

Economic Note	Number: HOEN0021
Title of regulatory proposal	The Data Protection Act 2018 (Transitional Provision) Regulations 2023
Lead Department/Agency	Home Office
Expected date of implementation	5 May 2023
Origin	Domestic
Date	13/03/2023
Lead Departmental Contact	krisztina.katona@homeoffice.gov.uk
Departmental Assessment	GREEN

Rationale for intervention, objectives and intended effects

Section 62 of the Data Protection Act 2018 (DPA 2018) introduced a requirement for law enforcement agencies to keep logs of specified data processing activities. Paragraph 14 of Schedule 20 of the DPA 2018 provides a transitional exemption for systems set up before 6 May 2016 from complying with requirements in Section 62 DPA 2018, if doing so would involve disproportionate effort. This expires on 6 May 2023. Whilst many core policing systems, set up before 6 May 2016, have been adapted to meet the majority of the logging requirements, more niche local pre-2016 automated processing systems are not technologically equipped to meet the logging capabilities before 6 May 2023, but are likely to be replaced within the next few years. Updating legacy systems that will shortly be replaced is an unnecessary expense. These regulations will extend the transitional exemption by a period of three years to 6 May 2026, to allow law enforcement agencies (LEAs) time to replace more niche local automated processing systems.

Policy options (including alternatives to regulation)

Option 1: Do nothing. This does not meet the Government's objectives.

Option 2: Extend the availability of the 6 May 2023 transitional exemption, by three years, until 6 May 2026. **This is the Government's preferred option.**

Costs and benefit summary

The proposed extension would entail no additional costs on LEAs as existing processes would continue. Enacting this extension would prevent disproportionate costs from being imposed on LEAs to ensure compliance.

Risks

No analytical risks or unintended economic consequences have been identified relating to this instrument.

Total Cost £m PV	Transition Cost £m	Cost to Business £m	Total Benefit £m PV
NA	NA	NA	NA
NPSV (£m)	BNPV (£m)	EANDCB (£m)	BIT Score (£m)
NA	NA	NA	NA
Price Base Year	PV Base Year	Appraisal period	Transition period
NA	NA	3 years	NA

Departmental sign-off (SCS):	Krisztina Katona	Date: 08/03/2023
Chief Economist sign-off:	Tim Laken	Date: 16/03/2023
Better Regulation Unit sign-off:	Emma Kirk	Date: 17/03/2023

Evidence Base

A. Background

1. Section 62 of the DPA 2018 introduced a requirement for law enforcement bodies to keep records (logs) of specified processing activities relating to personal data in automated processing systems.¹ These logging requirements are intended as a tool to help controllers monitor the use of personal data. This requirement was not in the Data Protection Act 1998, as logging is specific to Part 3 of the DPA 2018 (law enforcement processing).
2. Part 3 of the DPA 2018 transposed the EU Law Enforcement Directive 2016/680 (the 'LED') and the overarching approach taken to transposition was to copy out the LED, avoiding changes where possible. Section 62 faithfully reflects Article 35 of the LED.
3. Section 62 of DPA 2018 requires controllers to log the following operations: the collection, alteration, consultation, disclosure (including transfers), combination and erasure of personal data. The legislation places additional requirements on the processing actions for 'consultation' (that is, accessing/viewing data) and 'disclosure' (that is, sharing/transferring data).
4. For consultation, logs must record a reason or justification for consulting personal data, and the date and time the data was consulted. Where possible, the log must also record the identity of the user that consulted the data.
5. For disclosure, logs must record a reason or justification for disclosing personal data, and the date and time the data was disclosed. Where possible, the log must also record the identity of the user that disclosed the data, and the identity of the recipients of the data, for example, the name of the organisation.
6. There is currently a transitional exemption available to controllers, under Paragraph 14 of Schedule 20 of the DPA 2018, which allows for automated processing systems set up before 6 May 2016 to not comply with Section 62(1-3) if and to the extent that compliance would involve disproportionate effort.² This ceases to have effect on 6 May 2023. This transitional exemption was transposed from Article 63(2) and (3) of the LED.

B. The policy issue and rationale for government intervention

7. The Home Secretary is exercising the power, under Section 213(2) of the DPA 2018, to bring in regulations to amend paragraph 14 of Schedule 20. The regulations will extend the deadline to allow Part 3 controllers to not have to comply with Section 62 (1-3) of DPA 2018 (if doing so would require disproportionate effort) from 6 May 2023 to 6 May 2026.
8. Whilst many of the core policing systems, set up before 6 May 2016, have been adapted to meet the majority of the logging requirements, more niche local pre-2016 automated processing systems are not technologically equipped to meet the logging

¹ The Data Protection Act 2018, Section 62: <https://www.legislation.gov.uk/ukpga/2018/12/section/62/enacted>

² The Data Protection Act 2018, Schedule 20: <https://www.legislation.gov.uk/ukpga/2018/12/schedule/20>

capabilities before the current deadline of 6 May 2023, but are likely to be replaced in the next few years. Therefore, updating legacy systems that will shortly be replaced is an unnecessary expense.

9. A number of pre-2016 automated processing systems used by law enforcement agencies are off-the-shelf rather than bespoke. Some lack the functionality that would allow officers to either record a justification every time personal data is accessed or capture when personal data has been disclosed and, more specifically, to whom information has been shared and why. This shows that designing automated processing systems to capture all of the logging requirements is inherently a costly technical task.
10. This measure also aligns with the Prime Minister's priority to reduce the administrative burdens on law enforcement agencies, allowing them to focus on more pressing operational needs. Where systems, set up before 6 May 2016, do not currently meet the requirements of section 62, law enforcement will have to adopt onerous workarounds, such as manually recording the information in paper-based records. Given that officers often need to access large amounts of data quickly, this statutory instrument will facilitate their ability to investigate and prevent crime more swiftly until all their systems, set up before 6 May, 2016 are in-line with section 62 or have retired.
11. Law enforcement agencies, and their suppliers, are proactively taking steps to ensure new systems are being developed to replace those pre-2016 systems still in use with new ones featuring the required logging capabilities over the next few years. Replacing pre-2016 automated processing systems is a transitional process. Suppliers may deploy pilot systems to run alongside legacy systems until they are decommissioned, requiring law enforcement agencies to record the same information to differing systems simultaneously, which is an onerous task. This shows how intricate the process of developing police-centric systems is because suppliers need to ensure they are secure and fit for purpose.
12. The difficulties implementing the requirements, especially recording justification, have also been identified by Member States of the European Union (EU). The European Commission released a report in July 2022 into the transposition of the Law Enforcement Directive.³ A total of 12 Member states have decided to postpone aligning their pre-2016 automated processing systems with the EU logging requirements from May 2023 to May 2026. Consequently, our extension is unlikely to pose a risk to the UK's adequacy decision for law enforcement processing.
13. The Government's position is that the Home Office will extend the transitional availability of the exemption until 6 May 2026 via secondary legislation.

C. Policy objectives and intended effects

14. The exemption for Section 62, DPA 2018 expires on 6 May 2023. Whilst many of the core policing systems have been adapted to meet majority of the logging requirements, law enforcement agencies have stated that more niche local pre-2016 automated processing systems are not technologically equipped to meet the logging capabilities

³ First report on application and functioning of the Data Protection Law Enforcement Directive (EU) 2016/680: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022DC0364&qid=1658824345764>

before the current deadline of 6 May 2023 but are likely to be replaced in the next few years. Updating legacy systems that will shortly be replaced is an unnecessary expense. By extending the deadline by a period of three years until 6 May 2026, we will allow law enforcement agencies more time to replace their systems.

D. Policy options considered, non-regulatory options, implementation date

15. Two options have been considered:

Option 1: Do nothing

Option 2: Preferred option: Extend the availability of the 6 May 2023 exemption, under Paragraph 14 of Schedule 20 of DPA 2018, until 6 May 2026.

E. Appraisal

Costs

16. As the extension of the exemption would ensure that currently existing procedures are continued, no additional costs are imposed.

Benefits

17. In the absence of this extension of the exemption, LEAs would either be required to introduce and finance changes to ensure compliance or risk being in violation of Section 62. Ensuring compliance after the expiration of the exemption would impose disproportionate costs on LEAs whilst they are in the process of changing their systems.

Value for money metrics

18. As there are no monetised costs or benefits associated with this instrument, no Value for Money metrics have been applied.

SaMBA

19. No impacts on small or medium sized businesses have been identified. No SaMBA is required.

F. Risks and unintended consequences

20. No analytical risks or unintended economic consequences have been identified relating to this instrument.

G. Monitoring and evaluation

21. The extension of the 6 May 2023 exemption will be monitored over the course of the three years by Home Office Data Policy Unit.

Specific Impact Test Checklist

Mandatory specific impact test - Statutory Equalities Duties	Complete
<p>Since the extension of the 6 May 2023 exemption will simply maintain the status quo for legacy systems for a limited further period we do not consider that it will introduce any new inequalities.</p> <p>Furthermore, we consider that it is unlikely that it will lead to discrimination, harassment or victimisation of any individuals belonging to a particular protected characteristic.</p> <p>We do not consider that the SI will have any significant impacts regarding the need to foster good relations or advance equality of opportunity between people who share a protected characteristic and people who do not: the policy is neutral in this regard. The evidence gathered to come to this conclusion came from discussions with operational stakeholders and legal teams.</p> <p>The SRO has agreed these findings.</p>	<p>Yes</p>