



SEANAD ÉIREANN

**AN BILLE UM CHOMHROINNT AGUS RIALACHAS
SONRAÍ, 2018**

DATA SHARING AND GOVERNANCE BILL 2018

**LEASUITHE TUARASCÁLA
REPORT AMENDMENTS**

SEANAD ÉIREANN

AN BILLE UM CHOMHROINNT AGUS RIALACHAS SONRAÍ, 2018 —AN TUARASCÁIL

DATA SHARING AND GOVERNANCE BILL 2018 —REPORT

Leasuithe Amendments

**Government amendments are denoted by an asterisk*

*1. In page 7, line 9, after “Board;” to insert “to amend the Social Welfare Consolidation Act 2005;”.

*2. In page 9, between lines 24 and 25, to insert the following:

“Application of Act to special categories of personal data

5. This Act, other than *Part 5*, *Part 8* and *Chapter 3* of *Part 9*, shall not apply to special categories of personal data.”.

3. In page 9, between lines 24 and 25, to insert the following:

“Application of Act to special categories of personal data

5. This Act, other than *Part 5* and *Part 8*, shall not apply to special categories of personal data.”.

—*Senators Alice-Mary Higgins, Lynn Ruane.*

4. In page 9, line 26, to delete “Subject to *subsections (2)* and *(3)*, nothing” and substitute “Nothing”.

—*Senators Alice-Mary Higgins, Lynn Ruane.*

5. In page 9, line 29, after “body” where it secondly occurs to insert “except where that data contains special categories of personal data”.

—*Senators Alice-Mary Higgins, Lynn Ruane.*

6. In page 9, between lines 32 and 33, to insert the following:

“(4) Notwithstanding *section 5(2)*, any disclosure by one public body to another public body of special categories of personal data shall be subject to *section 38* of the Data Protection Act.”.

—*Senators Alice-Mary Higgins, Lynn Ruane.*

7. In page 10, line 3, after “identity” to insert the following:

“excepting such parts of that public service identity which constitute special

categories of personal data under General Data Protection Regulation, including biometric data such as facial images which allow for the unique identification or authentication of a natural person”.

—*Senators Alice-Mary Higgins, Lynn Ruane.*

8. In page 10, line 3, after “identity” to insert the following:

“excepting such parts of that public service identity which constitute special categories of personal data”.

—*Senators Alice-Mary Higgins, Lynn Ruane.*

9. In page 10, line 5, after “Act” to insert “and compliant with Article 9 of GDPR”.

—*Senators Alice-Mary Higgins, Lynn Ruane.*

10. In page 10, line 8, to delete “*section 12(2)(a)(ii)(VIII)*” and substitute “*section 2(2)(a)(ii)(III) or (VIII)*”.

—*Senators Alice-Mary Higgins, Lynn Ruane.*

11. In page 10, between lines 14 and 15, to insert the following:

“(6) A specified body may not make presentation of a public service card or access to a person’s public service identity the sole or exclusive basis by which a person may confirm their identity in order to conduct a transaction or access a service.”.

—*Senators Alice-Mary Higgins, Lynn Ruane.*

12. In page 10, to delete lines 24 to 32 and substitute the following:

“Data-sharing: meaning

8. (1) In this Act, “data-sharing” means the execution and operation of defined processes for the exchange of information between one or more entities for the purpose of supporting the delivery of statutory public sector services, or the execution of obligations under EU law.
- (2) The basis on which data sharing processes may operate include—
- (a) a case by case basis for the validation and verification of data,
 - (b) on a defined batch processing basis for the validation, verification, and updating of specific populations of data, or
 - (c) as once-off consolidation and integration of disparate data sets to form a new, shared, master data repository.”.

—*Senators Alice-Mary Higgins, Lynn Ruane.*

13. In page 10, to delete lines 34 to 38, and in page 11, to delete lines 1 to 30 and substitute the following:

“9. (1) In this Act, “public body” is given the same meaning as a public body and a public authority as set out in section 2 of the Data Protection Act.”.

—*Senators Alice-Mary Higgins, Lynn Ruane.*

14. In page 12, between lines 11 and 12, to insert the following:

“(5) Where a body designated by the Minister as a public body under this section has activities and functions which do not relate to the delivery of services to the public under an agreement with a public body, the Minister will make and publish regulations on suitable and specific safeguards to protect against any inappropriate access to or processing of data shared under this Act within that body.”.

—*Senators Alice-Mary Higgins, Lynn Ruane.*

15. In page 13, between lines 20 and 21, to insert the following:

“(h) the commercial interests of public bodies as defined under this Act.”.

—*Senators Alice-Mary Higgins, Lynn Ruane.*

*16. In page 13, lines 31 and 32, to delete “(other than special categories of personal data)”.

17. In page 14, to delete lines 5 and 6 and substitute the following:

“(I) as one non-mandatory means to verify the identity of a person, where the first or second mentioned public body is providing or proposes to provide a service to that person, without prejudice to a person’s right to seek to verify their identity by other means;”.

—*Senators Alice-Mary Higgins, Lynn Ruane.*

*18. In page 14, to delete lines 9 to 12 and substitute the following:

“(III) to avoid the financial or administrative burden that would otherwise be imposed on a person to whom a service is being or is to be delivered by the first or second mentioned public body were the second mentioned public body to collect the personal data directly from that person;”.

19. In page 14, to delete lines 9 to 12.

—*Senators Alice-Mary Higgins, Lynn Ruane.*

20. In page 14, line 12, after “directly” to insert the following:

“where a person gives instruction that they do not regard collection of their personal data directly by a second public body as a financial or administrative burden, such purpose shall not be considered grounds for disclosure”.

—*Senators Alice-Mary Higgins, Lynn Ruane.*

21. In page 15, line 4, to delete “body.” and substitute the following:

“body, and

(f) the sharing of personal data is necessary and proportionate.”.

—*Senators Alice-Mary Higgins, Lynn Ruane.*

22. In page 15, between lines 5 and 6, to insert the following:

“(4) Where special categories of personal data are disclosed by one public body to another public body for reasons of public interest, regulations shall be made—

(a) by the Minister following consultation with such other Minister of the Government as he or she considers appropriate, or

(b) by any other Minister of the Government following consultation with the Minister and such other Minister of the Government as he or she considers appropriate.

(5) The Minister or any other Minister of the Government shall consult with the Commission before making regulations under *subsection (4)#*.

(6) The Commission may, on being consulted under *subsection (5)#*, make observations in writing on any matter which is of significant concern to it in relation to the proposed regulations and, if the Minister or any other Minister of the Government proposes to proceed to make the regulations notwithstanding that concern, that Minister shall, before making the regulations, give a written explanation as to why he or she is so proceeding to—

(a) the Committee established jointly by Dáil Éireann and Seanad Éireann known as the Committee on Justice and Equality or any Committee established to replace that Committee, and

(b) any other Committee which that Minister considers appropriate having regard to the subject matter of the regulations.

(7) Regulations made under *subsection (4)#* shall specify—

(a) the personal data that may be processed,

(b) the circumstances in which the personal data may be processed, including specifying the persons to whom the data may be disclosed, and

(c) such other conditions (if any) as the Minister or any other Minister of the Government, as the case may be, considers appropriate to impose on such processing.”.

—*Senators Alice-Mary Higgins, Lynn Ruane.*

[#This is a reference to the subsection proposed to be inserted by this amendment.]

***23.** In page 15, line 7, to delete “(1) This section applies to personal data, other than special categories of personal data.”.

***24.** In page 16, lines 31 and 32, to delete “(other than special categories of personal data)”.

25. In page 17, to delete line 6 and substitute the following:

“**16.** (1) A data-sharing agreement shall be published and made available to any Oireachtas committee on request.

(2) An opinion of the data sharing-agreement by the Data Protection Commission must be published before the date of commencement of the agreement and made available to any Oireachtas committee on request.”.

—*Senators Alice-Mary Higgins, Lynn Ruane.*

26. In page 17, to delete line 6 and substitute the following:

“**16.** A data-sharing agreement shall be published and made available to any Oireachtas committee on request.”.

—*Senators Alice-Mary Higgins, Lynn Ruane.*

***27.** In page 17, between lines 26 and 27, to insert the following:

“(f) specify whether the impetus for the disclosure of information under the agreement will come from a data subject or a public body,

(g) specify whether, where information is disclosed under the agreement, the disclosure will be of information in relation to individual data subjects or classes of data subjects,

(h) specify whether the disclosure of information under the agreement will be on a once-off or ongoing basis,”.

28. In page 17, between lines 26 and 27, to insert the following:

“(f) specify whether the basis on which the data is to be processed is—

(i) a case by case basis for the validation and verification of data,

(ii) on a defined batch processing basis for the validation, verification, and updating of specific populations of data,

(iii) as once-off consolidation and integration of disparate data sets to form a new, shared, master data repository, or

(iv) on another basis detailed in the agreement,”.

—*Senators Alice-Mary Higgins, Lynn Ruane.*

***29.** In page 17, between lines 30 and 31, to insert the following:

“(h) include an undertaking by the parties to the agreement to comply with Article 5 of the General Data Protection Regulation in disclosing information under the agreement,”.

30. In page 18, between lines 11 and 12, to insert the following:

“(n) demonstrate necessity and proportionality of sharing.”.

—*Senators Alice-Mary Higgins, Lynn Ruane.*

31. In page 18, between lines 11 and 12, to insert the following:

“(n) able and specific safeguards put in place to protect against any inappropriate access to or processing of data between the stated bodies.”.

—*Senators Alice-Mary Higgins, Lynn Ruane.*

32. In page 18, between lines 11 and 12, to insert the following:

“(n) adhere to the principles of data protection as specified in article 5 of the General Data Protection Regulation.”.

—*Senators Alice-Mary Higgins, Lynn Ruane.*

33. In page 19, between lines 38 and 39, to insert the following:

“(6) This section is without prejudice to and does not limit the rights of a person as a data subject in respect of any or all data controllers in a data sharing agreement.”.

—*Senators Alice-Mary Higgins, Lynn Ruane.*

*34. In page 31, to delete lines 14 to 17.

*35. In page 31, to delete line 34, and in page 32, to delete line 1 and substitute the following:

“(b) avoiding the burden that would otherwise be imposed on a person to whom a service is being or is to be delivered by a public body if the information concerned was collected directly from that person, and”.

36. In page 31, to delete line 34, and in page 32, to delete line 1.

—*Senators Alice-Mary Higgins, Lynn Ruane.*

37. In page 32, line 2, to delete “bodies.” and substitute the following:

“bodies, and

(d) a mechanism shall be provided to allow a person to whom a service is being or is to be delivered by a public body to give instruction that they do not regard collection of their personal data directly by any public body as a burden and in such an instance *paragraph (b)* shall not apply.”.

—*Senators Alice-Mary Higgins, Lynn Ruane.*

38. In page 32, between lines 26 and 27, to insert the following:

“(5) The Minister shall, when making an order under *subsection (1)*, have regard to whether provision is made for a person’s right to verify their identify using an alternative process.”.

—*Senators Alice-Mary Higgins, Lynn Ruane.*

***39.** In page 33, to delete lines 32 to 35, and substitute the following:

“(1) Subject to *subsection (3)*, where the information contained in a base registry meets the qualitative requirements of a public body in respect of the purpose for which it intends to use that information, the public body shall not collect such information for that purpose from a source other than the base registry, save where the information so collected is collected for the purposes of enabling that public body to access information on the base registry relating to the information so collected.”.

40. In page 33, line 34, to delete “or use”.

—*Senators Alice-Mary Higgins, Lynn Ruane.*

41. In page 33, line 35, after “registry” to insert the following:

“other than where that information may be sought or collected on the basis of direct consent of the person or data subject”.

—*Senators Alice-Mary Higgins, Lynn Ruane.*

***42.** In page 34, line 15, to delete “system,” and substitute “system”.

***43.** In page 34, lines 15 and 16, to delete all words from “to” in line 15 down to and including line 16 and substitute the following:

“to—

(a) exercise his or her rights under the General Data Protection Regulation, and”.

***44.** In page 34, between lines 16 and 17, to insert the following:

“(b) view information in relation to the personal data breaches, if any—

(i) which affect his or her personal data, and

(ii) in respect of which a notification has been made for the purposes of Article 34(1) of the General Data Protection Regulation.”.

***45.** In page 34, line 22, to delete “and” and substitute the following:

“(b) view information in relation to the personal data breaches, if any—

(i) which affect his or her personal data, and

(ii) in respect of which a notification has been made for the purposes of Article 34(1) of the General Data Protection Regulation,

and”.

***46.** In page 34, line 24, after “18,” to insert “19,”.

—*Senators Alice-Mary Higgins, Lynn Ruane.*

47. In page 34, line 24, to delete “20 and 21” and substitute “20, 21 and 34”.

—*Senators Alice-Mary Higgins, Lynn Ruane.*

48. In page 34, line 25, to delete “Regulation.” and substitute the following:

“Regulation, and

- (c) view information about any data breaches where their personal data may have been affected and information on how to request further information.”.

—*Senators Alice-Mary Higgins, Lynn Ruane.*

49. In page 34, between lines 25 and 26, to insert the following:

- (c) view a list of instances where personal data relating to him or her has been shared between public bodies, and the nature of that data.”.

—*Senators Alice-Mary Higgins, Lynn Ruane.*

50. In page 34, between lines 25 and 26, to insert the following:

- (c) view the contents of the data-sharing agreements under which his or her data has been shared between public bodies.”.

—*Senators Alice-Mary Higgins, Lynn Ruane.*

*51. In page 34, line 30, after “(2)(a)” to insert “and (b)”.

*52. In page 34, line 34, to delete “subsection 2(b)” and substitute “subsection 2(c)”.

*53. In page 34, lines 37 and 38 and page 35, line 1, to delete all words from and including “of” in line 37 down to and including page 35, line 1 and substitute the following:

“of—

- (a) providing the information referred to in *subsection (2)(a)* or *(b)*, or
- (b) facilitating or responding to a request referred to in *subsection (2)(c)*.”.

*54. In page 35, line 4, after “(2)(a)” to insert “or (b)”.

*55. In page 35, line 5, to delete “subsection 2(b)” and substitute “subsection 2(c)”.

*56. In page 35, between lines 18 and 19, to insert the following:

“(9) In this section “personal data breach” has the same meaning as it has in the General Data Protection Regulation.”.

*57. In page 36, between lines 11 and 12, to insert the following:

“(5) The Minister may enter into an arrangement for the provision of consultancy, advice or other services to the Board.”.

58. In page 36, between lines 11 and 12, to insert the following:

“(5) Any contracts in respect of consultancy, advice or other services to the board shall be subject to public competition.”.

—*Senators Alice-Mary Higgins, Lynn Ruane.*

59. In page 36, between lines 11 and 12, to insert the following:

“(5) Any arrangements regarding consultancy advice or other services to the board must be

published and subject to an annual review and expiry.”.

—*Senators Alice-Mary Higgins, Lynn Ruane.*

60. In page 36, between lines 13 and 14, to insert the following:

“(2) Of the members of the Board, an equal number shall be male and female.”.

—*Senators Alice-Mary Higgins, Lynn Ruane.*

61. In page 36, to delete line 14 and substitute the following:

“(2) The Minister shall be responsible for appointing members of the board and ensuring the following conditions are met:

- (a) no more than half of the Board are employees of a Department or a public body;
- (b) at least two members of the Board have expertise in the area of data protection;
- (c) at least one member should satisfy both *paragraphs (a) and (b)*; and
- (d) external appointments are made following the recommendation of the Public Appointments Service and with the agreement of the Government.”.

—*Senators Alice-Mary Higgins, Lynn Ruane.*

***62.** In page 36, line 17, after “Board” to insert “, including in relation to the protection of personal data”.

***63.** In page 36, between lines 17 and 18, to insert the following:

“(4) When appointing members of the Board, the Minister shall have regard to—

- (a) the objective that at least 40 per cent of members of the Board shall be women and at least 40 per cent shall be men, and
 - (b) the guidelines, if any, prepared by the Minister in relation to appointments to boards of State bodies.
- (5) The Minister may, following consultation with the Minister, if any, in whom functions in relation to the public body are vested, appoint a person who is an employee of, or holds an office or other position in, a public body to be a member of the Board.
- (6) The Minister may appoint not less than 2 and not more than 4 persons who are not employees of, or the holders of an office or other position in, a public body to be a member of the Board.
- (7) The Minister shall ensure, where practicable, that not less than one third of the members of the Board are appointed pursuant to *subsection (6)*.”.

64. In page 36, between lines 17 and 18, to insert the following:

“(4) When appointing members of the Board, the Minister shall have regard to—

- (a) the objective that at least 40 per cent of members of the Board shall be women and at least 40 per cent shall be men, and
- (b) the guidelines, if any, prepared by the Minister in relation to appointments to

boards of State bodies.

- (5) The Minister may, following consultation with the Minister, if any, in whom functions in relation to the public body are vested, appoint a person who is an employee of, or holds an office or other position in, a public body to be a member of the Board.
- (6) The Minister may appoint not less than 2 who are not employees of, or the holders of an office or other position in, a public body to be a member of the Board.
- (7) The Minister shall ensure, where practicable, that not less than one third of the members of the Board are appointed pursuant to *subsection (6)*.”.

—*Senators Alice-Mary Higgins, Lynn Ruane.*

65. In page 36, to delete lines 20 and 21 and substitute the following:

“(5) Each member of the Board shall hold his or her office on such terms and conditions as are determined by the Minister at the time of his or her appointment for a term not exceeding three years and shall be eligible for re-appointment for a maximum of a further two three year terms.”.

—*Senators Alice-Mary Higgins, Lynn Ruane.*

***66.** In page 36, lines 20 and 21, to delete “, including the term of office,”.

***67.** In page 36, between lines 21 and 22, to insert the following:

“(6) Subject to *subsection (7)#*, each member of the Board shall hold office for 3 years from the date of his or her appointment.

(7) A person’s appointment under *subsection (5)##* shall be terminated with effect from the earlier of—

- (a) the date on which the person ceases to be employed by, or to hold an office or other position in, the public body concerned, and
- (b) the date that is 3 years from the date of their appointment.

(8) A member of the Board whose term of office expires by the effluxion of time or whose appointment is terminated in accordance with *subsection (7)#* shall be eligible for reappointment to the Board, but the total period of membership of the Board of a person shall not exceed 9 years.”.

[#*This is a reference to the subsection proposed to be inserted by this amendment.*]

[##*This is a reference to the subsection proposed to be inserted by amendment No. 63.*]

***68.** In page 36, lines 22 and 23, to delete all words from “by” on line 22 down to and including “in” on line 23 and substitute “by, or does not hold an office or position in,”.

***69.** In page 36, after line 37, to insert the following:

“(5) A committee established under *subsection (1)* shall prepare and submit a report on its activities to the Board on a regular basis.

(6) A report prepared and submitted by the Board under *section 52* shall include a summary of the activities of the committees, if any—

- (a) established under *subsection (1)*, and
- (b) in existence in the period to which the report relates.

(7) A committee established under *subsection (1)* may be dissolved by a resolution of the Board at any time and shall stand dissolved on the date that is 2 years from the date of its establishment, unless the Board resolves that the committee is to continue in existence.”.

70. In page 36, after line 37, to insert the following:

“(5) Each committee, not later than 30 June in each year, shall prepare and submit to the Board, a report on its membership and the performance by it of its functions in the immediately preceding year, or in the case of the period from the date the Board is first appointed to the next following 30 June, that period. Such reports shall be available to the Minister and Oireachtas committees on request.”.

—*Senators Alice-Mary Higgins, Lynn Ruane.*

71. In page 36, after line 37, to insert the following:

“(5) A committee shall be formed for a maximum period of two years, after which it is considered to be disbanded unless renewal of its membership and mandate is formally approved by the Board.”.

—*Senators Alice-Mary Higgins, Lynn Ruane.*

72. In page 38, line 16, after “it” to insert “, and its committees,”.

—*Senators Alice-Mary Higgins, Lynn Ruane.*

***73.** In page 39, between lines 13 and 14, to insert the following:

“(c) where no data protection impact assessment has been carried out in relation to the processing proposed to be undertaken under the proposed agreement, a summary of the reasons why no data protection impact assessment has been carried out,”.

74. In page 39, between lines 19 and 20, to insert the following:

“(iii) is satisfied that appropriate consideration has been given to conducting a data protection impact assessment,”.

—*Senators Alice-Mary Higgins, Lynn Ruane.*

75. In page 39, between lines 19 and 20, to insert the following:

“(iii) is satisfied that the agreement adheres to the principles of data protection as specified in Article 5 of the General Data Protection Regulation and is necessary and proportionate,”.

—*Senators Alice-Mary Higgins, Lynn Ruane.*

76. In page 42, to delete line 23 and substitute the following:

“(a) the time periods referred to in:

- (i) *section 55(1)(d)(iii)* setting a minimum of two weeks;

(ii) *section 56*,
and”.

—*Senators Alice-Mary Higgins, Lynn Ruane.*

*77. In page 42, between lines 24 and 25, to insert the following:

“(2) The time period specified by the Board for the purposes of *section 55(1)(d)(iii)* shall not be less than 14 days.”.

78. In page 42, between lines 24 and 25, to insert the following:

“(2) The time period specified by the Board for the purposes of *section 55(1)(d)(iii)* shall not be less than 30 days.”.

—*Senators Alice-Mary Higgins, Lynn Ruane.*

*79. In page 43, between lines 7 and 8, to insert the following:

“(e) the processing of personal data by a public body designated in an order made under *section 9(4)*,”.

80. In page 43, to delete lines 13 to 16.

—*Senators Alice-Mary Higgins, Lynn Ruane.*

81. In page 43, to delete lines 13 to 22.

—*Senators Alice-Mary Higgins, Lynn Ruane.*

82. In page 46, to delete lines 11 to 15 and substitute the following:

“(4) This section applies to personal data, excluding special categories of personal data.”.

—*Senators Alice-Mary Higgins, Lynn Ruane.*

*83. In page 48, after line 2, to insert the following:

“Amendment of Social Welfare Consolidation Act 2005

73. Schedule 5 to the Act of 2005 is amended by the insertion, in paragraph 1(4), of “the National Shared Services Office,” after “the National Council for Special Education”.