

By email only: [CPU@justice-ni.gov.uk](mailto:CPU@justice-ni.gov.uk)

22 December 2022

FAO: Department of Justice, Criminal Policy Unit.

Dear Sirs,

**Re: Department of Justice (DoJ), Abuse of Position of Trust  
Offences: Extension of the Law – A Call for Evidence**

The ICO welcomes the opportunity to respond to the Call for Evidence on Abuse of Position of Trust Offences.

This Office has responsibility for promoting and enforcing the UK General Data Protection Regulation (UK GDPR), the UK Data Protection Act 2018 (DPA 2018) and additional information rights legislation.

We note that this Call for Evidence centres on recent amendment made to the abuse of position of trust provision by Section 5 of the Justice (Sexual Offences and Trafficking Victims) Act (Northern Ireland) 2022. It seeks supporting information on any specific areas of risk which would necessitate an extension of the law. Specifically, this will focus on whether there are any additional environments/settings that should be provided for within the abuse of position of trust provision.

Given our role as a regulator, it would not be appropriate for us to respond with a view as to whether there are any additional environments/settings that should be considered when extending the law, or provide any supporting information in relation to this. However, there are data protection implications that we have raised below for your consideration.

**Article 36(4) – Statutory Consultation on Legislative Measures**

We would like to draw your attention to the obligations under Article 36(4) of the UK GDPR regarding the need to consult with the ICO if any extension to the law will result in new powers or obligations to process

personal data, or change/alter the scope of what is collected or shared already.

Article 36(4) imposes a requirement on Government Departments and relevant public sector bodies to consult with the ICO when developing policy proposals relating to the processing of personal data. Article 36(4) states that: "*Member States shall consult the supervisory authority during the preparation of a proposal for a legislative measure to be adopted by a national parliament, or of a regulatory measure based on such a legislative measure, which relates to processing.*"

As the scope of the Article 36(4) obligation extends to general processing under the UK GDPR and Part 2 of the Data Protection Act 2018 (the DPA), it will be important for the Department of Justice (DoJ) to decide whether any processing arising out of any legislative proposals or amendments resulting from the Call for Evidence law falls under the UK GDPR and Part 2 of the DPA, Part 3 of the DPA, or perhaps both.

If the DoJ does decide that consultation under Article 36(4) is necessary, we would require the completion and submission of [an Article 36\(4\) Enquiry Form, which can be found here](#).

### **Data Protection Considerations**

If the Call for Evidence results in any changes to data processing, DoJ must take account of the data protection legislation in order to safeguard individuals' personal information.

A fundamental concept of data protection law is that data protection should be built into any project or proposals using personal data from the earliest stages of planning. As such, we would also like to remind DoJ of their obligations under [data protection by design and default](#). It is important to note that a key aspect of these obligations is considering whether there is a need to carry out a [Data Protection Impact Assessment \(DPIA\)](#) and also seeking expert from your [Data Protection Officer \(DPO\)](#) where appropriate.

## **Conclusion**

We hope you find the above comments helpful. We look forward to engaging further on this and any other areas where the ICO's experience and expertise would be welcomed by the DoJ.

## **Information Commissioner's Office (Northern Ireland)**