

Department of Health
Public Health Bill Team
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14 October 2024

Dear Public Health Bill Team

**RE: Consultation on policy underpinning the Public Health Bill
(Northern Ireland)**

The ICO welcomes the opportunity to respond to the above public consultation. As you will be aware, the ICO is the UK's independent public authority set up to uphold information rights, and enforces and oversees a range of legislation including the Freedom of Information Act, the UK General Data Protection Regulation (UK GDPR) and the Data Protection Act 2018 (DPA 2018).

Accordingly, our comments are focused on the compliance of your proposals with UK data protection law as set out in the UK GDPR and the DPA 2018. Our comments do not extend to other legal requirements which may shape how these proposals develop. We would encourage the Department of Health (DoH) to ensure that these requirements have been duly considered.

The Public Health Bill Team have been engaging with our office on the proposals as part of consultation under Article 36(4) of the UK GDPR. We provided initial comments on the above consultation to the Bill Team via email on 12 September on the proposals that relate to the [general processing of personal data](#) under Part 2 of the DPA 2018 (read with the UK GDPR).

This correspondence is supplemental to the feedback already provided, and focuses on the Part 3 [law enforcement processing](#) elements of the proposals, alongside those where the processing appears to fall under Part 2, but may subsequently fall under Part 3 of the DPA.

The DoH will need to determine whether the policy proposals fall under Part 2 or Part 3 of the DPA. Part 3 only applies to competent authorities processing for law enforcement purposes. The law enforcement purposes are defined under section 31 of the DPA 2018 as:

'The prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security.'

Any processing carried out by a competent authority which is not for the **primary purpose** of law enforcement will be covered by the general processing regime under Part 2 of the DPA 2018 and UK GDPR.

Our comments are set out below:

Part 3 Powers of entry and investigations

The consultation document sets out proposals concerning powers of entry and investigation by an authorised officer of the Public Health Authority (PHA) "to ascertain whether there is, or has been, on, or in connection with premises, contravention of the Act or regulations made under the Act." It is therefore likely that such processing will fall under Part 3 of the DPA 2018. As such, it will need to comply with the six key principles for law enforcement processing as set out within Part 3, Chapter 2 of the DPA 2018. Considerations should include:

- **Lawfulness:** the processing "must be lawful and fair", ensuring that it falls under an applicable [condition for processing](#), as well as ensuring that the processing is not in breach of other legislation. If the processing is not lawful under separate legislation, it will not be lawful under data protection legislation.
- **Adequate, relevant and not excessive:** the data must be limited to what is necessary for the purpose for which it is being processed.
- **Transparency:** although transparency requirements are not as strict for law enforcement processing as they are under the UK GDPR, it will nonetheless be important to ensure compliance with the [transparency obligations](#) under the law enforcement processing provisions.
- **Sensitive processing:** there should be clarity on whether the proposals may extend to 'sensitive processing', for which there are [additional criteria](#) to be satisfied under Part 3 of the DPA.

Part 2 processing, that may become Part 3 processing

The consultation document contains proposals which are likely to involve processing under Part 2 of the DPA 2018 but may later fall under Part 3 processing, for example by the relevant competent authority responsible for dealing with non-compliance with the proposals that are said to constitute an offence. You can read further guidance on Part 2 to Part 3 processing [here](#) on our website.

We have set out comments below for DoH and relevant authorities to consider in such circumstances:

- **Transparency and data minimisation:** The consultation document outlines several proposals for individuals and organisations having to notify the PHA for a variety of reasons connected with public health matters. In our response of 12 September, we provided advice around [transparency](#) and [data minimisation](#) in relation to the duty on registered medical practitioners to notify the PHA of evidence of infectious diseases. The same advice would apply to all proposals of a similar nature within the consultation document that would fall under Part 2 of the DPA, but may proceed to Part 3 processing should non-compliance constitute the commission of an offence. For example, this would include the proposed duty on diagnostic laboratories to notify the PHA of causative agents found in human samples. It will be important for individuals to be made aware that their personal data may be shared in this way, as well as ensuring that the data being shared is adequate, relevant and limited to what is necessary.
- **Children's data:** The consultation outlines policy proposals to extend the powers of the PHA to issue a notice to keep a child away from school and to require the head teacher of a school to provide PHA with the names and contact details of pupils, with non-compliance with such requirements constituting an offence. The transparency and data minimisation considerations outlined above also apply to such proposals and are heightened, given the data will relate to a child. The additional consideration that is afforded to children is set out under Recital 38 of the UK GDPR which outlines that children "*merit special protection*". There will be additional considerations concerning these policy proposals in relation to the [security principle](#) of the UK GDPR and the technical and

organisational measures that will be applied to such processing, given the sensitivity of a child's health information.

Power to make regulations

The consultation document sets out a proposal for the Bill to include powers allowing the Minister of Health to make further regulations, including domestic regulations for the purposes of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination in Northern Ireland, as well as international travel regulations. Should these proposals proceed, it is likely that such regulations will require prior consultation with our office under [Article 36\(4\) of the UK GDPR](#). The Data Protection Officer (DPO) for DoH can advise further on this requirement.

Proposals concerning judicial processing

There are references in the consultation document to processing by judicial authorities, primarily the magistrates' court. Under section 117 of the DPA 2018, the ICO does not have regulatory authority over judges, courts or tribunals when they are 'acting in a judicial capacity'. This is to ensure judicial independence. However, if the processing is non-judicial, such as carrying out more administrative functions, the ICO does have regulatory authority.

Nonetheless, judges and courts do still need to comply with data protection law when acting in a judicial or an administrative capacity. We would recommend that the role of the magistrates' court proposed under the Public Health Bill, such as the issuing of court orders, is assessed against the data protection principles, to ensure their role and such orders are compliant with data protection legislation.

I hope the above feedback, alongside our initial comments dated 12 September, will be useful to DoH as the policy proposals develop. DoH should continue to liaise with our office on the legislative proposals as part of consultation under Article 36(4).

Regardless of whether the processing falls under Part 2 or Part 3 of the DPA as set out above, DoH will still need to demonstrate a data protection by design and default approach, with the completion of a Data Protection Impact Assessment (DPIA) being a key aspect of this. As requested on 12 September,

please provide us with a copy of this DPIA, setting out the necessity and proportionality of the policy proposals, for review.

Should you have any queries on the above, please do not hesitate to contact me.

Yours sincerely,

Senior Policy Officer
Northern Irish Affairs Team