

Observations on Draft General Scheme of the Data-Sharing and Governance Bill

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Summary

1. Heads need to be updated to take account of General Data Protection Regulation (GDPR).
2. Would suggest following changes
 - Data sharing requires a legislative legal base;
 - Criminal & non-criminal data sharing need to be split;
 - Sharing of comprehensive data sets is highly problematic;
 - A mechanism to inform subjects;
 - A portal to enable subjects access their data;
 - Compliance & supervision processes to be in place – appoint DPOs, undertake DPIAs etc...
3. Other suggestions

Data-sharing by State requires a law

Head 4 needs to be redrafted to provide an adequate lawful basis for the sharing of information

- memorandums are inadequate
- Primary legislation is too unwieldy

So need a regulation making power which might:

- Set out objectives of public interest & legitimate aims (principles & policies);
- Enable relevant Minister to make SI where these exist;
- Require that SI provide for:
 - i. General conditions
 - ii. Types of data
 - iii. Data subjects
 - iv. Disclosees
 - v. Purpose
 - vi. Storage periods
 - vii. etc.

Split data sharing for general & criminal justice purposes

Different regimes for different purposes:

- I. Data that is processed for prevention, detection, investigation and prosecution of crime – new Data Protection Directive

- II. General Data Protection Regulation – everything else

Heads should provide separate regimes for each

Sharing of comprehensive data sets is highly problematic

Heads 12, 13, 14 and 15 suggest that transfers of complete data sets out be allowed, this would be excessive, may conflict with:

- Principle of data minimisation under Article 5, GDPR
- Court of Justice in: *Digital Rights Ireland/Schrems/Tele2*

But accuracy is also a principle under Article 5, GDPR

- Suggest enable checking of individual data sets;
- So applicant education grant might be able to check identity, income and education with other public bodies.
- But only for applicant, not everyone.

Solution: allow public bodies to query data controlled by other public bodies – no need for complete transfers.

Information: Safeguards & professional secrecy

Subjects have right to be informed how data is being processed, but GDPR provides need not do so:

- “obtaining or disclosure is expressly laid down by... law to which the controller is subject and which provides appropriate measures to protect the data subject's legitimate interests”
- “where the personal data must remain confidential subject to an obligation of professional secrecy regulated by Union or Member State law, including a statutory obligation of secrecy”

What:

- Will appropriate measures be?
- Will obligations of professional secrecy be?

A portal to enable subjects access their data

Article 15 GDPR provides that subjects have:

1. Right of access to data;
2. Right to information about purposes of data processing, retention periods, disclosures, etc.
3. Right to a copy of the data.

How will state “provide **remote access to a secure system** which would provide the data subject with direct access to his or her personal data”?

Governance

Heads should not replicate GDPR as:

- Poor drafting practice – GDPR applies anyway
- EU Commission will check for inconsistencies

So heads need not provide for:

- Appointment of DPO;
- Undertaking DPIA;
- Accountability
- Data protection by design/default

But State still needs to do all these things and will be **accountable** if it fails to do so.

Other suggestions:

Creation of offence:

- processing of personal data controlled by State without authority;
- specifically aimed at public servants/those who wrongfully acquire data from them;
- Means each member of service would have to query instructions to process data;
- Who would prosecute?

Integrate with offences proposed by Heads of new Data Protection Bill?

- Unauthorised disclosure by processor.
- Disclosure of personal data obtained without authority.

Questions?