

By email only: [adoption@health-ni.gov.uk](mailto:adoption@health-ni.gov.uk)

09 January 2023

Dear Sirs,

**Re: The Information Commissioner's response to the Department of Health consultation regarding 'Support for Care Leavers'**

The Information Commissioner is pleased to respond to the Department of Health (DoH) regarding its consultation on 'Support for Care Leavers'.

The Information Commissioner's role includes the regulation of the Data Protection Act 2018 (DPA 2018), the UK General Data Protection Regulation (UK GDPR) and the Freedom of Information Act 2000 (FOIA), among other pieces of legislation.

Whilst we recognise that the questions asked within the questionnaire fall outwith our remit, we nevertheless would like to contribute to the consultation process. Therefore, in the sections below we have detailed our comments pertaining to the application of the data protection legislation for DoH to consider.

**Article 36(4) and the statutory obligation to consult with the ICO**

With the aim of the consultation being to seek views on proposed consequential amendments to Regulations 6 and 10 of the 2005 Regulation, we would like to draw your attention to DoH's potential obligation under Article 36(4) of the UK GDPR.

Article 36(4) states: "*Member States shall consult the supervisory authority during the preparation of a proposal for a legislative measure to be adopted by a national parliament, or of a regulatory measure based on such a legislative measure, which relates to processing*".

If a decision is made to amend legislation DoH may need to initiate the requirement to consult with our office. Your [Data Protection Officer](#) (DPO) will be able to guide you on this if it becomes relevant, including providing assistance with regards to completing the Enquiry Form, which can be found [here](#).

**Embedding data protection into the proposed amendments**

DoH must consider data protection implementations whilst drafting

amendments to the law. This includes adhering to your [data protection by design and default](#) obligations, seeking advice from your DPO and undertaking [Data Protection Impact Assessments](#) (DPIAs) where appropriate.

With regards to DPIAs we note that Section 6 of the consultation details that a full DPIA is not required. Whilst it is up to the determination of the controller (or the legislature in this instance) to consider whether the criteria for a DPIA have been met, we recommend that one is undertaken to support 'good practice'.

As you may be aware, under the data protection legislation DPIAs are necessitated when processing is likely to result in a 'high-risk' to the rights and freedoms of individuals. The ICO has produced guidance regarding what constitutes high-risk processing which is available [here](#). The European Data Protection Board also produced [guidelines](#) with some criteria to help identify other high-risk processing activities. This includes the processing of data concerning [vulnerable individuals](#).

With consideration of this information, we recommend that further consideration is given as to whether processing concerning care leavers, including those subjected to Modern Slavery and Human Trafficking (MSHT), is likely to be high-risk. If a high-risk has been identified, then DoH must complete a full DPIA and seek expert advice from your DPO.

We hope that this information is of use to you and welcome further engagement with the DoH regarding the proposals.

Yours sincerely,

Information Commissioner's Office