

<b>Committee(s):</b>	<b>Date(s):</b>
Audit and Risk Management Policy and Resources Police IT Sub	16 January 2018 18 January 2018 25 January 2018 9 February 2018
<b>Subject:</b> The Data Protection Bill 2017	<b>Public</b>
<b>Report of:</b> Remembrancer <b>Report Author:</b> Philip Saunders	<b>For Information</b>
<p style="text-align: center;"><b>Summary</b></p> <ul style="list-style-type: none"> <li>• The Bill is influenced by two factors - a 2017 Conservative manifesto promise to update data protection laws and European Union legislation, the General Data Protection Regulation (GDPR).</li> <li>• The Bill, which for the most part replicates the provisions of the Data Protection Act 1998, will replace the existing statutory provisions on personal data processing for all data controllers, and make new provision regarding the use of personal data by the police and other enforcement bodies for law enforcement purposes.</li> <li>• The City Corporation is within the scope of the Bill in relation to personal data processing.</li> </ul> <p style="text-align: center;"><b>Recommendation</b></p> <ul style="list-style-type: none"> <li>• To note this Report and the steps being taken to ensure compliance with the provisions in the Bill.</li> </ul>	

### **Main Report**

#### **Background**

1. The Bill paves the way for the adoption by the UK of the European Union's General Data Protection Regulation (GDPR) and the Law Enforcement Directive. The provisions of the Regulation will apply to the UK from 25 May 2018 and the measures giving effect to the Directive must be in force by 6 May 2018. Therefore, while the main focus of the Bill is on the implementation of the GDPR, the inclusion of the Directive means the Government will plan for the Bill to be in force by 6 May 2018.
2. For the most part, the Bill sets out rules to govern the way bodies handle personal data. These new rules will implement the GDPR and replace the Data Protection Act 1998. A Report on the implementation of the measures was presented by the Comptroller and City Solicitor and is attached.

3. This report provides an overview of the political debate and supplementary details on the Bill.

## **Political Background**

4. The Bill was introduced in the House of Lords by Digital Minister Lord Ashton of Hyde who explained that the measures had three objectives, first to improve trust through increased transparency over how data is used; second, to “support future trading relationships” and the “free flow of data across international boundaries”; and, third, to make provision about law enforcement. Ashton said the Bill was intended to give individuals “greater control over and easier access to their data” which would include an individual’s right to require social media platforms to delete information held about them. This new right would not, he emphasised, prejudice archival, journalistic or similar activities.
5. Ashton pointed to the new right of data portability which will allow individuals to “transfer data from one place to another”. This right would produce consumer benefit and competition, he said, because “when a consumer wants to move to a new energy supplier, they should be able to take their usage history with them rather than guess and pay over the odds. When we do the weekly supermarket shop online, we should be able to move our shopping list electronically”. On law enforcement, Ashton said the Bill would ensure a single domestic and transnational regime for the processing of personal data for law enforcement purpose.
6. Labour’s spokesman Lord Stevenson applauded the Government’s intention behind the Bill but criticised the measures as being insufficiently detailed. He cautioned that 43% of EU tech companies were based in the UK and 75% of the UK’s data transfers were with EU member states but that satisfying the European Commission that the UK’s post-Brexit legislative framework provided an “adequate level of protection” was open to debate - “the current surveillance practices of the UK intelligence services may jeopardise a positive adequacy decision, as the UK’s data protection rules do not offer an equivalent standard of protection to that available in the rest of the EU”. Stevenson highlighted the importance to the professional services sector of the ability to transfer data across the EU. He queried whether the Bill created a workable arrangement for the longer-term – “once we leave the EU, policies will be developed within the EU 27 without our input”. For the Lib Dems, Lord McNally welcomed the Bill and explained that his party would push to ensure individuals have the maximum control over their data. On law enforcement he told peers he had attended a conference sponsored by the City Corporation, the Atlantic Council and Thomson Reuters entitled “Big Data: A Twenty-First Century Arms Race”. He said significant threats had been outlined but was “encouraged that there seemed to be an appetite in the private sector to co-operate with the police and government to ensure that big data can be effectively tamed to ensure better compliance, improve monitoring and reporting and prevent illicit financial flows”.

## Data Protection

7. In broad terms the Bill will strengthen individuals' rights to control the way organisations handle their personal data ('data processing' in the jargon of the legislation). The Bill has a broader scope than the Data Protection Act 1998. For example, under the Data Protection Act 1998 collection of personal data should not be "excessive" in relation to the purpose for which it is gathered. The Bill restricts the use of personal data so that it is limited to what is necessary for the purposes for which it is collected. Currently personal data should be accurate and, where necessary, kept up to date. The Bill strengthens this provision so that every reasonable step should be taken to keep personal data up to date and that inaccurate data should be erased or rectified as swiftly as possible.
8. The Bill introduces some wholly new concepts. The processing of data will be the responsibility of a data controller. Typically, organisations, including the City Corporation, will be data controllers although the definition of controller in the GDPR and in the Bill requires a case-by-case analysis to determine the identity of the controller.
9. Data controllers will be required to appoint a data protection officer who will be responsible for an organisation's adherence to the Bill's principles. A person in each organisation – called a data protection officer - will be required to take technical and structural steps to ensure compliance with the Bill's principles. The City's data protection officer will be the Comptroller and City Solicitor.
10. Further new concepts include reinforcing individuals' rights to obtain and move their data for their own purposes – including a right to have the data provided to them in a commonly used format that is machine readable. The data must be provided for free. Individuals will be entitled to object to the use of their data in relation to profiling by institutions, and in relation to scientific and historical research purposes. Individuals will have a new right to have personal data erased in 5 circumstances, namely where
  - i. the purpose for which the data was gathered is redundant
  - ii. the individual withdraws consent
  - iii. the individual objects to the processing of his data and the data processor has no 'overriding' interest
  - iv. data was unlawfully obtained
  - v. in relation to children
11. The Bill recognises that archives may need to process sensitive personal data, and the Bill contains a specific condition to allow for this. The Bill also provides archives with specific exemptions from certain rights of data

subjects, such as rights to access and rectify data, where this would prevent them fulfilling their purposes.

12. In December 2017 or January 2018 European regulatory authorities will publish more details on the interpretation of the GDPR which will affect the interpretation of the Bill. A further Report will be provided on any important developments.

## **Law Enforcement**

13. Security matters are not within the scope of the GDPR and national security is outside the ambit of direct EU jurisdiction. The EU has, however, produced a directive (the Law Enforcement Directive) which relates to the framework for sharing data between law enforcement agencies. While the Directive relates only to cross border sharing, the Bill incorporates the Directive and extends the EU rules so that they will also apply to the way UK law enforcement agencies process individual data (even where it does not cross national boundaries). Under the Bill, agencies include those responsible for the prevention, investigation, detection and prosecution of criminal offences – the police, prosecutors, HMRC and similar bodies fall within this definition.
14. The Bill modernises many of the offences currently contained in the 1998 Data Protection Act, as well as creating two new offences. First, as recommended by Dame Fiona Caldicott, the National Data Guardian for Health and Care, the Bill creates a new offence of the unlawful re-identification of de-identified personal data. This might apply, for example, to data sets used by researchers, as well as by those developing new methods of machine learning, these are often pseudonymised to protect individual privacy. The Bill is intended to prohibit actions by those who seek to gain through re-identification.
15. Second, the Bill creates a new offence of altering or destroying personal data to prevent individuals accessing them. Such an offence is already in place in relation to public authorities, but now it will apply to data controllers more generally.

## **Consultation**

16. The Comptroller and City Solicitor has been consulted in the preparation of this Report. The Comptroller and City Solicitor's and Remembrancer's departments are working together on this matter.

## **Corporate & Strategic Implications**

17. In its current form, the Bill requires the City Corporation to nominate an officer as the data protection officer. The Comptroller and City Solicitor will assume this role.

18. The City's processes for gathering and handling personal data, must - if the Bill comes into force in its current form - ensure that the purposes to which the information may be put are indicated on relevant forms and documents and obtain the consent of those receiving such communications. While there are a number of methods to obtain consent, a single approach involving obtaining specific, active, agreement to receiving communications of various types (events, seminars, breakfasts, and so on) will be followed. Officers will develop suitable wording for inclusion where required.
19. As the measures relate to the handling of personal data and given that charities and not for profit organisations are within the scope of the Bill, all functions of the City Corporation which process personal data where the City Corporation is the controller, fall within the scope of the Bill. Examples of those required to ensure that data is processed in accordance with the Bill are adult and children's services, schools, City Bridge Trust and Open Spaces.
20. The Remembrancer's Office, EDO and other parts of the Corporation that issue external invitations will be reviewing their procedures to ensure compliance with the measures. The Comptroller and City Solicitor's Department has provided awareness raising presentations to key staff and is providing guidance and support across the Corporation.

**Documents Attached:**

Appendix 1 - Report of Comptroller & City Solicitor

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