

The Information Commissioner's Office (ICO) response to the Maritime & Coastguard Agency's consultation on The Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) (Amendment) Regulations 2020

About the ICO

The Information Commissioner has responsibility in the UK for promoting and enforcing the General Data Protection Regulation (GDPR), the Data Protection Act 2018 (DPA 2018), the Freedom of Information Act 2000, the Environmental Information Regulations 2004 and the Privacy and Electronic Communications Regulations 2003 (PECR), amongst others.

The Commissioner is independent from government and upholds information rights in the public interest, promoting openness by public bodies and data privacy for individuals. The Commissioner does this by providing guidance to individuals and organisations and taking appropriate action where the law is broken.

Introduction

The ICO welcomes the opportunity to respond to this Maritime & Coastguard Agency (MCA) consultation. Whilst the consultation is largely concerned with the costs of compliance to operators in addition to the impact of reducing the reporting time from 30 minutes to 15 minutes, this response focuses on the data protection considerations.

The ICO recognises the benefit of optimising the reporting of passenger data in order to reduce the risk to those passengers onboard vessels involved in an incident requiring assistance from Search and Rescue authorities. The ICO welcomes the clarity of section 2.11 of the consultation, which notes that personal data held in relation to these Regulations must "strictly adhere to current data protection regulations" and that this will be incorporated into the draft statutory instrument.

Legislative Consultation

A36(4) of the GDPR imposes a requirement on UK Government to consult with the UK's Data Protection Authority (the ICO) when developing policy proposals relating to the processing of personal data. This requirement covers all relevant policy proposals for legislation adopted by a national parliament, including:

- primary and secondary legislation

- regulatory measures (such as directions and orders) made under primary or secondary legislation
- statutory codes of practice and
- statutory guidance

Further information on the application of Article 36(4) can be found [here](#).

Data minimisation

Article 5(1)(c) of the GDPR stipulates that the personal data processed should be "adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed." Therefore, it is important that the data required, as set out in section 2.7 of the consultation, is the minimum amount of personal data needed to fulfil the purpose it is required for. The ICO has produced [guidance](#) on ensuring compliance with this data minimisation principle that may be of use.

Security of data

Section 2.8 of the consultation notes that one of the main changes to the Regulations is the method by which personal data is shared. Article 5(1)(f) of the GDPR concerns the 'integrity and confidentiality' of personal data and notes that personal data should be processed in a manner that ensures appropriate security of said data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures.

This principle needs to be considered alongside Article 32 of the GDPR, which specifies that in relation to the security of personal data, organisations should take into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons.

Passenger ship operators therefore need to implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk of using systems such as the National Single Window (NSW) or ships' Automatic Identification System (AIS). In particular, when processing personal data which passengers volunteer concerning any need they have for special care or assistance in emergency situations, organisations must make sure they treat these passengers fairly. As some of this information may constitute special category data, stronger safeguards may need to be in place.

The ICO has developed [guidance](#) on how organisations can comply with the security principle of the GDPR and what considerations they need to take.

ICO's Data Sharing Code of Practice

The data protection legislation obliges the Information Commissioner to produce a statutory [Code of Practice on data sharing](#). The code is currently being finalised following public consultation. When completed, it will be submitted to the Secretary of State and then laid before Parliament. Organisations involved in processing passenger details and sharing these through the National Single Window (NSW) or ships' Automatic Identification Systems (AIS) will need to take the Code into account when sharing personal data.

Adhering to the code will help to ensure good practice around data sharing and help to manage risks associated with sharing information, including the parties' approach to matters such as security. Following the code and adopting its practical recommendations will help to give passenger ship operators confidence to collect and share personal data in a way that is fair, transparent and in line with the rights and expectations of the passengers whose information is being shared.

Data retention

Article 5(1)(e) of the GDPR specifies that data must not be retained for longer than necessary in relation to the purpose for which it is processed. Section 2.11 of the consultation notes that the statutory instrument will include the requirement that "passenger information held on record is erased without undue delay" and at the latest once each voyage has concluded. The ICO notes that section 7(c) of the draft Regulation reflects this.

Ensuring that personal data is erased or anonymised when it is no longer needed reduces the risk that it becomes irrelevant, excessive, inaccurate or out of date. This also reduces the risk that controllers will use such data in error. Those operating passenger ships should ensure the system they use facilitates the erasure of data when required and that passengers are informed of the retention policy.

Transparency information for data subjects

The requirement to provide privacy information to individuals in relation to how their personal data will be processed is a fundamental right under the data protection legislation. Articles 13 and 14 of the GDPR specify what individuals have the right to be informed about in relation to the processing of their personal data.

This is an obligation that passenger ship operators will need to comply with to ensure that passengers are provided with clear and comprehensive information about how their personal data will be processed including what personal data will be collected, the purpose of the processing, how long it will be processed for (as noted in the data retention section above), and who it will be shared with. Further, data should not be processed in a way which data subjects would not reasonably expect.

It is often most effective to provide privacy information using a combination of techniques, including layering and dashboards. Careful consideration should be taken by passenger ship operators regarding what format is the most appropriate under the circumstances.

Privacy information must be regularly reviewed to ensure that any new use of an individual's personal data is brought to that individual's attention before the processing begins. The Information Commissioner has published [guidance on privacy information](#) that provides further information on this requirement.

Conclusions

We hope the above comments are useful to the MCA in taking forward the proposed policy changes. The ICO is happy to provide further input on these matters and we await formal consultation under Article 36(4) of the GDPR in respect of the legislative proposals outlined.

The Information Commissioner's Office

November 2020