

The Data (Use and Access) Bill

Lead department	Department for Science, Innovation and Technology
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) – 5 September 2024
Legislation type	Primary
Implementation date	tbc
Policy stage	Final
RPC reference	RPC-DSIT-5358(1)
Opinion type	Formal
Date of issue	21 October 2024

RPC opinion

Rating¹	RPC opinion
Fit for purpose	The IA provides sufficient evidence and analysis for the RPC to be able to validate a revised EANDCB figure. The assessment of impacts on small and microbusinesses is sufficient. There are some areas for improvement in the wider analysis.

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)	£208.5 million	£208.5 million <i>(2024 prices, 2024 pv)</i>
Business impact target (BIT) score	Not provided	
Business net present value	£4,362.0 million	
Overall net present value	£9,998.0 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 proposal. 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 to include analysis of newly included policies.
Rationale and options	Satisfactory	The IA has provided a satisfactory discussion of the rationale and options. As with the previous Bill's assessment, the IA could discuss how the different measures in the Bill could potentially form different options.
Cost-benefit analysis	Satisfactory	The assessment of societal impacts and risk analysis has been updated. The IA would benefit from further discussion of assumptions, risks and the robustness of some estimates.
Wider impacts	Satisfactory	The Department has satisfactorily expanded its assessment of trade impacts and updated its assessment of impacts on the individuals, competition and national security. The IA continues to provide significant discussion of trade and innovation impacts throughout.
Monitoring and evaluation plan	Satisfactory	The IA includes a monitoring and evaluation plan which sets out in some detail expected long-run impacts, how these will be measured and how evidence gaps will be filled. This plan could benefit from discussing in greater detail how this will be coordinated between departments.

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

Background

The IA provides an annex (pages 239-240) detailing the differences between the present Data (Use and Access) Bill and the Data Protection and Digital Information (DPDI) Bill introduced in the last parliament. The IA notes that indicative analysis of those measures in the current Bill that formed part of the DPDI Bill has been updated to reflect consultation responses, discussions with cross-government experts and external consultants, and assessment of the latest literature (paragraph 43, page 24). The IA also indicates that it reflects RPC comments on the methodology. The RPC issued a 'fit for purpose' opinion on the impact assessment (IA) relating to the DPDI Bill in March 2023.³ The present IA notes that the current Bill includes new measures not in the DPDI bill or makes substantial changes to previous measures. The present IA also assesses the impact of these changes and new measures. These changes include:

- i. Previously separate proposed legislation in the last parliament to establish a National Underground Asset Register (NUAR) has been included in this Bill. An IA related to the previous measure was rated 'fit for purpose' by the RPC in October 2023; the present IA updates the analysis for this.
- ii. Removal of measures reforming the accountability framework, subject access requests, data minimisation and anonymisation policies and high-risk processing.
- iii. Revisions to proposed Home Office measures, including the addition of processing in reliance on relevant international law, power to add categories of sensitive processing, supporting police to retain biometrics received as part of international cooperation and clarifying conditions on the use of international processors by UK competent authorities.

The Department has submitted an IA on the Data (Use and Access) (DUA) Bill for RPC scrutiny. The RPC opinion focusses primarily on the changes to the IAs to those we have previously opined on⁴.

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 proposal describes three potential options:

- Do Nothing: No policy change
- Do Minimum: Minor changes to the status quo and current data regime
- Intermediate: Considerable policy changes to the current data regime

³ [Data Protection and Digital Information \(No. 2\) Bill: RPC Opinion \(Green-rated\) - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/data-protection-and-digital-information-no-2-bill-rpc-opinion-green-rated) (28 March 2023).

⁴ https://assets.publishing.service.gov.uk/media/6422e4db3d885d000cdadcad/DCMS-5180_2_Data_Protection_and_Digital_Information_No_2_Bill_-_IA_f_revised_-_opinion.pdf

- Do Maximum: Even larger policy changes and a complete overhaul of existing legislation, repealing and replacing the existing data regime inc. significant changes to data protection legislation

The 'intermediate' option is preferred and is the only one assessed against the 'do nothing' baseline. Measures in this option have been grouped in this IA under the following subheadings:

- a. Research Purposes
- b. Further Processing
- c. Legitimate Interests
- d. AI and Machine Learning
- e. Data Adequacy
- f. Alternative Transfer Mechanisms
- g. Public Interest
- h. Digital Economy Act 2017
- i. Public Safety and National Security
- j. The National Underground Asset Register (NUAR)
- k. Data Preservation Notices
- l. Smart Meter Data
- m. Online safety researchers access to data
- n. Electoral Purposes
- o. Subject Access Requests
- p. Privacy and electronic communications
- q. Updating Special Category Data
- r. Digital Identity
- s. Smart Data
- t. Data Architecture
- u. Home Office
- v. Strategy, Objectives and Duties
- w. Governance Model and Leadership
- x. Accountability and Transparency
- y. Complaints
- z. Enforcement Powers

The Bill includes powers relating to the NUAR (j), digital identity (r), data architecture (DHSC) (t) online safety researchers access to data (m) and Smart Data (DBT) (i) and for these policies the IA includes analysis from a set of supplementary IAs. The IA presents an EANDCB figure of -£208.5m (2024 prices, 2024 present value base year). These estimated direct cost savings to business are derived from measures to reduce existing compliance costs, such as allowing organisations to use cookies for low-risk processing without consent, as well as efficiency gains for asset owners and data consumers arising from NUAR. The main overall estimated impact on the NPSV comes from the Digital Identity measures (r), 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 and ticketing, home buying and trusted financial transactions. These impacts account for most of the impacts in the NPV and business NPV figures (£9,998m and 4,362m, respectively, 2024 prices and 2024 present value base year).

The IA lists reforms in the bill that will be followed by secondary legislation, discusses 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 9, page 40). Subject to better regulation framework requirements, the RPC would expect to see assessments relating to these measures.

EANDCB

The Department has explained to the RPC its estimate of impact resulting from the changes compared to the DPDI Bill; this could usefully be set out in an annex to the IA. Overall, the estimated net direct benefits to business are lower than previous estimates, reflecting both policy and analytical changes. These are explained briefly below. The RPC is content with the changes to the estimates of direct business impact and can, therefore, validate the EANDCB figure.

Estimated impacts from analytical updates

The EANDCB validated for the previous bill during the last parliament was -£98.3m (2019 prices, 2020 present value base year). As noted above, the EANDCB for the DUA Bill is -£208.5 million for the DUA Bill, or around -£151 million in comparable (2019 prices, 2020 present value) base year terms. The EANDCB for the overall DUA Bill is driven by the inclusion of the -£188.8 million EANDCB for the NUAR, or around £137 million in 2019 prices, 2020 present value base year terms. The RPC previously validated an EANDCB figure of -£189.2m for NUAR; the Department explains that the new figure reflects more conservative assumptions covering the rate of asset owners joining the register, the rate of users starting to use the NUAR and the length of time asset owners would use legacy systems.

The EANDCB figure now also includes figures from DHSC which were previously described qualitatively. Further detail on the analytical changes made to the IA can be found in the 'Cost benefit analysis' section of this opinion. 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.

Estimated impacts from policy changes

The EANDCB validated for the previous bill during the last parliament was driven by compliance cost savings relating to areas such as threshold changes for responding to subject access requests (SARs) and record-keeping requirements for organisations that control or process low risk data. Compliance cost savings in these ‘data protection reform’ areas are now much lower and appear to reflect policy changes. The IA indicates that this was a result of consideration of “implicit costs and policy risks” (see annexes 5 and 6) and would benefit from further discussion of these costs/risks and clarifying how far the previous measures are represented in the ‘do maximum’ option.

Direct/indirect

As previously, the IA’s classification of business impacts into direct and indirect is in accordance with RPC guidance⁵. Additional impacts from the NUAR such as transition/familiarisation costs and benefits from increased efficiencies have been correctly described as direct impacts; the benefits of reducing asset strikes and the associated avoided costs to local businesses correctly treated as indirect. Estimated productivity benefits, as businesses respond to the proposals by making better use of data, are correctly treated as indirect impacts. Familiarisation costs and necessary upgrades to IT systems for private healthcare providers and IT suppliers have been correctly identified as direct costs to businesses.

Assessment of impacts at the primary legislation stage

The Department’s assessment of impacts at the primary legislation stage is consistent with RPC guidance. Additional direct costs have been included in the EANDCB as a result of the monetisation of impacts from the powers to improve interoperability across health and social care systems. It had previously been expected that these could only be monetised at the secondary legislation stage. The IA provides an indication of the impacts whilst acknowledging that secondary legislation will aim to provide fuller estimates of the expected costs and benefits of the proposals. In the meantime, the primary legislation IA could benefit from further narrative of the scale of the impacts at this point in the legislative process.

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, subject to framework requirements.

SaMBA

The Department has, as previously, provided a detailed small and micro business impact assessment (SaMBA), with a monetised assessment of how key impacts such as compliance cost savings, familiarisation costs, productivity benefits, smart

⁵ [RPC case histories - direct and indirect impacts, March 2019 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/collections/rpc-case-histories-direct-and-indirect-impacts)

data initiative and digital identity schemes affect business of different sizes. There is also a sectoral breakdown for compliance cost savings and familiarisation costs. The assessment satisfactorily justifies not exempting small and micro businesses (SMBs) from the proposed measures, in part because SMBs are still expected to benefit from the proposal overall. The IA, when considering the boosting of innovation through the Smart Data schemes should consider any potential disproportionality impacts for smaller businesses and how this could impact on competition if larger firms start in a dominant data position.

The Department has satisfactorily updated the SaMBA to take account of NUAR and online researcher's access to data. This includes a refresh of previous analysis to include new assumptions and data. The figures have also been updated to reflect the removal of policies such as reforming the Accountability Framework and Subject Access Requests. The department has also now quantified the impact of Improved Interoperability across Health and Social Care Systems.

Medium-sized business considerations

The IA usefully considers impacts on medium-sized businesses, with updated data and assumptions on the proportion of costs and benefits incurred by medium-sized businesses. As with small and micro businesses, medium businesses are expected to benefit overall, and the assessment satisfactorily addresses why they should not be exempt.

Rationale and options

As with the previous Bill, the IA provides a satisfactory discussion of rationale and options. The IA sets out the complexity of the current regulatory regime as a key part of the rationale for intervention. Given that the Bill does not include some previously intended simplifying measures in relation to data protection, the IA would benefit from discussing how a desire to simplify may have been balanced (in the preferred option) by other considerations (for example, perhaps the "implicit costs and policy risks" mentioned in the IA). 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

Updates from previous analysis

The Department has made a number of analytical updates to the IA since March 2023. The IA would benefit from providing a more detailed description of these changes.

The analysis of familiarisation costs and compliance cost savings has been updated by the Department to bring their assumptions up to date, using the 2024 UK Business Data survey and ONS Business Population Estimates 2023. Wages estimates, legal costs and exchange rates have also been updated to reflect 2024 values. The analysis now reflects the removal of some policies, such as data minimisation and anonymisation, subject access requests and reform of the

accountability framework. This set of updates has also been made to the department's productivity analysis, with the additional removal of the high-risk processing policy, which had been assessed previously.

The updated IA also includes new analysis from the Home Office to account for policy amendments. These have mostly been assessed qualitatively; however, a section has been added to quantify the benefits of supporting the police to retain biometrics disseminated by Interpol and other international exchange routes. These benefits arise as a result of time saved by police officers no longer having to make a National Security Determination when they wish to retain biometrics from Interpol and other international sources.

Analysis provided by the ICO to estimate the potential cost savings of improved regulatory oversight has been updated to include some new assumptions, with an adjustment to the estimated number of staff affected by policy changes to enforcement powers and complaints. The impact of this is negligible; however, the IA would benefit from providing an explanation for the basis of these changes.

The IA now includes details on analysis conducted by DHSC estimating the impact of improved interoperability of health and social care systems. This policy had been included in the previous IA without any monetised costs and benefits. The Department has now provided monetised values for familiarisation and accreditation costs for IT suppliers, as well as training and information standards systems update costs for public and private GPs, hospitals and social care providers. Monetised benefits include cost savings from a reduction in excess bed days, fewer duplicate tests and procedures, reduced time saved accessing information and a reduction in reporting, alongside a gain in quality adjusted life years. These impacts are summarised in the IA; however, DHSC has provided greater detail in the supplementary Open Data Architecture Information Standards IA, which the RPC welcomes.

There have been a small number of changes to the assumptions regarding the impact of the NUAR, with a reduction in the rate of asset owners joining the register, a reduction in the rate at which users start to use the NUAR and an increase in the length of time asset owners would use legacy systems. These are all more conservative assumptions than had been used before and account for a revised, lower estimate of benefits.

Definitions

The IA would benefit from more clarity around the definition of what constitutes 'public interest', as this may lead to implementation issues or possible future legal disputes when balancing data use with privacy rights. The department has helpfully added a section describing the roles of data controllers, processors and joint controllers.

Assumptions

The IA makes a number of assumptions to estimate the familiarisation costs and benefits from compliance cost savings. This analysis has been updated with new

data and assumptions, however 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 would benefit from providing greater detail on how the data taken from the UK Business Data Survey 2024, as it is unclear at times how the figure presented as the baseline cost has been obtained based on the data and assumptions presented in the IA.

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.

Risks

The IA's section on risks has been expanded to take account of the potential policy risks associated with allowing data controllers to re-use personal data for the purpose of archiving in the public interest. The IA notes that this could potentially lead to a lack of trust from data subjects' who may be less willing to share private data in the future. The Department has helpfully expanded its discussion of the impact on privacy and trust arising from the proposed policies; however, this could 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. The IA had assumed that this mitigation is successful, resulting in no significant additional costs to business. However, this is dependent on additional transitional provisions for currently unapproved EU data protection Binding Corporate Rules (BCRs). The IA has now provided a confirmation from the ICO that unapproved EU BCRs will still not be valid legal transfer mechanisms, and so businesses will not incur additional costs. The department has set this out in paragraph 745 of the IA; however, it would benefit from a more detailed description of the issue and why it will have no impact.

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.

Wider impacts

The Department has expanded its assessment of competition impacts. One addition is a discussion of how reducing barriers to entry in data markets could lead to reduced efficiency, due to new firms to entering the sector and limiting the potential economies of scale for larger firms. The section also addresses the possibility new entrants could reduce 'tipping' in data use markets, however, could benefit from considering the possibility that these additional measures could exacerbate the issue

especially where different data sets are combined for data analytics. The Department has also satisfactorily updated its section on impacts on competition to include new policies such as NUAR.

The section on trade impacts could be improved by expanding its discussion of the impact of losing EU Adequacy to include the potential for UK exporters to continue to rely on Standard Contractual Clauses (SCCs) in the short term. This could lead to a small increase in costs, but also a reduction in business lost for UK exporters.

The Department has also extended its assessment of the impact on individuals, to include a good discussion of the effect allowing elected representatives the ability to retain personal data for longer will have on public trust and electoral fairness. This section has also been updated to take into account potential productivity gains and taxpayer benefit from improved patient outcomes as a result of Improved Interoperability across Health and Social Care Systems.

The Department has also updated its assessment of national security impacts to take account of the policy amendments, using information provided by the Home Office.

Monitoring and evaluation plan

The IA includes a reasonably detailed monitoring and evaluation plan, with a PIR to take place 5 years after implementation. The plan sets out expected long-run impacts, how these will be measured and how evidence gaps will be filled. The plan could have described in more detail 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 could have discussed further how DSIT's coordinated M&E plan with other departments will be brought together to provide an overall picture of the effectiveness of data reform.

Regulatory Policy Committee

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