

Members
European Data Protection Board
Rue Wiertz 60
B-1047 Brussels

Our reference: ICO/O/JE/L/MIS/0675

1 March 2024

Dear EDPB colleagues,

Re: Data Protection and Digital Information Bill

I am writing to give you some more information about the passage of the Data Protection and Digital Information Bill ('the Bill') as it enters its latter stages of consideration by our Parliament.

I am doing so because a priority for me personally, and for the ICO, is to continue to engage with European colleagues, to strengthen ties and ensure both the people of the United Kingdom and the EU continue to enjoy a high standard of privacy and data protection.

The ICO is no longer part of the European Data Protection Board (EDPB), and as a result, its mechanisms for consistency in the application of the GDPR are no longer formally available to us. That said, we remain keen to foster greater multi-lateral collaboration, whether formally under Article 50 cooperation mechanisms, or informally with our closest counterparts and through other fora available to us.

In the absence of those multilateral opportunities, I continue to work bilaterally with my European colleagues and am grateful for the strong and enduring relationships my office shares with many authorities across

Europe whether with individual data protection authorities (DPAs), or most recently as exemplified by our Memorandum of Understanding (MOU) with the European Data Protection Supervisor (EDPS).

And like other European authorities we maintain strong links through the G7 group of data protection authorities, Organisation for Economic Cooperation and Development (OECD) and Global Privacy Assembly (GPA) discussing important shared challenges such as data free flow with trust, international data transfer mechanisms, emerging technologies, artificial intelligence and enforcement cooperation.

As the UK Government makes changes to our data protection legislation via the Bill, I want to reassure you that the reforms are an 'evolution' of our framework, not 'revolution' to replace or significantly change the data protection principles at its core.

When the Bill was introduced, I welcomed it as a positive package of reforms that would allow the ICO to continue to operate as a trusted, fair and independent regulator and I remain convinced that this is the case. My view is that the Bill achieves the balance of retaining the ICO's independence, continuing to protect people's rights and freedoms as well as providing greater regulatory certainty for organisations and promoting growth and innovation in the UK economy. For the ICO, governance changes in the Bill will mean that we will have greater diversity and resilience at our most senior decision-making level and the legislative underpinning needed to ensure that we continue to regulate effectively. The changes will also facilitate increased ICO accountability to the UK

Parliament and consequently, the public, through our reporting obligations.

I also welcomed the strengthening of the ICO's enforcement powers and the alignment of the corrective measures we can take under the Privacy and Electronic Communications Regulations (PECR) including higher penalties. These changes will help us act more effectively and efficiently where organisations are failing to comply with the law and better protect the public.

As the UK's independent regulator, we've been advising the UK Government based on our experience overseeing the current regulatory regime. It is for the UK Government to set public policy and the UK Parliament to consider and scrutinise the legislative proposals required to bring about change. But the ICO has been and continues to be listened to throughout the process.

We set out several concerns during the government consultation process and have continued to have robust discussions to influence the shape of the Bill throughout the legislative development process.

One area we have influenced is the approach to subject access requests (SARs), an important tool for individuals exercising their data protection rights. I want to reassure you that the basic right for anyone to request and receive information about themselves is not changing. Our feedback to government on SARs, based on their importance as a gateway individual right, was against the introduction of a cost limit or nominal

fee. I am pleased that Government took on board our advice and decided not to pursue either option.

The Bill aims to provide more clarity and certainty for organisations about when they can legitimately decline requests. We think the change of legislative language from 'manifestly unfounded' to 'vexatious or excessive' achieves this without lowering the threshold or fundamentally changing the circumstances in which a request can be refused and will be setting out this position in guidance when the changes come into law.

We felt strongly that giving the Minister the power to approve or reject all complex or novel ICO guidance would reduce our independence. We raised these concerns with government and worked closely with them to find a solution that maintains our regulatory independence and promotes trust and confidence in the process. We welcomed the Government change to the Bill to remove ministerial approval of ICO statutory codes of practice, as this demonstrates government recognition of the importance of our regulatory independence.

The Bill confirms that the ICO's principal objective remains securing appropriate levels of protection for personal data and promoting public trust and confidence in the processing of personal data. Setting out a clear articulation of our statutory objectives and duties, including the requirement to have regard to innovation and public safety, will help clarify the parameters within which we operate, while ensuring we retain our independence in how we conduct our activity to deliver these objectives. Specifying the duties, and how we will report against them and undertake impact assessments, also enhances our transparency as a

regulator and helps Parliament and our stakeholders better understand our purpose and how we prioritise our work and interventions. This in turn will strengthen the ability of such stakeholders to hold us to account. The Bill does not seek to lessen or amend the ICO's duty to remain independent under Article 52.

The Bill also strikes the right balance by retaining the right to human review of automated decisions which will ensure extra safeguards to protect people when those decisions can have a significant impact on their lives. As automated decisions become more common and more complex, it's important people still have this safeguard to make sure nothing goes wrong, and I'm pleased that Government has recognised this important point.

Our engagement with stakeholders has made it clear that our relationship with the EU remains of central importance, and the certainty a positive adequacy decision from the EU provides is a top priority. We welcome the UK Government's recognition of the importance of maintaining our adequacy status.

At the ICO we have implemented a new strategic plan, independent of the legislative change, to make a difference in UK citizens lives. That plan sets out how we, as a regulator, aim to empower people through information. The work the ICO is already doing and the new opportunities the Bill presents will help us on our mission to "empower the UK public through information". I hope that reassures you the same protections apply to European citizens.

We would welcome the opportunity to discuss this further with you either in the context of meetings already established for other matters, or if you would like a specific discussion around the Bill. Meanwhile, we remain at your disposal should you have any questions about our role in the legislative reform process in the UK.

Yours sincerely



John Edwards
UK Information Commissioner