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The Information Commissioner's response to the Department of Justice's revised Codes of Practice under the Police and Criminal Evidence (Northern Ireland) Order 1989.

Introduction

1. The Information Commissioner's Office (ICO) welcomes the opportunity to respond to the above consultation. This Office has responsibility for promoting and enforcing the UK General Data Protection Regulation (UK GDPR), the Data Protection Act 2018 (DPA 2018) and additional information rights legislation.

2. This consultation is in regard to revisions made to various Codes of Practice under the Police and Criminal Evidence (Northern Ireland) Order 1989 (PACE). Specifically, the consultation is seeking views on proposed changes made to Codes A to H, and on the introduction of new Code I (Persons detained under national security provisions).

3. It is our understanding that Codes A to H are being revised broadly to reflect changes made by Westminster to the Counter-Terrorism and Border Security Act (CTBSA) and the Police, Crime, Sentencing and Courts Act (PSCS) Act. Furthermore, we note that the new Code I is required to support the National Security Act (NSA).

4. Please note that many of the themes/questions included in the consultation fall outside of the scope of the Information Commissioner's regulatory role. For this reason, the following comments are focused solely on the information rights elements of the document.

General Data Protection Considerations

ICO Engagement

5. Whilst we have stated that many themes and questions posed in the consultation fall outside the ICO's remit, we have identified

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the following proposed amendments to the Codes relevant to the ICO's regulatory role:

- **Code A** – Amendments made to stop and search to ensure that officers have a specific description of the person to be searched. This description cannot rely on protected characteristics i.e. race or religion etc.
- **Code C** – The introduction of live-link technology to enable interpretation services to be provided by interpreters based at remote locations to individuals detained for questioning.
- **Code D** – Additional clarification provided regarding the power to take fingerprints without consent.
- **Codes E and F** – The introduction of revised approaches to the audio (E) and visual recording (F) of suspect interviews.

6. Good data protection policies and practices will complement the Department of Justice's (DoJ) work when developing the codes. This will also help to safeguard the personal information of individuals whose personal information will be collected by law enforcement agencies when implementing certain codes.

Data Protection by Design and Default

7. A fundamental concept of data protection law is that data protection should be built into any project or proposals using personal data from the earliest stages of planning. As such, we would like to remind DoJ of their obligations under data protection by design and default as set out in Article 25 of the UK GDPR.

8. Implementing technical and organisational measures at the initial phases of the design process and operation could lead to the safeguarding of privacy and data protection principles from the onset.

9. Furthermore, DoJ should also remind law enforcement agencies (such as the PSNI) of their own obligations under Article 25. This will be particularly important when it comes to implementing changes set out in the Codes that impact on personal data handling (for example, in the case of Codes C, E and F where new processes and technology are being introduced).

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Training and Guidance

10. We note that various Codes state that the Chief Constable must be satisfied that the use of recording devices (including notebooks), records and forms satisfies relevant data protection legislation. We also note that there are references to training throughout the Codes (for example, Code E states that training will be provided to staff in preparing summaries of interviews).

11. Due to the sensitive personal information that police officers will deal with, it is important that the PSNI also ensures that data protection training (which is reviewed at regular intervals), is also in place where relevant. This will be particularly important in ensuring that Codes that require the handling of personal information are implemented appropriately.

Data Protection Impact Assessments (DPIA)

Department of Justice

12. The consultation document states that the Department *"carried out a DPIA screening when considering the drafting of these regulations"*. It goes on to state that as these draft regulations *"do not require the Department to process individual's personal information a full DPIA has been screened out"*.

13. These changes may not impact any processing carried out by DoJ, but they will have impact an on how other data controllers process data, which in this case, will be law enforcement agencies implementing the Codes such as the PSNI.

14. Whilst we understand that there may be no direct processing risks for DoJ, the purpose of a DPIA when drafting legislation is to assess the project as a whole, and to identify, assess and manage the risks to the rights and freedoms of individuals. This is regardless of whether DoJ will be a controller for any of the processing in scope.

15. Whilst it is for DoJ to determine whether the threshold of requiring a DPIA has been reached, we would encourage you to review this, particularly in respect of the Codes which involve for

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example collecting recorded information from to children and young people, and vulnerable individuals (such as Codes E and F).

16. We would also like to remind DoJ that they must continue to review the screening as the proposals progress in order to identify any new risks which would require a DPIA to be undertaken.

Other Data Controllers

17. The draft Codes also contain proposals which may require certain controllers within scope to undertake a Data Protection Impact Assessment (DPIA).

18. We therefore recommend that you ensure that the relevant controllers are aware of their obligations under Article 35(1) of the UK GDPR. This states that a DPIA should be carried out by the controller where proposals are likely to result in a high risk to the rights and freedoms of individuals. The DPIA should consider measures, safeguards, and mechanisms to mitigate risks to personal data and ensure compliance with data protection law.

19. There is guidance available on our website about conducting a DPIA.

Data Protection Officer (DPO)

20. DoJ should be advised to seek expert advice from their DPO, where relevant, during the drafting of these Codes. Part of the DPO's role under the UK GDPR is to advise and inform their organisation of their obligations under data protection law.

Conclusion

21. We hope you find the above comments helpful. Should you have any queries in relation to the when it comes to addressing our points in the letter, please do not hesitate to contact our office.

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