additional transitional provisions for currently unapproved EU data protection Binding Corporate Rules. In their absence, the IA estimates a potential compliance cost of between £2.9 and £14.7 million. The IA states that this issue will be assessed further in an enactment stage IA, which the RPC expects to see to validate any revised EANDCB figure, as appropriate.

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.

The IA could improve its discussion of the re-use of public sector information (RPSI), in particular how the proposed digital identity measures relate to existing RPSI rules. This could include the different restrictions on data made available to the public sector and the ability of the public sector to authorise private re-use of data potentially limiting data subjects' and data creators' willingness to share data with the public sector.

Wider impacts

The Department has expanded its assessment of trade impacts. The assessment incorporates the discussion of risk relating to businesses being able to continue to seamlessly use their existing transfer mechanisms (referred to above) and updates its discussion of impacts on business from the proposed changes to Article 27

representatives by including more recent literature. The IA continues to provide significant discussion of competition and innovation impacts throughout but could usefully take current scholarship on data markets into account. In particular, the assessment of competition impacts would benefit from considering the possibility that these additional measures could exacerbate ‘tipping’ in data use markets (especially where different data sets are combined for data analytics) and domination by large data controllers.

The Department has updated its assessment of impacts on the public sector to take account of the policy amendments, using information provided by the Information Commissioners Office and the Home Office.

Monitoring and evaluation plan

The IA continues to include a reasonably detailed monitoring and evaluation plan, setting out expected long-run impacts, how these will be measured and how evidence gaps will be filled. The plan would benefit from describing more explicitly how the policy amendments in this latest version of the Bill will be evaluated within this framework. Given that the policy will be taken forward across departments and, in some cases, will rely on secondary legislation, it would be helpful to discuss further how the M&E plan will be brought together to provide an overall picture of the effectiveness of data reform.

Regulatory Policy Committee

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