



Notification Number: 2017/508/UK

Data Protection Bill HL Bill 66 Part 2 Chapter 2 clause 8 child's consent in relation to information society services. [Conditions applicable to child's consent in relation to information society services (Article 8 General Data Protection Regulation (Regulation (EU) 2016/679))]

Date received : 02/11/2017

End of Standstill : 05/02/2018

Message

Message 001

Communication from the Commission - TRIS/(2017) 02872

Directive (EU) 2015/1535

Notificación - Oznámení - Notifikation - Notifizierung - Teavitamine - Γνωστοποίηση - Notification - Notification - Notifica - Pieteiķu Pranešimas - Bejelentés - Notifika - Kennisgeving - Zawiadomienie - Notificação - Hlásenie-Obvestilo - Ilmoitus - Anmälan - Нотификация : 2017/0508/UK - Notificare.

No abre el plazo - Nezažahuje odklady - Fristerne indledes ikke - Kein Fristbeginn - Viivituste perioodi ei avata - Καμία έναρξη προθεσμίας - Does not open the delays - N'ouvre pas de délais - Non fa decorrere la mora - Neietekmē atlikšanu - Atidėjimai nepradedami - Nem nyitja meg a késéket - Ma' jiftaħ il-perjodi ta' dawmien - Geen termijnbegin - Nie otwiera opóźnień - Não inicia o prazo - Neotvorí oneskorenia - Ne uvaja zamud - Määräaika ei ala tästä - Inleder ingen frist - He ce предвижда период н прекъсване - Nu deschide perioadele de stagnare - Nu deschide perioadele de stagnare.

(MSG: 201702872.EN)

1. Structured Information Line

MSG 001 IND 2017 0508 UK EN 02-11-2017 UK NOTIF

2. Member State

UK

3. Department Responsible

Department for Business, Energy and Industrial Strategy
Europe Directorate
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3. Originating Department

Department for Digital, Culture, Media & Sport
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4. Notification Number

2017/0508/UK - SERV30



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5. Title

Data Protection Bill HL Bill 66 Part 2 Chapter 2 clause 8 child's consent in relation to information society services.

[Conditions applicable to child's consent in relation to information society services (Article 8 General Data Protection Regulation (Regulation (EU) 2016/679))]

6. Products Concerned

Clause 8 of the Data Protection Bill provides that where consent is the lawful ground for processing data relating to the offer of information society services, children under 13 years old require parental consent or authority to consent.

The scope of the provision is limited to consent relating to the offer of information society services only.

7. Notification Under Another Act

- Directive 2006/123/EC on services in the internal market
- 98/48/EC information society services only

8. Main Content

Article 8 GDPR sets out the conditions applicable to a child's consent in relation to the offer of 'information society services' direct to a child.

Article 8(1) states that where Article 6(1)(a) GDPR (that processing shall be lawful only if the data subject has given consent to the processing of his or her personal data for one or more specific purposes) applies - in relation to the offer of information society services directly to a child - the processing shall only be lawful where that child is at least 16 years old.

Where a child is under 16, processing will only be lawful only if and to the extent that consent is given or authorised by the holder parental responsibility over the child.

Article 8(1) permits derogation from this rule and states:

Member States may provide by law for a lower age for those purposes provided that such lower age is not below 13 years.

The UK therefore has the option of setting the age at which a child may consent to the processing of their personal data by those offering information society services, to an age between 13 and 16.

Clause 8 of the Data Protection Bill gives effect to this derogation and sets the age threshold below which parental consent is required at 13 years old.

9. Brief Statement of Grounds

The GDPR is a directly acting European Regulation and will come into force in the UK from 25 May 2018. Whilst EU Regulations not normally require implementation, a Data Protection Bill is being prepared in order to achieve a number of aims including the implementation of derogations and options offered under the GDPR.

The UK has chosen to set the age at which a child can consent to the processing of data for the purposes of the provision of information society services at 13 years old under clause 8 of the Data Protection Bill. This is in line with the age of consent already set as a matter of contract by some of the most popular information society services which currently offer services to and are accessed by children (e.g. Facebook, Twitter, Whatsapp, Instagram).

In relation to the offer of preventative or counselling services to a child of any age, the policy position is that consent from a person with parental control should not be required which is in line with recital 38 GDPR (which states that the consent of the holder of parental responsibility should not be necessary in the context of preventative and counselling services offered directly to a child).

This would minimise the burden placed on those with parental responsibility to provide consent. In addition, children aged 13 and above would not need to seek consent from a guardian when accessing, for example, information society services which provide educational websites and research resources to complete their homework.

The overall policy aim is to exercise the Article 8 GDPR derogation so that parental consent is required only up to the minimum age



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By setting the age at 13, this would give legal certainty to parents and organisations as most social media sites already have 13 years as a minimum age of access as a result of 1998 legislation in the United States known as COPPA (Children's Online Privacy Protection Act).

Therefore, the impact on business and the intended data subject would be low as 13 years is consistent with the current status quo.

10. Reference Documents - Basic Texts

References of the Basic Texts: Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)
<http://www.privacy-regulation.eu/en/index.htm>

Data Protection Act 1998

<https://publications.parliament.uk/pa/bills/lbill/2017-2019/0066/18066.pdf>

Explanatory Notes

<https://publications.parliament.uk/pa/bills/lbill/2017-2019/0066/18066en.pdf>

Statement of Intent

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/635900/2017-08-07_DP_Bill_-_Statement_of_Intent.pdf

Information Commissioner's Office consultation: GDPR consent guidance

<https://ico.org.uk/media/about-the-ico/consultations/2013551/draft-gdpr-consent-guidance-for-consultation-201703.pdf>

11. Invocation of the Emergency Procedure

No

12. Grounds for the Emergency

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13. Confidentiality

No

14. Fiscal measures

No

15. Impact assessment

Yes

16. TBT and SPS aspects

TBT aspect

No - The draft has no significant impact on international trade

SPS aspect

No - The draft is not a sanitary or phytosanitary measure

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GROWTH DIRECTORATE-GENERAL

Single Market for goods
Prevention of Technical Barriers

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