

# UPCOMING REFORMS TO UK DATA PROTECTION REGIME

JULY 2022

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On 22 June 2022, the UK Government published its much-anticipated response to the Department for Digital, Culture, Media & Sport's consultation paper ("**DCMS Consultation Paper**") on proposals to reform UK data protection laws ('Data: A new direction', September 2021). The response provides an indication of which of the Government's proposals will appear in the upcoming Data Reform Bill, and ultimately what reforms will be made to the UK data protection regime.

### CONSULTATION OUTCOME

The Government explains in the DCMS Consultation Paper that it intends to reshape its approach to UK data protection regulation in order to drive economic growth following greater regulatory freedom outside the EU. While the Government's response includes a number of notable changes to the UK data protection regime, the overall reforms are not as dramatic as originally proposed. This may be as a result of feedback from organisations during the consultation process, but may also reflect the Government's underlying concern that any significant departure from the current regime could jeopardise the adequacy decision in favour of the UK by the European Commission (which is expected to last until 27 June 2025). If the UK is no longer subject to an adequacy decision, organisations that transfer personal data from the EEA to the UK would need to put in place appropriate safeguards, such as standard contractual clauses. This would impede the Government's goal of reducing the burden on UK businesses in complying with data protection laws.

Some of the key proposals that the Government plans to proceed with include:

1. Providing clearer guidelines on the use of personal data for research.
2. Introducing a new requirement for organisations to implement risk-based privacy management programmes, without requiring organisations that are currently compliant with the UK GDPR to significantly change their approach. The new requirement will replace existing prescriptive requirements, such as appointing a data protection officer (replaced with a requirement to appoint a senior responsible person), conducting data protection impact assessments (replaced with a requirement to ensure there are tools in place to identify, assess and mitigate risks), and record keeping provisions (replaced with an approach that is more tailored to the organisation).
3. Changing the current threshold for refusing or charging a reasonable fee for a subject access request from 'manifestly unfounded or excessive' to 'vexatious or excessive', to bring it in line with the Freedom of Information regime.
4. Removing the need for websites to display cookie banners to UK residents, and permitting cookies (and similar technologies) to be placed on a user's device without explicit consent for a small number of other non-intrusive purposes. In the future, the Government intends to move to an opt-out model of consent for cookies placed by websites.

5. Extending the soft opt-in (which allows businesses to contact individuals with whom they have previously been in touch during a sale or transaction) to non-commercial organisations, such as charities.
6. Bringing the enforcement regime under Privacy and Electronic Communications (EC Directive) Regulations 2003 ("**PECR**") in line with the enforcement regime under the UK GDPR. This will allow the Information Commissioner's Office to levy fines of up to £17.5m or 4% of a business's global turnover for breach of PECR (such as unlawful use of email for direct marketing). The current regime limits penalties to £500,000.

### TAKE AWAYS

The Data Reform Bill is expected to be introduced in the current Parliament, but has not been made available for scrutiny yet, so there is still room for the Government to make further changes to its proposals. However, it is clear that if the proposals are enshrined in law, UK organisations will have greater flexibility in their use of personal data, and their internal data protection practices and processes. The Government's response to the DCMS Consultation Paper also suggests that the upcoming reforms will avoid the need for organisations that are currently compliant with the UK GDPR to significantly change their approach.

It is important to note that the new regime will only apply to organisations that are only subject to the UK GDPR. Organisations that are also subject to the EU GDPR will need to continue to comply with the EU GDPR regime to the extent that they process the personal data of EU individuals. In practice, many such organisations may decide to apply the more stringent EU GDPR across all jurisdictions so that they can comply with both regimes without implementing different internal processes and policies.

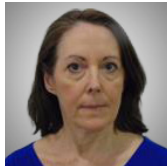
# FOR MORE INFORMATION

If you would like more information about the topics raised in this briefing, please speak to your regular contact at Weil or to any of the authors listed below.



BARRY FISHLEY

+44 20 7903 1410  
[barry.fishley@weil.com](mailto:barry.fishley@weil.com)



RUTH FISHER

+44 20 7903 1483  
[ruth.fisher@weil.com](mailto:ruth.fisher@weil.com)

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