

Data Protection Impact Assessment for Legislation for Policy Team use only

This template is for policy teams developing a legislative proposal (that is, in primary or secondary legislation) or statutory guidance, where that proposal may have an impact on the protection of personal data within the meaning of the General Data Protection Regulation (GDPR).

The very first question you should answer is **does the proposal involve processing of personal data in some way?**

For the purposes of the GDPR, the key term is “**processing**”, which is very broad in scope and includes (but is not limited) to collecting, storing, recording, altering, using, consulting, transmitting or erasing data- in short, just about any possible use. “**Personal**” is also very broad in scope and means any information relating to a living person, where that person can be directly or indirectly identified.

For example if the proposal is to establish a new public body, there may be new data sharing provisions needed to ensure that body can carry out certain functions or to deliver certain services. The proposal may involve new technologies for the collection or storage of data or a change in how existing processes operate with respect to processing of data. Some provisions will involve similar sorts of processing as currently take place but there may be a significant change to the context or purpose.

Where a potential impact is identified, a full assessment of the proposed provisions and the impact on data subjects must be undertaken.

You may find in working through the preliminary questions in this template that a full DPIA is not necessary under the GDPR; however if so, it is recommended that you document your reasoning as why that is the case and to that end it may still be helpful to work through the form.

The template operates works in conjunction with the [Article 36\(4\) ICO](#) consultation form, in the event the draft legislation requires consultation with the Information Commissioner’s Office (ICO).

Separately, the proposal may also have implications which will need to be considered in respect of ECHR, in particular Article 8 rights to privacy. Please note that questions below seek to articulate how the proposals will meet the requirements of [Article 32 of GDPR](#), [Article 35 GDPR](#) and other relevant elements of both GDPR and Data Protection Act 2018, as well as providing an appropriate assessment of the impact on individuals.

Article 35(1)

Where a type of processing in particular using new technologies, and taking into account the nature, scope, context and purposes of the processing, is likely to result in a high risk to the rights and freedoms of natural persons, the controller shall, prior to the processing, carry out and assessment of the impact of the

envisaged processing operations on the protection of personal data. A single assessment may address a set of similar processing operations that present similar high risks.

Article 35(7)

The assessment shall contain at least:

- a) systematic description of the envisaged processing operations and the purposes of the processing, including, where applicable, the legitimate interest pursued by the controller;
- b) an assessment of the necessity and proportionality of the processing operations in relation to the purposes;
- c) an assessment of the risks to the rights and freedoms of data subjects referred to in paragraph 1; and
- d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of personal data and to demonstrate compliance with this Regulation [GDPR] taking into account the rights and legitimate interests of data subjects and other persons concerned.

Article 32 (Security of processing)

1. Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, the controller and the processor shall implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk, including inter alia as appropriate:

- a) the pseudonymisation and encryption of personal data;
- b) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
- c) the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident;
- d) a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing.

2. In assessing the appropriate level of security account shall be taken in particular of the risks that are presented by processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to personal data transmitted, stored or otherwise processed.

Introductory information

Summary of proposal:	To lay required amendment regulations under s85 of the Social Security (Scotland) Act for the exchange of information that will enable Social Security Scotland to effectively administer devolved adult disability assistance in Scotland in keeping with the Scottish social security principles and without any interruption of service to clients
Your department:	Social Security Directorate, Scottish Government
Contact email:	andrew.hiskett@gov.scot
Data protection support email Data protection officer	dpa@gov.scot dataprotectionofficer@gov.scot
Is your proposal primary legislation, secondary legislation or other form of statutory measure?	Secondary legislation – Scottish Statutory Instrument
What stage is the legislative process at? Please indicate any relevant timescales and deadlines.	Instrument currently being drafted, prospective laying date in Scottish Parliament is 17 December 2021
Have you consulted with the ICO using the Article 36(4) form (please provide a link to it)?	Yes, an Article 36(4) submission has been made to the ICO covering this instrument and all other Scottish Statutory Instruments that are being introduced for Adult Disability Payment. The consultation is ongoing and expected to be complete before the end of October.
If the ICO has provided feedback, please include this.	Formal feedback will be provided at a meeting with the ICO on 18/10/21.
Do you need to hold a public consultation and if so has this taken place	Given that this instrument will only amend particular details within the existing social security information-sharing legislation (which has previously undergone public consultation and experience panel feedback reviews) to update it for the upcoming launch of adult disability assistance, no further public consultation is necessary. Additional consultation with the Convention of Scottish Local Authorities (COSLA) was recently done to ensure the parts of the instrument relevant to local authorities meet the requirements of all stakeholders.

Were there any comments/feedback from the public consultation about privacy, information or data protection?

The public consultation that took place for the existing social security information-sharing legislation identified that clients and other public sector stakeholders desire a social security system that is more efficient and joined-up. Recognising this desire, Scottish Ministers made commitments to support clients to access social security services without requiring the client to shoulder the full burden of gathering and supplying information. For Social Security Scotland to be able to support clients by taking the burden of information-sharing off of them and to gather the information on the client's behalf, it is necessary for Social Security Scotland to be able to share information about the client with other relevant organisations, when authorised to do so by the client. Legislation is needed to provide the legal gateways under which Social Security Scotland can share this information with other relevant organisations.

The existing social security information-sharing legislation was designed to meet the demands and requirements that were identified during the public consultation. The legislation now needs updating to keep it relevant when adult disability assistance launches in Scotland in 2022 and to ensure clients on adult disability assistance receive the same information gathering support and assistance from Social Security Scotland as clients on child disability assistance do.

	Question	Comments
	<i>Article 35(7)(a) – “purposes of the processing, including, where applicable, the legitimate interest pursued by the controller”</i>	
1	<p>What issue/public need is the proposal seeking to address? What policy objective is the legislation trying to meet?</p>	<p>Social Security Scotland is an Executive Agency of the Scottish Government. It will eventually be making payments to 1.4 million citizens in Scotland, with a value in excess of £3 billion per year.</p> <p>The Scottish Government, including its agencies, must comply with the Public Sector Equality Duty (PSED) and Equality Act 2010. The Scottish Government also has a commitment to ‘joined-up public services’ and has been working with the wider public sector to achieve public services that are high quality, continually improving, efficient and responsive to local needs (National Outcome 16).</p> <p>Through consultation with social security clients, Scottish Government has identified the need to make access to benefits more efficient and less burdensome for clients. Delivering these improvements while adhering to the Social Security Principles (in section 1 of the Social Security [Scotland] Act 2018), the Social Security Charter and ministerial commitments will depend on Social Security Scotland being able to share information about clients with other organisations. This information sharing will make benefit applications easier and less time-consuming for clients, especially those who are vulnerable.</p> <p>The social security system involves various information-sharing dependencies with other welfare services provided by other organisations, such as “blue badges” provided by local authorities on the basis of a disability benefit award, for example. To ensure the existing dependencies do not break down when the UK Personal Independence Payment is replaced by the new Adult Disability Payment in Scotland in 2022, new legal gateways are needed that will allow the</p>

		<p>necessary information-sharing to continue. This will enable organisations who depend on social security information for delivery of a service to continue delivering those services without any interruption or disadvantage to the client.</p> <p>Social Security Scotland will need to minimise the risk of error in accordance with the Scottish Public Finance Manual, which may require certain persons to provide information about individuals entitled to, or receiving, benefits. This is particularly important when an individual may spend periods of time in residential care, which may affect eligibility for devolved disability or other benefits.</p> <p>To achieve these objectives, the Social Security Information-sharing (Scotland) Regulations 2021 ('the 2021 Regulations') will be amended through a new instrument ('the Amendment Regulations') that will update the legal gateways to incorporate Adult Disability Payment requirements. The working title of the Amendment Regulations is the Social Security Information-sharing (Scotland) Amendment Regulations 2022.</p>
<p><i>Article 35(7)(c) "assessment of the risks to the rights and freedoms of data subjects" and Article 35(7)(b) "...necessity and proportionality of the processing operations"</i></p>		
2	<p>Does your proposal relate to the processing of personal data? If so, please provide a brief explanation of the intended processing and what kind of personal data it might involve. Who might be affected by the proposed processing?</p> <p>Is the processing considered necessary to meet a policy aim? Is there a less invasive way to meet the objective (for example, anonymising data, processing less data).</p>	<p>Yes, the administration of devolved benefits in Scotland requires the processing of personal data. This may include special category data about a client's health in the case of disability assistance. Processing activities will increase in 2022 when Adult Disability Payment launches in Scotland, replacing UK Personal Independence Payment for Scottish clients.</p> <p>The processing will take place where information sharing is necessary for establishing individuals' entitlements to benefits, in keeping with the legal duties</p>

	<p>Please also specify if this personal data will be sensitive or special category data or relate to criminal convictions or offences</p> <p>(Note: ‘special categories’ means personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data about a person’s sex life or sexual orientation and sensitive personal data means criminal information or history)</p>	<p>and obligations of Social Security Scotland and local authorities (including protecting public funds). Anonymisation of the data is not possible due to the requirement to establish individual entitlements.</p> <p>As required by the 2021 Regulations, sharing of data about clients will be limited to no more than is necessary for the recipients purpose.</p>
<p><i>Part of your consideration in relation to Article 35(7)(a) and (b) should be in respect of ECHR. “</i></p>		
<p>3</p>	<p>Will your proposal engage any rights under ECHR, in particular Article 8 ECHR? How will the proposal ensure a balance with Article 8 rights? If the proposal interferes with Article 8 rights, what is your justification for doing so – why is it necessary?</p> <p>Article 8 ECHR: Right to respect for private and family life</p> <p>1. Everyone has the right to respect for his private and family life, his home and his correspondence.</p> <p>2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.</p> <p>You may also wish to consider Article 6 right to a fair trial (and rights of the accused) Article 10 right to freedom of expression Article 14 rights prohibiting discrimination Or any other convention or treaty rights?</p>	<p>The 2021 Regulations include provisions that protect individuals’ rights under Article 8 of the ECHR, namely Regulations 3(2), 3(3) and 5. The Amendment Regulations will preserve these requirements and they will remain enforceable and relevant for the upcoming launch of Adult Disability Payment.</p> <p>The overarching aim of the Amendment Regulations is to facilitate access to social security assistance for people who receive adult disability assistance. This operates in the interests of the promotion of health and morals, which is one of the justifications under Article 8(2).</p>

<p><i>Article 35(7)(b) "...necessity and proportionality of the processing operations"</i> <i>Article 35(7)(c) "assessment of the risks to the rights and freedoms of data subjects"</i> <i>Article 35(7)(d) "measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of personal data and to demonstrate compliance with [GDPR] taking into account the rights and legitimate interests of data subjects and other persons concerned"</i> <i>Note Article 32 GDPR for s.4 also</i></p>		
4	<p>Will the proposal require regulation of :</p> <ul style="list-style-type: none"> <input type="checkbox"/> technology relating to processing <input type="checkbox"/> behaviour of individuals using technology <input type="checkbox"/> technology suppliers <input type="checkbox"/> technology infrastructure <input type="checkbox"/> information security <p>(Non-exhaustive examples might include whether your proposal requires online surveillance, regulation of online behaviour, the creation of centralised databases accessible by multiple organisations, the supply or creation of particular technology solutions or platforms, or any of the areas covered in questions 4a or 4b.)</p>	<p>Neither the 2021 Regulations nor the Amendment Regulations require regulation of technology or information security.</p> <p>The information sharing enabled by the Amendment Regulations will involve standard use of technology such as PCs, laptops, etc. The operational privacy risks of using technology will be assessed and mitigated through data protection impact assessments operationally.</p>
4a	<p>Please explain if the proposal will have an impact on the use of technology and what that impact will be.</p> <p>Please consider/address any issues involving:</p> <ul style="list-style-type: none"> ○ Identification of individuals online (directly or indirectly, including the combining of information that allows for identification of individuals, such as email addresses or postcodes); ○ Surveillance (necessary or unintended); ○ Tracking of individuals online, including tracking behaviour online; ○ Profiling; 	<p>As noted above, standard use of technology will be involved in the information sharing enabled by the Amendment Regulations, but the provisions do not introduce any novel or significant effects on the use of technology.</p>

	<ul style="list-style-type: none"> ○ Collection of ‘online’ or other technology-based evidence ○ Artificial intelligence (AI); ○ Democratic impacts e.g. public services that can only be accessed online, voting, digital services that might exclude individuals or groups of individuals <p>(Non-exhaustive examples might include online hate speech, use of systems, platforms for delivering public services, stalking or other regulated behaviour that might engage collection of evidence from online use, registers of people’s information, or other technology proposals that impact on online safety, online behaviour, or engagement with public services or democratic processes.)</p>	
4b	<p>Will the proposal require establishing or change to operation of an established public register (e.g. Accountancy in Bankruptcy, Land Register etc.) or other online service/s?</p>	<p>No, not applicable.</p>
<p><i>Article 35(7)(b) “...necessity and proportionality of the processing operations”</i> <i>Article 35(7)(c) “assessment of the risks to the rights and freedoms of data subjects”</i> <i>*Note exemptions from GDPR principles where applicable</i></p>		
5	<p>Please provide details of whether the proposal will involve the collection or storage of data to be used as evidence or use of investigatory powers (e.g.in relation to fraud, identify theft, misuse of public funds, any possible criminal activity, witness information, victim information or other monitoring of online behaviour)</p>	<p>The proposal does not introduce any new requirements regarding investigatory powers; these are already included in the Social Security (Scotland) Act 2018 and regulations made under it.</p>
<p><i>Article 35(7)(b) “...necessity and proportionality of the processing operations”</i> <i>Article 35(7)(c) “assessment of the risks to the rights and freedoms of data subjects”</i> <i>Article 35(7)(d) “measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of personal data and</i></p>		

to demonstrate compliance with [GDPR] taking into account the rights and legitimate interests of data subjects and other persons concerned”

<p>6</p>	<p>Would the proposal have an impact on a specific group of persons e.g. children, vulnerable individuals, disabled persons, persons with health issues, persons with financial difficulties, elderly people? (Please specify) In what way?</p>	<p>The Amendment Regulations will affect all those who access adult disability assistance in Scotland. This will naturally include people who have health issues and are vulnerable on account of their disability and low income. The effects will be positive, because the Amendment Regulations will make it easier for such individuals to access benefits they are entitled to. This not only improves their financial circumstances, it also reduces the stress and burden they would otherwise experience when applying for benefits.</p> <p>Importantly, the legal gateways only allow for information to be shared when it is required for social security functions or other functions specified by regulations. Furthermore, no more information may be shared than is necessary for the recipient’s specified function. This protects against inappropriate sharing that would otherwise have negative effects on clients’ privacy and data rights.</p>
<p>7</p>	<p>Will the proposal necessitate the sharing of personal data to meet the policy objectives? For example</p> <ul style="list-style-type: none"> ○ From one public sector organisation to another public sector organisation; ○ From a public sector organisation to a private sector organisation, charity, etc.; ○ Between public sector organisations; ○ Between individuals (e.g. practitioners/ service users/sole traders etc.); ○ Upon request from a nominated (or specified) organisation? 	<p>Yes. The Amendment Regulations will update the legal gateways in the 2021 Regulations to enable information sharing to take place as required for the successful launch and ongoing delivery of Adult Disability Payment and related welfare services in Scotland.</p> <p>The majority of the legal gateways in the 2021 Regulations are applicable to Adult Disability Payment and can be used without amendment. Two of these gateways (for Accessible Vehicles and Equipment suppliers, and for blue badges provided by local authorities) currently refer only to Child Disability Payment, so these will be amended to include Adult Disability Payment. A single new gateway is needed with local</p>

	<p>If so, does the Bill make appropriate provision to establish a legal gateway to allow for sharing personal data. Please briefly explain what the gateway will be and how this then helps meet one of the legal bases under Article 6 of the GDPR.</p> <p>(Please provide details of data sharing, e.g. if there is a newly established organisation, if it is new sharing with an already established third party organisation, if it is with a specified individual or class of individuals, or any other information about the sharing provision/s. State what is the purpose of the sharing and why it is considered to be necessary to achieve the policy aims.)</p>	<p>authorities under Regulation 4(3). This new gateway pertains to social care charges, whereby Scottish local authorities need to be able to request information about a client's disability benefit entitlements to accurately assess their income when deciding how much that individual should be charged for local authority-funded social care.</p> <p>All processing of personal data under the Amendment Regulations will be undertaken on the basis of Article 6(1)(c) of GDPR. The public tasks in question are the delivery of social security and welfare services in accordance with UK and Scottish social security and welfare legislation. Where special category data is processed, it is undertaken on the basis of Article 9(2)(b) of GDPR.</p>
8	<p>Is there anything potentially controversial or of significant public interest in the policy proposal as it relates to processing of data? For example, is the public likely to view the measures as intrusive or onerous?</p> <p>Are there any potential unintended consequences with regards to the provisions e.g. would the provisions result in unintended surveillance or profiling.</p> <p>Have you considered whether the intended processing will have appropriate safeguards in place? If so briefly explain the nature of those safeguards and how any safeguards ensure the balance of any competing interests in relation to the processing.</p>	<p>No. The legal gateways created by the Amendment Regulations are in line with the wishes of social security clients, as expressed through consultation.</p> <p>Furthermore the Amendment Regulations simply update the 2021 Regulations to incorporate Adult Disability Payment requirements, which are largely identical to the existing requirements from Child Disability Payment. The 2021 Regulations passed through Parliamentary scrutiny without any concern or controversy, and came into force earlier this year without any public interest.</p> <p>The privacy safeguards within the 2021 Regulations will remain applicable for Adult Disability Payment. They are not being amended by the Amendment Regulations.</p>
9	<p>Are there consequential changes in other legislation that need to be considered as a result of the proposal or the need to make</p>	<p>No, these provisions are amendments to the Social Security Information-sharing (Scotland) Regulations 2021 and will</p>

	<p>further subordinate legislation to achieve the aim?</p> <p>(This might include, for example, regulation or order making powers; or provisions repealing older legislation; or reference to existing powers (e.g. police or court powers etc.).)</p>	<p>fully meet the requirement in the one instrument.</p>
<p>10</p>	<p>Will this proposal necessitate an associated code of conduct? If so, what will be the status of the code of conduct (statutory, voluntary etc.)?</p>	<p>No, a formal code of conduct or statutory guidance will not be necessary. Staff involved in processing the data will receive operational guidance and training to ensure they understand the legal requirements and privacy implications of sharing data.</p>

Summary – Data Protection Impact Assessment

11	Do you need to specify a Data Controller/s?	No, the Amendment Regulations simply provide the legal gateways for social security information to be shared where necessary. Data controllership will continue to be determined at the organisation governance level.
12	<p>Have you considered whether the intended processing will have appropriate safeguards in place, for example in relation to data security, limitation of storage time, anonymisation? If so briefly explain the nature of those safeguards</p> <p>Please indicate how any safeguards ensure the balance of any competing interests in relation to the processing.</p>	<p>Social security information may only be processed for purposes and functions specified within legislation. The 2021 Regulations were designed to ensure information will only be shared where necessary for enabling clients to access all the benefits they are entitled to. Privacy provisions were included to place additional safeguards on how and when that data will be shared. In circumstances where Social Security Scotland may wish to share information about a client's health to help the client access a benefit, the regulations require the client to give authorisation before that sharing can happen, for example.</p> <p>The Amendment Regulations do not alter these limitations – they will continue to apply to all information sharing for Adult Disability Payment purposes.</p>
13	Will the processing of personal data as a result of the proposal have an impact on decisions made about individuals, groups or categories of persons? If so, please explain the potential or actual impact. This may include, for example, a denial of an individual's rights or use of social profiling to inform policy making.	<p>The provisions are designed to make it easier and more efficient for clients to access Adult Disability Payment and related welfare services they may be entitled to. This is in line with the wishes clients have expressed in consultations for a less burdensome social security system.</p> <p>As a result of the provisions, clients will be able to get support in gathering the necessary supporting information when applying for Adult Disability Payment, reducing the costs and stress associated with collecting that information themselves. The provisions also ensure</p>

		<p>that any existing services the client receives by virtue of their disability assistance (such as blue badges, for example) can continue to be provided without interruption when the client transfers from UK Personal Independence Payment to Scottish Adult Disability Payment.</p> <p>As mentioned above, the existing social security information sharing legislation includes privacy provisions that ensure data is only shared when necessary for a decision to be made about social security. The amendments made by the instrument are intended to put in place additional information sharing gateways necessary for Adult Disability Payment. These gateways will be bound by the existing privacy provisions.</p>
14	<p>If the proposal involves processing, do you or stakeholders have any relevant comments about mitigating any risks identified in the DPIA including any costs or options, such as alternative measures.</p>	<p>The Amendment Regulations do not introduce any new risks, they simply update the 2021 Regulations in preparation for the launch of Adult Disability Payment. Stakeholder feedback has been positive about the need for social security information to be shared where appropriate. The existing privacy provisions within the 2021 Regulations will remain in place.</p> <p>Technical and operational controls will be in place to mitigate practical risks to client data rights. These include minimising the data that is shared, using secure and auditable channels for sending data, strict access controls, and so on.</p> <p>If the amendments are not made, not only will clients be unable to get support when applying for Adult Disability Payment, they may also experience interruptions or difficulties in accessing related welfare services. This could include higher charges for local authority-funded social care, for example, because local authorities would need to use inaccurate or out-of-date information when assessing</p>

	the client's income, affecting the client's liability for charges. The provisions are therefore necessary to ensure Scottish Adult Disability Payment clients do not become disadvantaged in comparison to their UK counterparts on Personal Independence Payment.
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Authorisation

The DPIA report should be signed by your Information Asset Owner (IAO). The IAO will be the Deputy Director or Head of Division or the relevant person in the business area sponsoring the Bill/proposals.

Before signing the DPIA report, an IAO should ensure that she/he is satisfied that the impact assessment is robust and has addressed all the relevant issues.

By signing the DPIA report, the IAO is confirming that the impact of the policy has been sufficiently assessed against individuals' right to privacy.

The results of the impact assessment must be published in the eRDM with the phrase "Legislative DPIA" and the name of the project or initiative in the title.

Details of any relevant information asset must be added to the Information Asset Register, with a note that a DPIA has been conducted.

I confirm that the impact of these provisions has been sufficiently assessed in compliance with the requirements of the GDPR

Name and job title of a IAO or equivalent	Date each version authorised:
Ian Davidson (Deputy Director)	15 October 2021

Explanatory note re risks

The data protection impact assessment for legislation is an iterative process. There are many ways that risks to privacy and/or data protection can arise in legislative proposals and also many options for addressing those risks through legislation. As with most responses to risks, these will vary in their implications and potential impacts (e.g. cost implications, creation of other risks, consequence scanning etc.).

Some of the risks you will need to consider as work develops on Bill proposals, ancillary documents, analysis of consultations, ICO feedback and other Bill development may include (but will not be limited to):

- There is insufficient justification for interference with Article 8 ECHR rights;
- Appropriate safeguards have not been included/incorporated into provisions;
- Appropriate safeguards have not been included/incorporated into provisions regarding impact to/on children;
- The legal basis for processing is not specified or not specific enough;
- The legal basis for processing is insufficiently expressed for the purposes of Article 9 GDPR or Schedule 1 Data Protection Act 2018 (processing of special category personal data);
- Data controllers are not specified (they are not required to be but, where appropriate, they should be specified);
- Legal gateways for data sharing are not included;
- Legal gateways for data sharing are not specific enough or are too specific (for example, a named organisation is specified which consequently changes its name/structure and there is no generalised provision to allow for continued data sharing, or the provisions are drawn so specifically that an area of data sharing is excluded even though, once implemented, that information is needed etc.);
- Provisions interfere with other ECHR rights (there will be an overlap between data protection (Article 8) and some of the other ECHR rights);
- Unintended consequences of the proposals lead to undesirable outcomes (including non-compliance) e.g. surveillance, impinging other rights, collection of more personal data than originally intended, invasive monitoring of citizens without appropriate safeguards, creation of 'big data' sets that allow for identification of individuals and discovery of unintended personal data;
- Data protection principles aren't incorporated into the legislation itself and/or
- The implementation of the legislation (i.e. once the Bill is enacted) is problematic because insufficient provision was included in the legislation (e.g. through express or implied powers, legal gateways, flexibility with regards to manner of implementation/powers to implement etc.);
- Controversial measures;
- Other legislation is not repealed or amended which contains provisions that make new proposed provisions unclear or uncertain;
- Statistics or other exemptions aren't incorporated/become unclear through the new legislation;
- Failing to identify all of the personal data that will be created, that will need to be shared, the organisations it will need to be shared with, or failing to include sufficiently wide provisions to allow for necessary use, sharing or access to the personal data (or other future proofing issues).