

# Tertiary Education and Research (Wales) Bill

## Data Privacy Impact Assessment

### Background

The Tertiary Education and Research Bill provides for Welsh Ministers to be able to request information from organisations and share them with the new Commission.

The Bill also provides powers for the new Commission to require any person that receives funding from it to provide any information it needs for the exercise of its functions. The requirement would be enforceable by injunction.

### **Step one: Identify the need for a PIA**

Article 35(3) of the General Data Protection Regulation (GDPR) sets out three types of processing which will always require a Data Privacy Impact Assessment (DPIA). You must do a DPIA if you plan to:

- use systematic and extensive profiling with significant effects;
- process special category or criminal offence data on a large scale; or
- systematically monitor publicly accessible places on a large scale

The ICO's own guidance sets out ten criteria – if your processing meets any one of these then a full DPIA will be required.

Further, the European Union Article 29 Working Party have set out nine criteria regarding processing personal data. In most cases, a data controller can consider that a processing meeting two criteria would require a DPIA to be carried out. In general, the WP29 considers that the more criteria are met by the processing, the more likely it is to present a high risk to the rights and freedoms of data subjects, and therefore to require a DPIA, regardless of the measures which the controller envisages to adopt.

Please list below which criteria are met by this processing and set out a short description/explanation below.

UCAS (Universities and Colleges Admissions Council) are the body that provides applications and admissions services to higher education institutions, and collect the personal data from prospective learners that apply to higher education providers. The Tertiary Education and Research Bill creates a new Commission to oversee the tertiary education providers in Wales and the Commission will receive this data from UCAS.

The information that will be required is referred to as “application-to-acceptance information” and relates to persons applying for places on higher education courses, the offers or rejections they receive from the institutions and their acceptance or refusal of those offers. The information will be required if it relates to “qualifying research”, which must relate to the choices available to applicants, equality of opportunity, or another topic. It will allow the Commission to process that information either for qualifying research purposes, or to share it with an approved person for research purposes.

The Bill will provide the Welsh Ministers to have power to require “application-to-acceptance” information from bodies providing admissions services to Welsh higher

education institutions (i.e. UCAS). They will be able to provide this information to approved persons in the same way and with the same conditions and safeguards as the Secretary of State in section 80 of the Higher education and Research Bill (HERA). The Bill will also have a power to provide the information to the Commission, which should be under a duty to take account of the data when exercising its functions.

The Commission will be able to publish research derived from its analysis of data, including statistical information, subject to a requirement that all personal information is anonymised so that nothing capable of identifying an individual is published. It will also be able to contract third parties to undertake such publication, subject to the same restriction on identifying individuals.

The Commission will be under a duty to promote good practice in relation to data sharing among the persons and bodies it funds or regulates. The Commission will need to review and update or replace its guidance as and when it considers necessary.

Therefore the Bill amounts to a creation of new powers/duties regarding personal data. The Commission will ensure that data protection compliance is fully considered once it has been established.

## **Step two: Describe the information flows**

The collection, use and deletion of personal data should be described here. In particular:

- How will the information be collected or transferred to Welsh Government?
- Who will have access the information?
- Where will the information be held?
- What will the information be used for?
- How long will the information be retained?
- How will it be destroyed/deleted?
- Who will be the owner of the information?
- Will the information be shared with anyone? If yes, who?

The Commission will be a new organisation, and a new IT system will be established to collect and transfer the information. The new IT system will be chosen by a project team in time for its establishment in 2023.

The Commission will hold this information, and the personal data currently held/processed by other data controllers will be under its controllership.

Pre-16 pupils information will also be collected as part of learner destinations studies. The proposal relates to the collection of personal data such as ethnic group and socio economic group.

The Bill allows for this information to be used to inform “qualifying research”, which means research in relation to:

- choices available in HE in Wales;
- consideration of offers;
- equality of opportunity; and
- other topics approved by the Welsh Ministers.

The information will be retained as per data protection legislation. It will be destroyed or deleted as per the legal requirements. The Commission will own the information.

The legislation will create the vires to enable the Commission to share data with the Welsh Government and providers that it funds or regulates, and any other bodies, as prescribed by regulations, in relation to its functions.

### **Numbers of individuals impacted by proposals**

#### Powers to request information from organisations (such as UCAS) for application to acceptance data

As the data from all individuals in post-compulsory education will be now sent to the Commission, then as such, all will be affected by the proposal.

The legislation allows the Commission to require information from UCAS in regards to its application to acceptance data. The WG currently receives this information from UCAS, and the new power provides a legal basis for this exchange of information. There is already an equivalent power for the Office for Students (OFS) in the Higher education and Research Bill (HERA) Act.

UCAS currently collects this data from the student and higher education providers that apply to higher education through UCAS. The Commission will receive this data from UCAS. The majority of higher education providers use UCAS to manage their entry of higher education courses.

Officials have engaged with UCAS about the power and they are content. They have already agreed to provide the information, prior to the power becoming law, and they also have this agreement in place for the OFS in England. Therefore officials think there will be minimal impact to learners in implementing this power.

#### Compliance with those notices is enforceable by injunction, made on application of the Welsh Ministers

The Commission will have powers to require any person that receives funding from it (or responsibility for regulating) to provide any information it needs for the exercise of its functions.

The number of individuals likely to be affected as a result of our proposals is believed to be very small. The system currently operates without being enforceable by injunction and this element is only being introduced as a precaution to ensure the information will be available in the future if colleagues or providers change. Officials envisage that it is unlikely that this power will be used but have requested the power to safeguard the system.

### Step three: identify the privacy and related corporate/organisational risks

Identify the key privacy risks and the associated compliance and corporate risks.

Privacy Issue	Corporate Risk	Compliance Risk	Organisational Risk
<p><b>Inadequate disclosure controls</b>                      The circumstances of the information processed by the Commission will be narrow and tightly regulated and therefore the risk appears to be low. This will need to be managed by the Commission; Welsh Government will not be responsible for the data.</p> <p>It will be for the Commission to ensure that there are adequate disclosure controls in place whenever it needs to process or share the additional information it receives about its registrants as part of the process.</p>			
<p><b>Data stored seen as intrusive</b>                      These proposals may be viewed as intrusive, because individual's data will be stored without them specifically being</p>	<p><b>Public distrust in use of data</b>                      Two public consultations have taken place regarding the proposals and those with an interest will have had the chance to raise concerns in</p>		

Privacy Issue	Corporate Risk	Compliance Risk	Organisational Risk
<p>asked for their consent. As the Commission is providing the funding, this data is needed to administer that and to ensure the money is properly allocated etc. An individual's data will never be made public.</p>	<p>response to the Welsh Government's consultation. There has been a general acceptance of the new powers.</p> <p>Welsh Government officials have consulted the ICO on these proposals and they have agreed with the plans.</p>		
<p><b>Sharing and merging of data sets</b></p> <p>The Commission must ensure sharing and merging of data takes place only when strictly necessary. The scope of datasets must be monitored.</p> <p>The Commission should also monitor the scope of any new data sets that are produced.</p>			

## Step four: Identify privacy solutions

Describe the actions you could take to reduce the risks, and any future steps which would be necessary.

### Consultation requirements

Many of the privacy solutions relate to the Commission taking appropriate measures to ensure that the personal data they receive as part of a referral is appropriately processed, shared and stored. As a data collector and processor, the Commission should be operating already in accordance with the GDPR and have an appreciation of what is required for the ISO process also to be compliant. This includes:

- Ensuring retention periods are no longer than necessary, and that information is destroyed securely.
- Implementing appropriate technological security measures.
- Ensuring that staff are properly trained and are aware of potential privacy risks.
- Developing ways to safely anonymise the information.
- Producing guidance for staff on how to use systems and how to share data if appropriate.
- Where appropriate, producing data sharing agreements which make clear what information will be shared, how it will be shared and with whom.
- Consulting with any affected parties both internally and externally.
- It is for the Welsh Government to ensure that giving the Commission the proposed powers are lawful and proportionate.

As explained above, it will be for the Commission to take the practical steps required to protect the privacy of individuals and comply with the GDPR.

A consultation regarding the proposals for the Bill has already taken place, and officials do not consider that consulting on this aspect again is warranted.

**Step five: Sign off and record the PIA outcomes**

No	Risk Cat	Description	Risk			Control / Mitigation Measures	Agreed Solution	Approved by / Action Owner / Date
			Impact	Likely	Overall			
1	Privacy	<p><b>Inadequate disclosure controls</b> This will need to be managed by the Commission; Welsh Government will not be responsible for the data.</p>				On set-up, the Commission will be responsible for the control of data.		
2	Privacy	<p><b>Data stored seen as intrusive</b> These proposals may be viewed as intrusive, because individual's data will be stored without them specifically being asked for their consent. However an individual's information will not be made public.</p>				UCAS currently collects this data from the student and higher education providers that apply to higher education through UCAS. The Commission will receive this data from UCAS. The majority of higher education providers use UCAS to manage their entry of higher education courses.		

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3	Privacy	<p><b>Sharing and merging of data sets</b></p> <p>The Commission must ensure sharing and merging of data takes place only when strictly necessary. The scope of datasets must be monitored.</p>				The Commission should monitor the scope of any new data sets that are produced.		



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			Impact	Likely	Overall			
8	Corporate	<p><b>Public distrust in use of data</b></p> <p>Two public consultations have taken place regarding the proposals and those with an interest will have had the chance to raise concerns in response to the Welsh Government's consultation. There has been a general acceptance of the new powers.</p> <p>Welsh Government officials have consulted the ICO on these proposals and they have agreed with the plans.</p>				<p>The Commission to ensure that the systems introduced to manage the data systems adhere to appropriate legislation and guidance and that the systems are transparent to members of the public with an interest.</p>		