Department for Digital, Culture, Media & Sport

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Dear Sarah

DATA PROTECTION BILL: VULNERABLE INDIVIDUALS

Thank you for your letter of 23 April, which the Secretary of State passed to me and which I was keen to respond to as a matter of urgency. I wanted, in particular, to reassure you that where a constituent ('A') passes you information about a family member or other individual ('B'), and it is necessary to process that information, your hands will not be tied.

It is true to say that, in order to lawfully process personal information you will need to identify a lawful basis under Article 6 of the GDPR, but consent is only one such basis. As is the case now, there are other legal bases you may rely upon. For example, a controller can process B's data without consent in cases where there is a risk to life, or where it is otherwise necessary in the public interest for you to process B's data and you have a relevant separate legal basis. The Government is confident that the GDPR permits much the same range of casework activities as the Data Protection Act 1998 does now.

If the information on B contains 'special category' personal data (formerly 'sensitive' personal data), you must *also* identify a separate condition under Article 9 of the GDPR. This would be the case if, for example, A disclosed a medical condition suffered by B, and you wanted to be able to refer to that medical condition in onward correspondence, or retain the information about the condition on file.

The GDPR itself provides a relatively narrow range of conditions for the processing of 'special category' data, including where B has given their explicit consent. But, in recognition that this will not always possible, the Government has provided additional conditions in Schedule 1 to the Bill. Paragraphs 23 and 24 in particular are designed to permit the processing of 'special category' data in a range of common casework scenarios. They operate in a similar way to existing processing conditions under the 1998 Act.

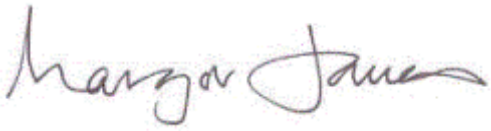
In this respect, very little is changing. But we have been clear throughout the passage of the Data Protection Bill that, in cases where the physical, mental or emotional health of an individual is being put at risk, data protection law should not be seen as a bar to safeguarding activity. To this end, Members and others will be able to take advantage of a new processing condition inserted by the Government at Commons Committee Stage. Paragraph 18 of Schedule 1 is designed to reassure those who process 'special category' data for the purpose of protecting an individual from neglect of physical, mental or emotional harm that such processing, subject to certain safeguards, is and remains lawful.

Should technology evolve, or experience with the new law demonstrate that these provisions are insufficient, the Bill provides a regulation-making power to vary them, or to add new processing conditions to Schedule 1.

You may also be interested in the additional guidance for MPs and others available from the Information Commissioner's website (https://ico.org.uk/for-organisations/political/).

I am aware that you have other concerns regarding the sharing of information by health professionals and I have passed these on to colleagues at the Department of Health and Social Care and the Home Office. If, nevertheless, it would also be helpful for us to meet I am of course happy to do so.

Yours ever



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