



Submission on '*Fundamentals for a Child-Oriented Approach to Data Processing*' to the Data Protection Commission

1. Introduction

The Department welcomes the opportunity to contribute to this public consultation and acknowledges the work already undertaken in directly consulting children and young people and the work undertaken to include other stakeholders including parents and educators. The document '*Children Front and Centre: Fundamentals for a Child-Oriented Approach to Data Processing*' is a useful outcome of these consultations.

Any initiative that provides greater clarity in this area is welcome. The Department, like other Government agencies takes very seriously the requirement to safeguard the rights of all those in receipt of services and payments from the State and is very conscious of the data protection rights of children and the particular challenges involved.

2. Situations where the Department processes the personal data of children

State bodies have a very particular motivation for processing personal data. The main reason the Department of Social Protection collects and processes personal data is to ensure that customers can attain social welfare benefits and allowances, and to ensure that the Department's budget of €25Billion is allocated to the correct customers in a timely manner.

The Department processes children's data in a range of circumstances. These include:

- (i) children who have been allocated PPSNs
- (ii) 16 or 17 year olds who apply for, or are in receipt of an income support benefit or payment (a relatively small number of the Department's overall claim load)
- (iii) 16 or 17-year-olds who work and pay PRSI contributions
- (iv) situations where a child-related payment is made to an adult e.g. child benefit, an increase for a Qualified Child (on any scheme), Maternity Benefit, Back to School Clothing and Footwear Allowance, Domiciliary Care Allowance, Guardian's Payment, One Parent Family Payment, etc.

In the case of (ii) and (iii) above the 16/17-year-old has a direct relationship with the Department and the Department deals with them as it would with adult customers. However, in the case of (i) and (iv) there are particular challenges in finding a way of providing the child with their personal data and other information, while also protecting the rights of the parent/guardian. The Department would welcome guidance on this particular challenge. Other organisations who are in a similar position would no doubt also appreciate guidance in this area.

3. Legal Basis and Specific Challenges faced

The Social Welfare Consolidation Act 2005 (SWCA 2005) is the primary legislation covering Social Protection payments. The Department makes payments based on this legislation to customers including parents who are in receipt of a full payment in respect of a child payment or an increase

to their own individual payment based on the number of dependent children. These payments include child benefit, but also include the increases that are paid on all social welfare schemes where the customer has dependant children. Such payments are referred to as Increases for Qualified Children and the criteria and payment rates applying to the individual schemes are advertised on the Department's website.

As an example, as at October 2020, Child Benefit was paid to 635,422 qualified persons in respect of 1.2 million children.

There can only ever be one qualified person to receive child benefit, and it is usually the mother. This is set out by law – See Article 159 of SI 142/2007.

The GDPR does not set out many principles for making decisions as regards children and the data. Any guidance which is developed must not be overly burdensome. It may be too onerous to suggest that a best interests test should be carried out by a public official each time a child seeks to exercise their data subject rights, or indeed each time their parent/guardian seeks to do so on their behalf.

Cases where there has been a breakdown of communications within a family are very difficult to deal with. Where a Department seeks to protect the rights of a customer, other persons concerned may be aggrieved. There can be added complications in instances of domestic violence, coercion and the mental or physical abuse of children. These can add another layer of complexity to an already complex decision-making process.

The Department is keen to avoid a scenario where providing data to a child or a parent in relation to the claim of the other parent could identify that a claim is in payment. The very fact that the other parent is in receipt of a particular payment could further reveal a) their current relationship status b) their address c) financial situation, d) employment status, e) health information or anything else that breaches the data rights or possibly the safety of the claimant. This places an added pressure on the Department when balancing rights, as disclosure of information to someone with a malicious intent can have very serious consequences. Clarity on the best approach to these individual cases would be welcomed.

The Department, while keen to fully respect the rights of all persons, is also aware that unintended consequences must be avoided. The right to erasure is one potential area this may occur. It is important to avoid an undesirable outcome, where someone may wish to exercise their right to erasure but the consequence of one person exercising a right could be the removal or reduction of a payment for a third party where otherwise their payment should continue.

Most Departmental payments are not made directly to children but having dependent children can increase the amount of benefit payable to a customer in many schemes. The guidance on data protection rights of children should be cognisant that if a child were to pursue a request to exercise their right to erasure this could lead to the withdrawal of benefit from a parent or guardian. This may also have relevance where one parent makes a request to erase their child's data when the other parent is in receipt of an income support payment.

The Department regularly reviews its schemes and services and the language used when communicating with children and young people.

We welcome the opportunity provided by this process and look forward to further engagement with your office on the matters under consideration.

ENDS