



The knowing or reckless misuse of personal data – introducing custodial sentences CP 22/09

List of questions for response

We would welcome responses to the following questions set out in this consultation paper. Please email your completed form to: ollie.simpson@justice.gsi.gov.uk or fax to: 020 3334 2245. Thank you.

Question 1. Should the Secretary of State introduce custodial penalties for offences committed under section 55 of the DPA?
--

Comments: Yes.

Question 2. Subject to the responses to Question 1, the Government believes that the level of the custodial sentences should be set at the maximum available under the power (i.e. twelve months' imprisonment on summary conviction and two years on conviction on indictment) Do you agree? If not, at what (lower) level do you believe the maximum sentence should be set?

Comments: The suggested level appears to us to be appropriate.
--

Question 3. **Subject to the responses to Question 1, the Government proposes to bring in the new custodial penalties from April 2010, when the intention is that the ICO be given enhanced powers. Do you agree with this approach?**

Comments: In principle, yes. The establishment of meaningful enforcement powers for the ICO is, we think, vital if matters pertaining to data protection and informational privacy are to be taken seriously in the public and commercial sectors. The simultaneous activation of the new custodial penalties and enhanced powers for the ICO have the potential to make compliance with the DPA a more pressing concern for data controllers; and thus increase the protection afforded to data subjects.

In order to maximise the impact of the proposed changes, we suggest that there should be a highly-visible accompanying campaign explaining; (i) why the MOJ and ICO are taking these matters seriously; (ii) the nature of the fundamental rights of individuals that are sought to be protected by the DPA (and enforced by the ICO and the courts); and (iii) by way of a timely reminder, that company officers can be individually liable for section 55 offences as per section 61.

Question 4. **Subject to the responses to Question 1, the Government proposes to commence the new defence for anyone who can show that he was acting for the special purposes with a view to publishing journalistic, literary or artistic material, in the reasonable belief that the obtaining, disclosing or procuring was in the public interest alongside the increased penalties. Do you agree with this approach?**

Comments: This seems appropriate in light of Article 10 of the ECHR, though justification of what constitutes the "public interest" is clearly not always a straightforward matter.

Please complete the section overleaf to tell us more about you.

About you

Please use this section to tell us about yourself

Full name	Liam Curren
Job title or capacity in which you are responding (e.g. member of the public etc.)	Researcher in Law, University of Oxford
Date	18 December 2009
Company name/organisation (if applicable):	EnCoRe Project
Address	c/o HeLEX - Centre for Health, Law and Emerging Technologies at Oxford University of Oxford Old Road Campus
	Oxford
Postcode	OX3 7LF
If you would like us to acknowledge receipt of your response, please tick this box	<input checked="" type="checkbox"/> (please tick box)
Address to which the acknowledgement should be sent, if different from above	

If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.

EnCoRe – Ensuring Consent and Revocation:

EnCoRe is a multi-disciplinary research project, spanning across a number of IT and social science specialisms, that is researching how to improve the rigour and ease with which individuals can grant and, more importantly, revoke their consent to the use, storage and sharing of their personal data by others.

The overall vision of this project is to make giving consent as reliable and easy as turning on a tap, and revoking that consent as reliable and easy as turning it off again.

We are a UK research project, with six academic and industrial participants, that is partially funded by the UK Government's Technology Strategy Board, Economic & Social Research Council and Engineering & Physical Sciences Research Council.

www.encore-project.info
