



An Bille um Chomhroinnt agus Rialachas Sonraí, 2018
Data Sharing and Governance Bill 2018

Meabhrán Míitheach agus Airgeadais
Explanatory and Financial Memorandum



AN BILLE UM CHOMHROINNT AGUS RIALACHAS SONRAÍ,
2018

DATA SHARING AND GOVERNANCE BILL 2018

EXPLANATORY AND FINANCIAL MEMORANDUM

Background

The purpose of this Bill is to provide a generalised legal basis for the sharing of data between public bodies while also setting out appropriate safeguards under which such sharing should take place.

Better use of data by the public service will deliver tangible benefits to the public and to business. In particular, sharing and reusing data will cut down on waste and duplication by ensuring that individuals and businesses should not have to supply the same information more than once to public bodies. More extensive data sharing will also support better policy development and more efficient and effective policy implementation.

Enabling public bodies to share data more widely must be balanced against the need to uphold the rights and freedoms granted under national and EU data protection law. Any legislation that provides for wider sharing of personal data must be compatible with the new EU General Data Protection Regulation, which came into effect on 25 May 2018. Accordingly, this legislation also strengthens the governance arrangements for the management of data across the public service in order to ensure public trust and confidence in public bodies insofar as it relates to individuals' personal data.

Provisions of the Bill

Part 1

Preliminary and General

Section 1 is a standard provision containing the short title and commencement arrangements.

Section 2 is a standard interpretation provision and defines the meaning of certain terms used in the Bill.

Section 3 is a standard provision empowering the Minister to make regulations in relation to any matter prescribed in the Bill. *Subsection (3)* states that every order (other than an order made under *section 1(2)*) or regulation made by the Minister will be laid before the Houses of the Oireachtas.

Section 4 is a standard provision dealing with expenses.

Part 2

Application of Act

Section 5 provides that the Bill shall not affect the operation of the Data Protection Acts or the EU General Data Protection Regulation (GDPR). *Subsections 5(2)* and *5(3)* provide that the provisions in the Data Protection Act 2018 for the processing of personal data for a task carried out in the public interest or in the exercise of official authority shall not apply to the sharing of data between public bodies.

Section 6 concerns the interaction of the Bill with the Social Welfare Consolidation Act 2005 (“the 2005 Act”). It clarifies that any sharing of PPSN and Public Service Identity data, as defined in the 2005 Act, remains confined solely to public bodies specified under the 2005 Act. It also provides that specified bodies may share PPSN and Public Service Identity data with other specified bodies for any of the purposes listed in *section 12*, except that specified at *subsection 12(2)(a)(ii)(VIII)* (to facilitate organisational studies of public bodies).

Section 7 concerns the interaction of the Bill with other enactments that provide for the sharing of data between public bodies and provides that nothing in this Bill shall affect the operation of other Acts.

Section 8 defines the term “data-sharing” for the purposes of this Bill.

Section 9 defines the term “public body” for the purposes of the Bill. Schools, other than schools established and maintained by Education and Training Boards, are excluded from the definition of “public body” as are the commercial state-owned enterprises listed in the *Schedule*. *Subsection 9(2)* provides that the Minister may, by order, exclude a named public body from the definition of a public body if the public body is engaged in commercial activity and the sharing of data could give that public body an unfair commercial advantage. *Subsection 9(4)* provides that the Minister may, by order, designate a body that would not otherwise be included in the definition of a public body to be a public body for the purposes of the Bill.

Section 10 clarifies that the Bill shall apply to the sharing of data of deceased persons.

Section 11 provides that the Bill shall not apply to data-sharing for the purposes specified in this section. These exclusions include protecting the security of the State and preventing, detecting and investigating offences (provisions for data-sharing for these purposes are in the Data Protection Act 2018).

Part 3

Regulation of Data-Sharing

Section 12 sets out the conditions under which public bodies may share personal data. *Subsection 12(1)* provides, among other things, that this Bill shall not apply to the sharing of special categories of personal data, as defined in the GDPR. *Subsection 12(2)* provides that public bodies may only share data for the purpose of the performance of one or more of their lawful functions and only for one or more of the following purposes:

- To verify the identity of a person where a public body is providing a service to that person;
- To identify and correct erroneous information held by a public body;

- To support the “once only” principle that persons should not have to provide the same information multiple times to different public bodies;
- To establish the entitlement of a person to the provision of a public service;
- To facilitate the administration, supervision and control of a service, programme or policy;
- To facilitate the improvement or targeting of a service, programme or policy;
- To enable the evaluation, oversight or review of a service, programme or policy;
- To facilitate an organisational study of a public body.

Subsection 12(2) also provides, among other things, that public bodies must comply with any regulations and orders concerning proper data management made by the Minister under *Part 9* of the Bill and that data-sharing be carried out in accordance with a data-sharing agreement.

Section 13 gives the Minister the power to direct two or more public bodies to share data, subject to the consent of relevant Ministers and having had regard to the criteria set out at *subsection 13(8)*. Public bodies to whom a direction is issued must comply with the direction.

Part 4

Data-Sharing Agreements

Section 14 provides that this Part of the Bill applies only to data-sharing that is carried out under the provision of this Bill and not any other enactment.

Section 15 obliges public bodies to enter into a data-sharing agreement before sharing data.

Section 16 requires that data-sharing agreements must be formal written documents.

Section 17 provides that additional public bodies may be added to an existing data-sharing agreement by way of an accession agreement. *Subsection 17(3)* requires the lead agency responsible for the data-sharing agreement to notify the Data Governance Board if a new signatory is added to a data-sharing agreement.

Section 18 specifies what information, at a minimum, shall be included in a data-sharing agreement. Among other things, it provides that public bodies must set out the purpose, function and legal basis for sharing and processing the data concerned and specify what data is to be disclosed and how it will be processed. *Subsection 18(2)* gives the Minister power to prescribe additional information that must be included in a data-sharing agreement, if required.

Section 19 requires public bodies to review their data-sharing agreements on a regular basis and amend as appropriate.

Section 20 requires one of the parties to the data-sharing agreement to be designated as the lead agency responsible for carrying out the functions specified in this section and elsewhere in the Bill in relation to data-sharing agreements. It sets out a number of functions that the lead agency will have.

Section 21 requires the lead agency to notify the Minister when a data-sharing agreement expires or is terminated.

Part 5

Public Service Information

This Part of the Bill gives the Minister, or another Minister of the Government, the power to collect and process specified information regarding public servants arising from their membership of a public service pension scheme and includes provisions for the administration of pension scheme benefits for beneficiaries earned over a public servant's entire career in the public service. It also provides that the Minister, in performing a function under the Ministers and Secretaries (Amendment) Act 2011, may collect and analyse information on the number of public servants employed and expenditure on pay and pensions, including the carrying out of actuarial calculations, to inform public service expenditure estimates and support public service resource planning and policy development.

Section 22 is a standard interpretation provision that defines the meaning of certain terms used in this Part of the Bill only. The definition of a "public service body" in this Part is different to that used elsewhere in the Bill to ensure that this Part applies to all bodies with employees who are members of any public service pension scheme.

Section 23 provides that this Part of the Bill applies to personal data. *Subsection 23(2)* provides that sensitive personal data may be processed under this Part where this is required for the administration of a public service pension scheme or to carry out an actuarial valuation of a public service pension scheme.

Section 24 requires that the information specified in *subsection 24(2)* shall be provided to the Minister (or another Minister or a relevant authority specified by the Minister under the Public Service Pensions (Single Scheme and Other Provisions) Act 2012) for the purpose of administering the Single Public Service Pension Scheme. *Subsection 24(2)* also gives the Minister the power to prescribe any additional information that may be required for this purpose.

Section 25 requires that the information specified in *subsection 25(2)* shall be provided to the Minister (or another Minister) for the purpose of administering a pre-existing public service pension scheme that was in being prior to the introduction of the Single Public Service Pension Scheme. *Subsection 25(2)* also gives the Minister the power to prescribe any additional information that may be required for this purpose.

Section 26 requires that the information specified in *subsection 26(2)* shall be provided to the Minister for policy analysis purposes in relation to the public service pay and pensions bill and in relation to supporting and developing public service human resources policy.

Section 27 gives the Minister the power to specify, in relation to any request made under *sections 24, 25 or 26*, the classes of information required, the timespan to which the information relates, the format in which the information is to be provided and the time-limit for the provision of this information.

Section 28 requires the Minister to carry out a data protection impact assessment in advance of prescribing any additional information to be provided under *sections 24, 25 or 26*.

Section 29 provides that data provided to the Minister under *section 26* shall be anonymised or pseudonymised, as appropriate, upon receipt by the Minister.

Section 30 provides for the establishment of information systems to support the collection of the information provided under *section 24* for the purpose of the administration of the Single Public Service Pension Scheme. This includes calculating and administering entitlements and liabilities in respect of that Scheme. *Subsection 30(4)* provides that public bodies may access this information system for the purpose of calculating and administering entitlements and liabilities in respect of a public servant who is a member of the Single Public Service Pension Scheme.

Section 31 requires the Minister to publish the information specified in this section for purposes of transparency.

Part 6

Business Information

Section 32 defines what information constitutes “business information” for the purposes of the Bill and provides that the Minister may prescribe additional information as business information.

Section 33 provides that this Part applies to the sharing of business information where there is no pre-existing legislative basis for doing so. *Subsection 33(3)* allows the Revenue Commissioners to disclose business information that is taxpayer information within the meaning of Section 851A of the Taxes Consolidation Act 1997.

Section 34 gives the Minister, or a public body delegated by the Minister, the power to issue a unique business identifier number for the purpose of uniquely identifying an undertaking.

Section 35 allows public bodies to share business information with each other subject to the provisions of this Bill for the purposes set out at *subsection 12(2)*.

Part 7

Base Registries

Section 36 provides that this Part applies to personal data, but not including special categories of personal data, and to information other than personal data.

Section 37 gives the Minister the power to designate, by order, subject to the consent of the relevant Minister, a database as a base registry to act as an authoritative source in respect of information that is frequently used by public bodies in the performance of their functions. *Subsection 37(4)* sets out criteria that the Minister will take account of when making such an order.

Section 38 obliges a designated base registry owner to, among other things, ensure insofar as is reasonable that the information held on the base registry is accurate, up to date and complete and to provide access to the base registry to other public bodies who need the information on the base registry for the performance of their functions.

Section 39 provides that a base registry owner may collect data for the purpose of keeping the information held on the base registry accurate, up to date and complete.

Section 40 obliges a designated base registry owner to draw up terms of service under which access to the base registry is to be provided to other public bodies.

Section 41 provides that, in order to ensure that the information held in a base registry is accurate, up to date and complete, a base registry owner may amend the data it holds and collect updated data from other public bodies.

Section 42 requires that where a set of data has been designated as a base registry, public bodies are obliged to use the base registry as the source of this data and not collect or use this data from another source. *Subsection 42(3)* provides that a base registry owner can designate another public body to collect data for the purpose of updating the base registry.

Part 8

Personal Data Access Portal

Section 43 provides that this Part applies to personal data, including special categories of personal data, shared in accordance with this Bill or under any other enactment.

Section 44 gives the Minister the power to develop an information system – the Personal Data Access Portal – that will enable people to exercise their rights under the GDPR, including: the right to see what data public bodies hold about them, the purpose for which that data is held and the processing that is carried out on that data; the right to rectify any erroneous information that is held about them; the right to erasure of that data where it is no longer required for the purposes for which it was held; and the right to object to the processing of their personal data.

Part 9

Data Governance

This Part of the Bill provides for better governance in the management of all data held and processed under this Bill or under another enactment by public bodies.

Chapter 1 – Data Governance Board

Section 45 gives the Minister the power to appoint a Data Governance Board (“the Board”).

Section 46 sets out the functions of the Board.

Section 47 is a set of standard provisions concerning the membership of the Board.

Section 48 is a standard provision granting the Board the power to establish advisory committees and to make external appointments to these committees as required.

Section 49 is a standard provision setting out the conditions under which a person may not become a member of the Board or may be disqualified from membership of the Board. One of these conditions (at *subsection*

49(i)) is if a person is appointed as a Commissioner for Data Protection or as a member of staff of the Data Protection Commission.

Section 50 is a standard provision concerning the resignation of members from the Board.

Section 51 is a standard provision permitting the Minister to fill any casual vacancies that may arise on the Board.

Section 52 is a standard provision requiring the Board to make an annual report to the Minister on its activities.

Chapter 2 – Review of Data Sharing Agreements

Section 53 is a standard provision setting out key definitions in use in this Chapter of the Bill.

Section 54 provides that this Chapter shall not apply when an additional public body accedes to an existing data-sharing agreement in accordance with *section 18* or in the event of a change in the lead agency specified at *section 20*.

Section 55 provides that all public bodies shall hold a public consultation in advance of entering into a data-sharing agreement. *Subsection 55(1)* provides that the public bodies shall publish:

- a copy of the draft data-sharing agreement;
- a summary of the findings of any data protection impact assessment regarding the proposed data-sharing arrangement, if one has been carried out; and
- a statement from the data protection officer of each of the public bodies concerned that they have reviewed the data-sharing agreement and are satisfied that it is in accordance with data protection law.

Subsection 55(4) provides that the public bodies shall have regard to any submissions made under the public consultation process and may update the draft data-sharing agreement accordingly.

Section 56 requires the lead agency to the proposed data-sharing agreement to submit the following documents to the Board:

- the draft data-sharing agreement;
- the summary data protection impact assessment (if any);
- details of any submissions made during the public consultation at *section 51*; and
- the statement from the data protection officer referred to in *section 51*.

Section 57 provides that the Board shall review the documents submitted under *section 56* and make recommendations if required. *Subsection 57(6)* requires that the parties to the proposed data-sharing agreement shall take account of any recommendations made by the Board and shall make amendments to the draft data-sharing agreement accordingly. *Subsection 57(4)* provides that the Board may require the parties to submit the amended data-sharing agreement for further consideration.

Section 58 provides that, if required by the Board, where a draft data-sharing agreement is amended following the Board issuing its recommendations under *section 57*, the lead agency shall re-submit the amended draft agreement to the Board for further consideration.

Section 59 provides that a data-sharing agreement may be executed if the Board does not issue a recommendation following review or if the Board makes recommendations but does not require the parties to the agreement to resubmit the data-sharing agreement under *subsection 57(4)* provided the agreement is amended in accordance with the Board's recommendations.

Section 60 requires that the signed data-sharing agreement shall be sent to the Minister and laid before the Houses of the Oireachtas. The Board shall publish the signed data-sharing agreement, along with the summary data protection impact assessment (if any) and any recommendations made by the Board during its scrutiny of the draft agreement.

Section 61 provides that a data-sharing agreement shall take effect on the date of its publication.

Section 62 gives the Board the power set the time frames required for the public consultation at *subsection 55(1)(d)(iii)* and the submission of documents to the Board under *section 56*.

Chapter 3 – Governance

Section 63 provides that this Chapter applies to the management of personal data, including special categories of personal data, collected, stored or shared in accordance with this Bill or under any other enactment.

Section 64 gives powers to the Minister to prescribe rules, procedures and standards for the management of data by public bodies.

Section 65 provides that the Minister may issue guidelines in respect of the management of data by public bodies.

Section 66 provides that the Minister may prepare model data-sharing agreements that public bodies shall use as the basis for any data-sharing agreements they enter into.

Section 67 requires the Minister to publish the rules, procedures and standards prescribed under *section 64* and the guidelines issued under *section 65*.

Section 68 gives the Board the power to request a public body to furnish it with a report on its compliance with its obligations under this Bill.

Part 10

Miscellaneous

Section 69 gives the Minister the power to prescribe certain documents that public bodies should not collect directly from a person but should instead avail of data-sharing in order to avoid unnecessary requests for documents.

Section 70 grants the Minister the power to direct public bodies to collect information in a format specified in the direction.

Section 71 enables the Minister to direct public bodies to provide information in relation to all data-sharing arrangements being carried out under this Bill or any other enactment.

Section 72 amends the Ministers and Secretaries (Amendment) Act 2011 to enable the Minister to collect personal data in order to carry out the functions specified in *Part 5* of this Bill.

SCHEDULE

The *Schedule* is a list of bodies – all commercial state owned enterprises – to which the definition of “public body” in *section 9* does not apply.

Financial Implications of the Bill

A certain level of direct cost can be expected to arise for the Exchequer from the establishment of base registries, which has yet to be quantified. Incremental staffing and other administrative costs can also be expected to arise from requirements under the Bill to put data sharing agreements in place and to undertake privacy impact assessments as part of all data sharing agreements between public bodies. These costs will be met from within existing agreed Ministerial expenditure ceilings.

On the other hand, an incremental positive impact on the Exchequer can be expected in terms of reducing the future administrative burden on public bodies seeking to put individual data sharing arrangements on a statutory footing as they arise. A decrease in the duplication of efforts by public bodies is also likely to give rise to incremental cost savings.

*An Roinn Caiteachais Phoiblí agus Athchóirithe,
Meitheamh, 2018.*