

APPENDIX III

Data Sharing and Governance Bill

REGULATORY IMPACT ANALYSIS

April 2015

SUMMARY OF REGULATORY IMPACT ANALYSIS (RIA)		
Department: Public Expenditure and Reform		
Title of Legislation: Data Sharing and Governance Bill 2015		
Stage: Drafting		Date: April 2015
Related Publications:		
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<p>Policy options considered:</p> <ol style="list-style-type: none"> 1. Do nothing and rely on the current legislative framework, which is fragmented and opaque. 2. Prepare and issue administrative guidance on data sharing between Public Bodies within the existing legislative framework. 3. Create a general legislative basis for the sharing of data between public service bodies, whilst providing also for enhanced governance and better data management arrangements to apply to all data sharing arrangements between public bodies; Provide also for the establishment of base registers¹ and the prohibition of the use of physical documents by public bodies in certain cases. <p>Preferred option: Option 3 is considered the best option, bearing in mind, inter alia, commitments made in the 2011 Public Service Reform Plan to legislate for data sharing between public bodies.</p>		
OPTIONS		
<i>Costs</i>	<i>Benefits</i>	<i>Impacts</i>
Option 1		
No direct financial costs	No benefit	Would reflect negatively on Government commitment to legislate in this area and leave the current uneven statutory framework in place.
Option 2		
No substantial financial costs	Administratively simpler in the short term	Would not meet the Government commitment to legislate in this area. Result may not be as coherent or comprehensive as the legislative route and would leave the current uneven statutory framework in place. Reluctance to share data may persist in the absence of a clear legal basis.
Option 3		
Limited costs may arise from the establishment of Base Registers.	Will provide a general legislative basis for the sharing of data between public bodies and strengthen governance for all data sharing arrangements between public bodies, whether they occur on the basis of this statute or on any other basis.	Meets Government commitments to legislate in this area and advances the public service transformation agenda through innovations such as base registers and a prohibition on the use of physical documents by public bodies in certain cases.

¹ In this case, “base register” means a database maintained by a public service body, subject to data quality and consistency checks and assurance procedures, which is designated by law as the authentic source of the data in question, and which is to be used by all public service bodies in the course of carrying out their functions.

REGULATORY IMPACT ANALYSIS

1 Summary

- 1.1 This Regulatory Impact Analysis (RIA) examines the proposed Data Sharing and Governance Bill 2015.
- 1.2 The principal aim of the proposed legislation is to establish a new general legal basis for data-sharing between public bodies. This will facilitate broader access to data-sharing by public bodies by specifying categories where sharing is permitted, while setting out clearly the purpose of data-sharing and the safeguards and conditions that must be complied with prior to data-sharing.
- 1.3 The legislation will also further advance the public service transformation agenda by providing, notably, for the establishment of base registers and the prohibition of the use of physical documents by public bodies in certain cases.
- 1.4 The proposed legislation also contains a number of enabling provisions to help underpin the Minister's Open Data Initiative.

2 Policy Context

Background

- 2.1 Data-sharing currently occurs extensively across the public service under a number of existing legal provisions. Indeed, in certain respects, the current level of service delivery would not be possible without this sharing taking place. Nevertheless, experience shows that more could be done to streamline the flow of data between public bodies in support of a more seamless and efficient service delivery to citizens and businesses fully consistent with data protection requirements.
- 2.2 Experience has been that overly restrictive interpretation of current Data Protection Law on the part some Public Bodies can lead them to them to be reluctant to share data with other Public Bodies where it would otherwise be beneficial. Furthermore, where a cross-departmental data-sharing requirement exists, there may not be sufficient incentive for any particular Department to meet it.

The Programme for Government contains a commitment to put in place “*anti-fraud measures using the latest available technology and better sharing of data across government departments and agencies.*”

The 2011 Public Service Reform Plan has a more focused commitment to “*review all relevant legislative provisions in relation to data-sharing between public bodies and develop principles for the sharing of data.*”

The recently launched Public Service ICT Strategy identifies “*the sharing of data on a whole-of- government basis is critical to supporting better decision making, driving efficiency and delivering a range of new digital government services to citizens and businesses.*”

2.3 Shortcomings of the Existing Legal Framework

Under the existing legal framework, data-sharing provisions are included in specific Acts, based on the requirements of a particular Department or bodies. This leads to a number of disadvantages:

Firstly, where a public body identifies a need for data-sharing, it will, for the avoidance of doubt, usually seek to have an explicit legal basis in primary legislation before the sharing can take place. However, access to the legislative schedule is limited (especially for smaller bodies) and there can be a significant delay in establishing the necessary legal basis.

Secondly, where a cross-departmental data-sharing requirement exists, there may not be sufficient incentive for any particular Department to meet it.

Finally, whereas data-sharing represents an important and growing area of government activity, the fact that the relevant provisions are spread over many Acts make the process opaque and leads to a lack of legal clarity regarding the legal basis to appropriate data-sharing.

3 Objectives

3.1 The objectives of the approach set out in the draft legislative Scheme are:

- to promote and encourage data-sharing between Public Bodies by providing a statutory basis for data sharing for legitimate and clearly specified purposes that are compliant with the Data Protection Acts;
- to provide that the Minister for Public Expenditure and Reform may in certain circumstances direct Public Bodies to engage in data-sharing, subject to the Data Protection Acts and the Governance provisions contained in the Bill;
- to improve transparency and respect for individual rights by setting new governance standards for data-sharing between Public Bodies;
- to reform and modernise how data is arranged, shared and processed by Public Bodies by providing for definitive registers of information;
- to increase the use of digitalisation for delivery of services to individuals and businesses by reducing reliance on paper documents.
- To support the delivery of the Open Data Initiative under which official information is published by public bodies on the Irish Government's data portal www.data.gov.ie for reuse.

3.2 For the first time, the Bill establishes a general legislative basis for the sharing of data between public bodies. This should make the process faster and bring greater clarity as to what is permitted, in particular for those smaller public bodies that do not have regular opportunities to place specific data sharing arrangements on a statutory basis. At the same time, the Bill increases safeguards for the personal data held by public bodies by providing for enhanced governance and better data management arrangements to apply to all data sharing arrangements between public bodies, whether they occur under this statute or on any other basis.

- 3.3 The legislation further advances the public service transformation process by requiring that public bodies, in certain cases of their engagement with customers/citizens, are not allowed to seek paper documentation if the relevant information/verification can be obtained through data sharing arrangements. It provides also for the establishment of base registers that are to be the repository of definitive data sets available for access by all public bodies under the appropriate governance arrangements.
- 3.4 While primarily concerned with personal data, the Bill will also have some provisions relating to business data, in order to facilitate public bodies in unambiguously identifying the businesses they are dealing with, and Open Data to support the delivery of the Government's Open Data Initiative.

4 Identification of Policy Options

- 4.1 The costs, benefits and other impacts of the following alternative options are set out below:
- Do nothing (maintain the status quo);
 - Develop and issue administrative guidance in the form of a departmental circular or guidance note in order to encourage increased data sharing between public bodies within the existing statutory framework.
 - Provide a new, general statutory basis for data-sharing between Public Bodies to be accompanied by enhanced governance and better data management arrangements applicable to all data sharing arrangements between public bodies.

5 Analysis of the Costs, Benefits and Impacts of each option

Set out below is a brief overview of the likely costs and benefits that would attach to each option.

Option 1: Do Nothing (maintain the status quo)

Costs

- 5.1 No direct financial costs will be incurred by the State if the legislation is not implemented.

Benefits

- 5.2 No benefit would arise if nothing is done.

Other impacts

- 5.3 The "do nothing" option would reflect negatively on the Government's commitment to legislative reform in this area, in particular the commitment in the 2011 Public Service Reform Plan to "review all relevant legislative provisions in relation to data-sharing between public bodies and develop principles for the sharing of data" Such an approach would also be expected to represent a significant inhibitor to the delivery of the digitalisation agenda for public services set out in the Government's recently published ICT strategy.
- 5.4 Ambiguity and a lack of legal clarity regarding the vires of some Public Bodies to share data under the current statutory framework (provision for which is dispersed across a number of different Acts of the Oireachtas) is likely to persist, in the absence of a general statutory basis for data-sharing between Public Bodies.

- 5.5 In the event that governance arrangements are not augmented, Public Bodies may risk significant consequences if their governance of data sharing is found to be in breach of the Data Protection Acts. In addition, to the reputational damage, this issue would become even more pressing should the new EU Data Protection Regulation (currently under negotiation) allow the Data Protection Commissioner to impose significant fines.

Option 2: Seek to develop and issue administrative guidance within the current statutory framework

- 5.6 The alternative implementation option to address the objectives set out in Section 3 above would involve administrative guidance in the form of a departmental circular or guidance note on enhancing data sharing between Public Bodies on the basis of current (in some cases very significant) statutory powers for data-sharing.

Costs

- 5.7 Apart from incidental administrative costs, there are no substantial financial costs to the State of preparing guidance in this area. It may, however, represent a substantially less efficient method of delivering the objective in terms of staff deployment and the utilisation of the time of those involved. As the need for data-sharing increases on foot of, *inter alia*, delivery of the Public Service Reform Programme and the Government's ICT strategy, data sharing arrangements between public bodies that would otherwise have been founded in the general legislative basis provided by this Bill would have to be provided for on a piecemeal basis in individual acts and depending on the opportunities to legislate that arise. This is likely to give rise to a significant delay in the realisation of key reforms.

Benefits

- 5.8 Developing guidance is administratively simpler and can be delivered in the short-term.

Other Impacts

- 5.9 Whereas this might be usefully undertaken as an interim measure, it would not resolve all of the issues identified in Section 2 above.
- 5.10 This option would reflect negatively on the Government's commitment to legislate in this area. Preparation of guidance may be simpler to achieve administratively but the overall outcome is likely to be significantly less coherent or comprehensive as Option 3.
- 5.11 Ambiguity regarding the vires of some Public Bodies to share data under the current statutory framework (provision for which is dispersed across a number of different Acts of the Oireachtas) is likely to persist, in the absence of a general statutory basis for data-sharing between Public Bodies. Administrative guidance is unlikely to provide the level of legal certainty and clarity required in this area.
- 5.12 In the event that governance arrangements are not augmented, Public Bodies may risk significant consequences if their governance of data sharing is found to be in breach of the Data Protection Acts. This would give rise to significant reputational damage potentially impacting on data sharing arrangements more generally. This issue would

become more pressing should the new EU Data Protection Regulation (currently under negotiation) allow the Data Protection Commissioner to impose significant fines.

Option 3: Augment the current statutory framework by legislating for a general basis for data sharing between Public Bodies.

Costs:

- 5.13 A certain level of direct cost can be expected to arise for the Exchequer from the establishment of base registers, which has yet to be quantified. Direct staffing and other administrative costs can also be expected to arise from the legislative process and on an on-going basis from requirements under the Bill to put data sharing agreements in place and to undertake privacy impact assessments as part of all data sharing arrangements between public bodies. On the other hand, a positive impact on the Exchequer can be expected in terms of reducing the future administrative burden on Public Bodies seeking to put individual data sharing arrangements on a statutory footing as they arise which would otherwise have been covered by a general legislative basis. A decrease in the duplication of efforts by public bodies is also likely to give rise to incremental cost savings.

Benefits

- 5.14 This option would result in a more streamlined and transparent statutory basis for data-sharing between Public Bodies accompanied by enhanced governance and better data management arrangements to apply to all data sharing arrangements between public bodies, whether they occur under this or any other statutory basis.
- 5.15 This legislation would also further the public service reform agenda by providing for the establishment of base registers and the prohibition of the use of physical documents by public bodies in certain cases.

Other Impacts

National Competitiveness

- 5.16 Widespread data-sharing between public bodies avoids the need to provide the same information multiple times to different bodies. The implementation of an “ask-once, use-many” approach can help to significantly reduce the administrative burden on citizens and businesses and allow them to avail of higher-quality, more efficient and seamless public services on a cross-sectoral basis.

The Socially Excluded and Vulnerable Groups

- 5.17 In so far as these groups may be more likely to have increased interaction with Public Bodies in accessing public services, the implementation of an “ask-once, use-many” approach may help to reduce the administrative burden that these groups experience in dealing with public bodies and allow them to avail of public services more easily.

The Environment

- 5.18 There are no impacts for the environment.

Economic Market, including Consumer and Competition Impacts.

- 5.19 International experience highlights potential for transformation in the provision of services through a comprehensive and proactive approach to data-sharing. For

example, the 2013 Shakespeare review² of public sector information in the UK lists the potential benefits as ‘transparency, accountability, improved efficiency, increased data quality, creation of social value, increased participation, increased economic value, improved communication, open innovation, and data linkage’

The Rights of Citizens

- 5.20 Currently, Public Service Bodies request physical documents for the purposes of identification or validation of individuals or organisations during the course of a number of administrative transactions. The proposed Bill includes provisions whereby specific uses of physical documents could be proscribed if the intended outcome could be more efficiently brought about through data-sharing instead.

The proposed legislation will also increase safeguards for citizens’ personal data held by public bodies by providing for enhanced governance and better data management arrangements to apply to all data sharing arrangements between public bodies, whether they occur under this statute or on any other basis. For example, Privacy Impact Assessments and Data Sharing Agreements recorded in Memorandums of Agreement available for public consultation will be required as part of all data sharing arrangements between public bodies.

North-South and East-West Relations

- 5.21 There are no impacts for North-South / East-West relations.

Impact on Employment

- 5.22 The proposed Data sharing and Governance legislation would be expected to have an incremental beneficial effect arising from the positive impact on the long-term sustainable rate of economic growth from reductions in the administrative burden on individuals and businesses.

Enforcement and Compliance

- 5.23 The Data Protection Commissioner has extensive powers to investigate the processing of personal data under Section 10 of the Data Protection Act. Given that the core activity of data-sharing is already subject to the Data Protection Act, it is not considered necessary to duplicate enforcement measures provided for in that Act.

6 Consultation

- 6.1 During the course of 2014, the Department of Public Expenditure and Reform issued a policy paper³ entitled, “Data Sharing and Governance: Policy Proposals” setting out key elements of proposed legislation. Interested parties were invited to make submissions responding to the policy proposals.
- 6.2 The Department received 26 written responses to the consultation from private citizens, State agencies, Government Departments (Social Protection, Transport Tourism and Sport), the Data Protection Commissioner, Members of the Oireachtas, rights group, research bodies, solicitor, and industry representative bodies. These submissions contributed significantly to the further development of policy on Data-

² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/198752/13-744-shakespeare-review-of-public-sector-information.pdf

³ <http://per.gov.ie/wp-content/uploads/Data-Sharing-and-Governance-Bill-Policy-Proposals-August-2014.pdf>

Sharing and, in overall terms, agreed that there is a need for a new general legislative basis for data-sharing.

- 6.3 A public information event was held in late November 2014 to discuss the outcomes of the consultation. This was addressed by the Secretary General of the Department of Public Expenditure and Reform; the Data Protection Commissioner; and Daragh O'Brien on behalf of Digital Rights Ireland. This event allowed for useful discussion of the main policy issues from different perspectives. The subsequent preparation of a draft General Scheme of the Data-Sharing and Governance Bill was informed by this consultation and the information event.
- 6.4 It is proposed to submit the draft General Scheme of the Bill for consideration by the Joint Oireachtas Committee on Finance, Public Expenditure and Reform and to request the Committee's views and recommendations on the proposed Bill.

7 Publication

- 7.1 This Regulatory Impact Analysis will be published on the Department's website (www.per.gov.ie).

8 Alignment with Better Regulation Principles

Necessity

- 8.1 The proposed legislation addresses the Programme for Government commitment to put in place "*anti-fraud measures using the latest available technology and better sharing of data across government departments and agencies.*" It is necessary to deliver the commitment in the 2011 Public Service Reform Plan to "*review all relevant legislative provisions in relation to data-sharing between public bodies and develop principles for the sharing of data. This should have regard to data protection legislation including the forthcoming EU General Data Protection Regulation (currently under negotiation) and consideration of any amendments which may be necessary in this regard.*" The legislation does not give rise to any additional regulatory, compliance or administrative burden on individuals or organisations outside of the public sector but seeks instead to reduce these burdens.

Effectiveness

- 8.2 The proposed legislation addresses Programme for Government commitments on anti-fraud measures and meets the commitment on data sharing contained in the Public Service Reform Plan as effectively as possible.

Proportionality

- 8.3 The objective on data sharing between Public Bodies set out in the Public Service Reform Plan cannot be achieved other than by legislation. Nevertheless, the legislative approach proposed respects proportionality: for example, its provisions are without prejudice to the Data Protection Acts.

Transparency

- 8.4 The development of the proposed legislation has been informed by consultations with key stakeholders. The current uneven statutory framework in which related provisions are spread over many Acts makes data-sharing less transparent. While the proposed Data-Sharing and Governance Bill would not replace existing provisions, it would

provide new transparency requirements for existing data-sharing, and a clear framework for future data-sharing. For example, for the first time, data subjects would be in a position to consult a centrally held register of data-sharing agreements between Public Bodies.

Accountability

8.5 The Bill will provide for improved standards of governance and data management by Public Bodies engaged in data sharing leading to greater accountability. For example, under these proposals, Public Bodies proposing to share data must negotiate Data Sharing Agreements, the terms of which are to be set out in a Memorandum of Agreement. A Lead Agency will be designated for each Data Sharing Arrangement and will have responsibility for ensuring that the Data Sharing Agreement is kept updated and accessible to the public on the Lead Agency's website.

Consistency

8.6 The proposed legislation will achieve a greater consistency in the implementation of data sharing between public bodies by providing a general legislative basis that can be availed of by all public bodies. It will also provide for enhanced governance and better data management arrangements to apply to all Data-Sharing arrangements between public bodies, whether they occur under this statute or on any other basis.

1 Conclusions

- 1.1 The main positive benefit expected from augmentation of provisions for data sharing between Public Bodies will be higher-quality, more efficient and seamless public services delivered on a cross-sectoral basis. Enhanced governance and better data management arrangements will apply to all data sharing arrangements between public bodies, whether they occur under this statute or on any other basis. The proposed legislation will also further advance the public service transformation agenda by providing, notably, for the establishment of base registers and the prohibition of the use of physical documents by public bodies in certain cases.
- 1.2 It is recommended, therefore, that that **Option 3** is the best approach to achieve the goals set out in Section 3 above.

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