

Data Protection and Digital Information (No. 2) Bill Amendment - Third Party Data Gathering

Lead department	Department of Work and Pensions
Summary of proposal	A broad data sharing power to compel designated Third Parties to share information with DWP to help tackle fraud and error.
Submission type	Impact assessment (IA) – 3 October 2023
Legislation type	Primary legislation
Implementation date	2025
Policy stage	Final
RPC reference	RPC-DWP-5293(1)
Opinion type	Formal
Date of issue	10 October 2023

RPC opinion

Rating¹	RPC opinion
Fit for purpose	On first submission the IA received an initial review notice (IRN). The revised IA has satisfactorily addressed the RPC's concerns on the assessment of the direct impacts on business. The RPC expects to see further IA(s) at secondary legislation stage for validation of business impacts, subject to better regulation framework requirements.

Business impact target assessment

	Department assessment	RPC validated
Classification	Not provided	Qualifying regulatory provision (IN) – subject to confirmation at secondary legislation stage
Equivalent annual net direct cost to business (EANDCB)	Not quantified at this stage	Further IA(s) to be submitted at secondary legislation stage for validation of an EANDCB figure
Business impact target (BIT) score	Not quantified at this stage	See above
Business net present value	Not quantified at this stage	
Overall net present value	£1,881 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 IA has addressed the points in the RPC's initial review and now meets the RPC's minimum requirements for the assessment of measures at primary legislation stage. The assessment of direct impacts on business will need to be developed significantly for validation at secondary legislation IA stage.
Small and micro business assessment (SaMBA)	Green	Initial use of the powers will be confined to the fifteen largest banks and building societies. The IA notes that any change of plan to widen this would involve secondary legislation, with a further IA that would assess any impact on small and micro businesses.
Rationale and options	Satisfactory	The IA identifies clearly the problem being addressed and provides evidence to support the likely effectiveness of the proposal in addressing this. The IA discusses a reasonable range of options, including a non-regulatory approach.
Cost-benefit analysis	Satisfactory	The IA provides indicative cost and benefit estimates to government/taxpayers. The revised IA provides greater explanation of the modelling but would benefit from explaining why the estimated costs to government have fallen markedly. The assumptions behind the benefit estimates appear to be informed by the two 'proof of concept' studies but the IA would be improved by providing greater clarity on this.
Wider impacts	Satisfactory	The IA provides a detailed quantitative assessment of impacts on the public sector and an improved discussion of impacts on individuals, competition and trade.
Monitoring and evaluation plan	Satisfactory	The M&E plan sets out what will be tested during the 'test and learn' phase and how success will be measured.

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 primarily because of the following issues with the assessment of the direct impacts on business:

Comparison against estimates in the 2015 Home Office's IA 'Immigration Bill: tackling existing current accounts held by illegal migrants'

The IA provided insufficient indication that the requirements on banks/building societies or scale of impact would be at approximately the same level as the HO measure. There was also no evidence presented on whether the estimates provided in the HO measure turned out to be reasonably accurate.

Comparison against other possible measures

The IA needed to consider whether there are existing, more similar disclosure obligations on banks which might support more robust analysis, such as the sharing of interest-bearing accounts with government and corporate reporting rules on banks on people who have a foreign tax number.

Clarification of further IA(s) at secondary legislation stage

The IA needed to provide clarity on whether there will be further legislation and accompanying IA before the powers are used from 2025, and before any decision to widen their use beyond the fifteen largest banks and building societies (and potentially taking in small or medium-sized businesses).

The Department has responded satisfactorily to these points, as described below.

Summary of proposal

The proposal, which is currently being considered as an amendment to the Digital Protection and Data Information Bill, is for a broad data sharing power to compel designated Third Parties (initially the fifteen largest banks and building societies) to share information with DWP to help tackle fraud and error. The focus is on reducing 'capital and abroad' fraud, i.e. accounts receiving a means-tested benefit having savings over the capital limits and those being accessed abroad for over four weeks in a row.

The Department estimates a net present value of £2,570 million (£1,881 million, 2019 prices; 2020 present value base year) over ten years, with costs to government of £360 million outweighed by an estimated £2,930 million reduction in fraud. Costs to business of complying with the proposal are not monetised at this stage.

EANDCB

The IA provides a significantly improved comparison against the HO measure (paragraphs 68-70) and now includes discussion of other possible comparators (paragraphs 71-74). The Department provides a much clearer explanation of expected secondary legislation, with firm commitments on submitting associated IAs for RPC scrutiny (for example, at paragraphs 25-6, 59-60, 117 and 130). The IA includes indicative information from engagement with industry, in particular on set-up costs. The IA now meets the RPC's minimum requirements for the assessment of measures at primary legislation stage.³ The assessment of direct impacts on business will need to be developed significantly at secondary legislation IA stage to provide estimates sufficiently robust for validation.

The IA would benefit from providing a clearer indication of other financial institutions that could potentially be subject to future requirements, should these be widened beyond the fifteen largest banks and building societies.

SaMBA

The IA states that initial use of the powers will be confined to the fifteen largest banks and building societies. None of these are small, micro or medium in size. The IA notes there are no plans to exercise the powers more widely. However, should this change, secondary legislation setting out the definition of new third-party data holders would be needed, accompanied by a further IA to assess costs, including any impact on small and micro businesses.

The IA would benefit from providing a short discussion of the size breakdown of the other financial institutions that could potentially be subject to requirements.

Medium-sized business considerations

Any IA at secondary legislation stage should include an assessment of impacts on medium-sized businesses, in addition to the SaMBA.

The IA has been improved in a number of other areas following the RPC's initial review, as described below.

Rationale and options

The IA provides a satisfactory discussion of the rationale for intervention and adequate consideration of options. The Department provides good evidence of the scale of existing fraud, with internal analysis showing that substantial amounts are due to undeclared or under-declared savings. The IA explains clearly how the proposal is expected to tackle the problem, setting clear policy objectives. The Department has tested two 'proof of concepts' (PoC), whereby it has established

³ <https://www.gov.uk/government/publications/rpc-case-histories-primary-legislation-ias-august-2019>

data-sharing collaboration with two banks, which appears to have demonstrated the potential effectiveness of the proposal.

The IA discusses a range of options, including a non-regulatory ‘industry and government partnership’. The IA now helpfully includes discussion of an additional option (paragraphs 38-40), as well as its exploration of using existing legislation and data sources both inside and outside of government (paragraph 15).

Cost-benefit analysis

Appraisal period

The IA now uses a correct, ten-year appraisal period starting in the first year than impacts are incurred (2025).

Methodology

The IA provides monetised estimates of the costs to government and the expected benefits to government/society of an anticipated reduction in fraud. Given the size of these estimates, the IA now appropriately provides significantly more detail on the calculations involved. This includes a step-by-step description of the modelling and illustrative calculations.

Evidence, data and assumptions

On costs, the estimated cost to government has fallen markedly since the previous IA and the IA would benefit from explaining what new information has been used for this new assessment. The benefit estimates are broadly in line with those presented previously and the assumptions behind them would appear to be informed by the two PoC studies. The IA would, however, be improved by providing greater clarity on this issue.

Risk and uncertainty

The IA has usefully improved its sensitivity analysis and, although there is some reference at paragraph 88, the IA would benefit from developing further a break-even analysis. The IA now discusses further the optimism bias adjustment applied to benefits but could usefully discuss its application to the public sector costs.

The IA has discussed further the basis for its adjustments for ‘behavioural change’ and has appropriately modified the sensitivity analysis on this, so that the assumptions used are now varied in both directions (table 6 and surrounding text).

Wider impacts

As noted above, the IA provides a detailed assessment of the expected costs to the public sector of delivering the proposal. The assessment of impacts on the justice system has been usefully significantly expanded (paragraphs 83-86).

The IA now helpfully includes further discussion around protections of the privacy of individuals (paragraphs 122-124) and risks to benefit claimants' access to bank accounts (paragraphs 118-121).

The IA includes a discussion on competition impacts (paragraphs 125-126). This would benefit from discussing further the possible effects on competition of the initial use of the powers on the fifteen largest bank/building societies.

The IA now usefully includes an expanded discussion of international and trade impacts (paragraphs 127-130). This would benefit from discussing GDPR (as discussed under impacts on individuals) and its possible relevance to international data adequacy agreements.

Monitoring and evaluation plan

The IA sets what will be tested during the 'test and learn' phase, how this will be managed in partnership with UK Finance, banks and building societies and how success will be measured. This information is fairly 'high-level' at this stage and more detail will need to be added at secondary legislation stage.

Regulatory Policy Committee

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