

NIO POLICY EQUALITY SCREENING FORM

1. Title of policy

Introducing custodial sanctions for offences committed under section 55 of the Data Protection Act 1998

2. Brief description of policy. Do any other policies interact with this policy?

Section 55 of the DPA makes it an offence to unlawfully obtain, disclose or procure personal data and selling or offering to sell personal data obtained in those circumstances. Currently the maximum penalty available is an unlimited fine.

The review of penalties is in response to the Information Commissioner's Office request following their monitoring of the illegal trade in personal data. The Information Commissioner called to introduce custodial sentences for those who seek to profit from the illegal trade in personal data and for those who knowingly or recklessly disclose personal data to those who have no right to it.

The consultation also seeks views on the introduction a new defence, which has not yet been commenced, for anyone who can show that they acted for the purpose of journalism, art or literature with a view of publishing material in the reasonable belief that the obtaining, disclosing and procuring the information was in the public's interest.

The consultation exercise seeks views on proposals to:

- Introduce increased maximum penalties available to the courts for those guilty of offences under section 55 of the DPA 1998.
- Commence of new defence in relation to journalistic, artistic or literary use of personal data in the interest of the public.

3. Aims of policy

To provide public reassurance that the government will take the appropriate action to protect people from crime and uphold the individual's right to an appropriate degree of protection for their personal data.

To deter more effectively the knowing or reckless misuse of personal data, including the illegal trade in personal information.

It also consults on the commencement a new defence in relation to journalistic, artistic or literary use of personal data in the interest of the public. This is to prevent the curtailing of legitimate and responsible journalism.

PART I

4. Who is responsible for devising and delivering the policy?

This is a Ministry of Justice consultation that is being delivered in parallel with the Northern Ireland Office as it is a UK wide policy.

5. Are there any linkages to NI Departments or NDPBs in relation to this policy/legislation? How are these interfaces managed?

Any changes to the policy on fine default will have implications across a range of criminal justice interests including:-

Northern Ireland Prison Service
Northern Ireland Court Service
The Judiciary
The Legal profession

These bodies and agencies will be consulted on the future development of any proposals.

6. Who is the policy/legislation likely to impact upon? What data is available to facilitate the screening exercise?

Impact:

Any changes introduced to section 55 of the DPA will have an impact upon individuals who knowingly or recklessly misuse personal data, including the illegal trade in personal information. The proposals would have an impact on the prison service if custodial sentences are subsequently passed for those found guilty of offences committed under section 55 of the DPA. There would also be a potential impact on the work of the courts.

Data:

For the years 2004 to 2006 three individuals were charged in NI for offences under this section. Two resulted in fines and one was issued a conditional discharge.

Another consultation "Increasing penalties for deliberate and wilful misuse of personal data" conducted by the Home Office and the NIO from 24th July till 30th October 2006.

7. Who will implement the policy?

The Judiciary, the Northern Ireland Court Service and the Northern Ireland Prison Service will implement appropriate and relevant aspects of the policies that are developed.

PART II

1 Is there any evidence or indication of higher or lower participation or uptake by different groups? If so, please indicate below.

CATEGORY	YES	NO	DON'T KNOW
Gender/Gender Identity		✓	
Sexual orientation		✓	
Religion		✓	
Political opinion		✓	
Disability (physical and learning)		✓	
Race or ethnic origin (includes Travellers)		✓	
Age		✓	
Dependant responsibilities		✓	
Marital/Civil Partnership status		✓	

Please give reasons for your answer, including sources of data used.

As there have only been three individuals convicted under this section in the last three years that data is available no group can be seen as having a high participation or uptake.

2. Is there any evidence or indication that different groups have different needs, experiences, issues or priorities in relation to the particular policy?

CATEGORY	YES	NO	DON'T KNOW
Gender/Gender Identity		✓	
Sexual orientation		✓	
Religion		✓	
Political opinion		✓	
Disability (physical and learning)		✓	
Race or ethnic origin (includes Travellers)		✓	
Age		✓	
Dependant responsibilities		✓	
Marital/Civil Partnership status		✓	

Please give reasons for your answer, including sources of data used:

These proposals will affect anyone who participates in the illegal trade in personal data. Under the proposals, if they are convicted of a section 55 offence they may be liable to a custodial sentence, as well as the fines currently available. The previous responses to a consultation on this issue did not identify any impact of the proposal on any groups under consideration. There is equally no suggestion that prosecutions made under section 55 of the DPA fall along lines of race, gender, disability, age, dependent responsibilities, religion, political opinion, marital status or sexual orientation.

Any additional comments:

PART II

- 3 Is there an opportunity to better promote equality of opportunity or better community relations by altering the policy or working with others in Government or in the larger community?**

CATEGORY	YES	NO	DON'T KNOW
Gender/Gender Identity			
Sexual orientation			
Religion			
Political opinion			
Disability (physical and learning)			
Race or ethnic origin (includes Travellers)			
Age			
Dependant responsibilities			
Marital/Civil Partnership status			

Please give reasons for your answer, including sources of data used:

Not applicable to this policy.

PART II

- 4 Equality Commission guidance states that the screening process should include pre-consultation with those who may be affected by the policy. Have consultations with relevant groups, organisations or individuals indicated that the policy may create problems, which are specific to them?**

CATEGORY	YES	NO	DON'T KNOW
Gender/Gender Identity		✓	
Sexual orientation		✓	
Religion		✓	
Political opinion		✓	
Disability (physical and learning)		✓	
Race or ethnic origin (includes Travellers)		✓	
Age		✓	
Dependant responsibilities		✓	
Marital/Civil Partnership status		✓	

Please give reasons for your answer, and details of any consultations that have taken place:

The consultation paper 'The knowing or reckless misuse of personal data', published with this screening assessment in October 2009 will invite relevant groups, organisations or individuals to indicate any specific problems with any of the proposals suggested.

A previous consultation 'Increasing penalties for deliberate and wilful misuse of personal data' on this issue did not raise any specific problems.

PART II

It may be that a policy has an adverse differential impact on certain people in one or more of the categories as a consequence of targeting or affirmative action to combat an existing or historical inequality. If this is the case, please give details below and contact the Equality Unit if you are in doubt:

Not applicable to this policy

PART III

Consideration of Disability Duties

5. Does this proposed policy / decision provide an opportunity for NIO to better promote positive attitudes towards disabled people?

Explain your assessment in full

Not applicable to this policy

6. Does this proposed policy / decision provide an opportunity for NIO to actively increase the participation by disabled people in public life?

Explain your assessment in full

Not applicable to this policy

PART IV

- 1 **If screening has indicated that a policy is having an adverse differential impact, how would you categorise it?**

Please tick.

Significant impact

Low impact

- 2 **Do you consider that this policy needs to be submitted to a full equality impact assessment?**

YES

NO

✓

If NO but the policy has significant impact, please give reasons for your recommendation:

N/A

3. **What data do you believe may be required to ensure effective monitoring of the policy in the future?**

Statistics on convictions and sentencing under section 55 of the DPA by gender and age.