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FAQs

UK Data Reform - Data (Use and Access) Bill



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1. How will the Data (Use and Access) Bill affect cookie consent requirements?

The Bill proposes changes to the cookie consent rules, including exemptions for low-risk processing activities like analytics and security purposes. These exemptions require clear information about the processing and an option to opt-out. Additionally, the Bill aims to extend the ICO's enforcement power to website publishers, potentially holding them accountable for cookie practices by third-party ad-tech vendors.

2. What changes are proposed for data transfers under the new Bill?

The Bill introduces a "data protection test" to replace the "adequacy" assessment for international data transfers. It focuses on evaluating whether the destination country's data protection standards are materially lower than the UK's. Organisations must act "reasonably and proportionately" when assessing transfer risks, particularly for low-risk transfers. Existing safeguards like Standard Contractual Clauses remain in place.

3. How will the Bill impact data subject rights?

While the Bill introduces a new right for data subjects to complain to controllers, changes to other data subject rights are minimal. The Bill clarifies the deadlines for responding to data subject requests and the controller's obligation to provide accessible data after a reasonable search. It also reaffirms existing ICO guidance and court precedents regarding data subject requests.

4. What are the proposed changes to the ICO's structure and governance?

The Bill proposes transforming the ICO from a "corporation sole" to a body corporate known as the Information Commission. This change mirrors the structure of other regulatory bodies like the FCA and CMA,

with a board of non-executive members led by a Chair and executive members led by a Chief Executive. The Bill aims to increase the role of non-executive members in the ICO's governance.

5. How will the Bill affect the ICO's enforcement powers?

The Bill grants the ICO additional enforcement powers, including the ability to compel the production of specific documents through expanded Information Notice powers. It also introduces a new power to issue interview notices, requiring individuals to attend interviews and answer questions related to data protection investigations. These enhanced powers aim to improve the ICO's ability to investigate and enforce data protection regulations.

6. What changes are proposed regarding the use of legitimate interests as a lawful basis for processing?

The Bill clarifies the concept of "legitimate interests" by providing specific examples and formally recognising certain interests as legitimate, including public interest tasks, national security, and crime prevention. This recognition simplifies the assessment for controllers in these specific situations, effectively removing the need for a balancing test against individual rights.

7. How does the Bill address data processing for research purposes?

The Bill consolidates research-related provisions and introduces exemptions from providing privacy notices for research using data not directly collected from individuals. It clarifies the concept of "specific" consent for scientific research, even when the full scope of research purposes cannot be identified at the time of consent. However, the Bill maintains the requirement for consent for further research using data initially collected with consent, potentially hindering research activities.

8. What provisions does the Bill include for international law enforcement requests?

The Bill simplifies the process for UK organisations responding to data access requests from US law enforcement agencies for countering

serious crime. It allows organisations to rely on "legal obligation" as the lawful basis for processing personal and special category data in response to such requests, streamlining compliance and recognising the "special relationship" between the UK and USA.

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