

## The Information Commissioner's response to the Department for Business, Energy & Industry Strategy's consultation on the Warm Home Discount: better targeted support from 2022

### About the ICO

1. The Information Commissioner has responsibility for promoting and enforcing the UK General Data Protection Regulation ('UK GDPR'), the Data Protection Act 2018 ('DPA'), the Freedom of Information Act 2000 ('FOIA'), the Environmental Information Regulations 2004 ('EIR') and the Privacy and Electronic Communications Regulations 2003 ('PECR').
2. She 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, solving problems where she can, and taking appropriate action where the law is broken.

### Introduction

3. The Information Commissioner's Office (ICO) welcomes the opportunity to respond to this Department for Business, Energy & Industrial Strategy (BEIS) consultation on the Warm Home Discount (WHD): better targeted support from 2022. Whilst this consultation is largely focused on the financial and technical elements of the WHD scheme, this response focuses on the data protection and privacy considerations of the scheme, in line with the Commissioner's remit.
4. The UK GDPR and DPA enable fair and proportionate processing of data, and the ICO recognises that there are important societal benefits that can arise from the use of personal data, such as assisting those in fuel poverty. Using data responsibly is vital to prevent harm as well as to secure and retain the public's trust and confidence.
5. The ICO [previously responded](#) to a BEIS consultation on the WHD for 2021/22 and notes the proactive and continued engagement with BEIS regarding the WHD. We recommend that those areas outlined in our previous response continue to be considered for the WHD from 2022 onwards.

## Data matching and sweep up

6. The ICO understands that BEIS propose replacing the current 'Broader Group' with a new 'Core Group 2' in order to better target support, remove the first-come, first-served nature of this Group and enable recipients to receive the WHD automatically, rather than having to apply. The ICO notes that in order to administer the 'Core Group 2' rebate, BEIS propose matching data from various sources, including from DWP, HMRC and the Valuation Office Agency (VOA), as outlined on page 17 of the consultation.
7. The ICO supports the use of Government data in the public interest, to assist those in fuel poverty. However, where such use of Government data includes personal data, any processing must comply with data protection legislation. Data protection legislation enables legitimate and responsible data sharing and data matching, but the tools that are used need to be fit for purpose and proportionate in order to respect individuals' rights. The consultation proposes using special category data to assess potential eligibility for the WHD, such as whether an individual is in receipt of a health-related benefit such as Personal Independence Payment or Disabled Living Allowance. Additional protection is needed for this and any other special category data that will be processed, due to its use creating significant risks to individuals' fundamental rights and freedoms.
8. BEIS, alongside all other parties involved in the data matching and sweep up process, will need to establish and set out their respective responsibilities and the nature of their relationship. This will require appropriate documentation for the relationship, such as a transparent arrangement for a joint controller relationship or a written contract if there is a controller-processor relationship.<sup>1</sup> The ICO has produced [guidance on controllers and processors to assist with this process](#). The 'ICO's Data Sharing Code of Practice' section of this response also provides further guidance in respect of any sharing undertaken as part of the data matching process.
9. As part of the data matching and sweep up process, the ICO welcomes the provision for individuals to submit their own evidence to prove their WHD eligibility, particularly bearing in mind the limitations acknowledged in the consultation in respect of the accuracy and completeness of the VOA data.

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<sup>1</sup> As per the requirements in Articles 26 and 28 of the UK GDPR.

10. BEIS should ensure that alternative evidence accepted from consumers is not limited to the evidence listed in the consultation such as Energy Performance Certificates but includes 'relevant' data, with a holistic approach being taken and guidance being given to individuals on what may be classed as relevant. DWP will need to provide this clarity to ensure that it only receives the evidence it needs and does not collect more data than is necessary. This will assist compliance with the [UK GDPR Article 5\(1\)\(c\) data minimisation principle](#).

Additionally, it is important that data subjects are aware that providing personal data, that will be used to assess their eligibility, may result in confirmation that they do not qualify for the WHD.

### Automated decision making

11. As mentioned in the ICO's [previous response](#) to WHD proposals for 2021-2022, it appears that the Core Group, as well as the new Core Group 2, are identified through a process of data matching, with data provided from a variety of sources, such as DWP and the VOA. From the consultation, it appears that this constitutes solely automated processing, as defined in Article 22 of the UK GDPR. Article 22 states that data subjects have the right not to be subject to a decision based solely on automated processing, including profiling which produces legal effects concerning them, or similarly significantly affects them.
12. Organisations can only carry out this type of processing if they can rely on one of the three exceptions set out in Article 22(2), but it is not clear from the consultation which exception BEIS are relying on, so further clarity if this applies. The ICO has produced [detailed guidance on the data protection requirements when using solely automated decision making](#) that may be of use in determining if one of the three exceptions applies in relation to any of the individuals eligible under the Core Group or Core Group 2.
13. In particular, individuals must be informed of the use of their personal data for solely automated decision-making with legal or similarly significant effects. They must also be provided with meaningful information about the logic involved and what the likely consequences are. In this instance, this may mean, for example, that they are able to phone a Helpline or provide alternative evidence to prove their WHD eligibility.

## Accuracy of data

14. The ICO welcomes DWP's intention to process data in a way that results in a more accurate identification of those eligible for the WHD. This aligns with the [accuracy principle](#) under Article 5(1)(d) of the UK GDPR, which requires that data remains accurate and up to date.
15. As the consultation proposes matching data from various sources, it is crucial that consideration is given to how data will be kept up to date, and how any changes will be reflected throughout the process, to ensure that no harm or detriment is faced by data subjects. For example, if an individual moves home and updates their address with DWP, how will this be reflected in the data that BEIS process, bearing in mind the address is matched with VOA data on the property where an individual resides? This is particularly important when those eligible for the WHD may be more likely to experience insecure housing arrangements.

## Accountability

16. Accountability is an important aspect in engendering public trust and confidence, and the ICO has published an [accountability framework](#) to help organisations demonstrate their compliance. The ICO highlights the importance of adopting a [data protection by design and default](#) approach to ensure that any risks in the processing of personal data for implementing the WHD are appropriately mitigated against and appropriate safeguards are put in place.
17. A data protection impact assessment (DPIA) is a tool to help controllers ensure that they are processing personal data in a manner that is compliant with the data protection legislation. A DPIA must be carried out before any type of processing that is "likely to result in a high risk" to the rights and freedoms of individuals.<sup>2</sup>
18. Article 35(3)(a) of GDPR notes that any systematic and extensive evaluation of personal aspects which is based on automated processing and on which decisions that produce legal effects or similarly significantly affect the individual, a DPIA must be undertaken. Therefore, the proposals for the

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<sup>2</sup> Article 35(1) of the UK GDPR.

Core Group and Core Group 2 are likely to be within scope of this requirement, due to recipients automatically receiving the WHD following the data matching exercise.

19. There are also [European guidelines](#) to help controllers identify other high risk processing. Whilst these are no longer directly relevant to, or binding under the UK regime, they may still provide helpful guidance. As required by Article 35(4), the ICO has published a list of operations that require a DPIA, which complements and further specifies the criteria referred to in the European guidelines. One of the operations under Article 35(4) that automatically requires a DPIA is the matching, combining or comparing of data from multiple sources. In the 'Data matching and sweep-up' section of the consultation, proposals include data matching with a larger cohort of energy suppliers, the VOA and HMRC. Such data matching is within scope of the aforementioned processing operation under Article 35(4). It is therefore likely that a DPIA will need to be undertaken before this processing is carried out.
20. DPIAs enable controllers to map the flow of data through an entire process lifecycle, including the various organisations involved. This enables all risks to be identified and the opportunity for these to be mitigated prior to processing. If a high risk to data subjects is identified through a DPIA, which cannot be sufficiently mitigated, the controller must consult with the ICO under Article 36(1) of the UK GDPR prior to the high risk element of the processing being carried out. The ICO has produced [general guidance](#) as well as [detailed guidance](#) on when DPIAs are legally required, and how such assessments should be undertaken, to assist controllers with their obligations.
21. Considering and mitigating the potential privacy risks at the earliest stage of the proposals from 2022 onwards will help ensure that both individuals and organisations can realise the benefits of the WHD in a way that takes account of privacy risks, integrates appropriate safeguards into the processing and helps controllers fulfil their accountability obligations. This is particularly important when the processing relates to vulnerable individuals.

## ICO's Data Sharing Code of Practice

22. The data protection legislation obliges the Information Commissioner to produce a statutory [code of practice](#). The code has been laid before Parliament, and should be taken into account by all organisations involved in sharing personal data in relation to the WHD.
23. This not only applies to the sharing of personal data between government agencies such as BEIS, DWP and VOA for those in the Core Group and Core Group 2 but also for the sharing between energy suppliers and other organisations, such as charities, in relation to those individuals in the Industry Initiatives group. Adhering to the Code will help ensure good practice around data sharing and help to manage risks associated with sharing information, including the parties' approach to matters such as cybersecurity. Following the Code and adopting its practical recommendations will help to give organisations confidence to collect and share personal data in a way that is fair, transparent and in line with the rights and expectations of the people whose information is being shared.
24. The consultation outlines in the 'Supplier participation' section that a staged approach is proposed, which will, over time, increase the number of energy suppliers participating in the WHD scheme. As the number of organisations involved increases, it is important that clear guidance and information is provided to all suppliers on their data protection obligations as part of the scheme. Additionally, BEIS will need to consider how to ensure new and existing suppliers meet these requirements prior to sharing data, potentially as part of any pre-contractual checks.

## Transparency

25. Transparency is a key component of fairness as well as a legal requirement under Article 5(1)(a) of the UK GDPR. Additionally, the requirement to provide privacy information is a fundamental right under Articles 13 and 14 of the UK GDPR. It is therefore crucial that privacy information is available and accessible to all individuals whose data will be processed in the administration of the WHD, including those who are deemed ineligible. The ICO has published [guidance on the right to be informed](#) that will assist controllers in meeting these requirements.
26. When processing information, including from any vulnerable individual, organisations must make sure they treat them fairly. This means drafting privacy information appropriate to the level of

understanding of the intended audience and, in some cases, putting stronger safeguards in place. Particular care should be taken to ensure individuals understand the purpose for which data will be processed and the extent of this. Data should not be processed in a way which data subjects would not reasonably expect.

27. As already mentioned, individuals have the right to receive details of the existence of solely automated decision-making if this applies. They also need to receive information about their [data protection rights](#) and how to assert these, including (but not limited to) how to have incorrect data rectified.
28. It is often most effective to provide privacy information using a combination of techniques, including layering and dashboards. Careful consideration should be taken about the format that the most appropriate in the circumstances, particularly in relation to vulnerable individuals. 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, so any information currently provided in respect of the WHD scheme must be updated prior to any new processing.

## Security of personal data

29. Article 5(1)(f) of the UK GDPR requires that personal data is processed "in a manner than ensures appropriate security" and that controllers should use "appropriate technical or organisational measures" to achieve this. The proposal to match data from various sources, coupled with the increase in energy suppliers due to participate in the WHD scheme from 2022 onwards, means that the volume of personal data that will be processed is likely to increase significantly. Therefore, care must be taken to ensure it is held and processed securely.
30. Article 32(1) details the considerations that organisations must take, including but not limited to the state of the art, the costs of implementation and the risk of varying likelihood and severity for the rights and freedoms of individuals. The level of security should be appropriate to the level of risk and should be documented in the DPIA. The ICO has produced [guidance on security](#) that may be of use in determining what is appropriate in the circumstances outlined in the consultation.

## Legislative consultation

31. The consultation, aimed at better targeting the support provided through the WHD, proposes legislative changes. Therefore, under Article 36(4) of the UK GDPR, BEIS will need to consult with the ICO during the preparation of these legislative proposals.
32. Article 36(4) requires government departments and relevant public sector organisations to formally consult with the ICO during the preparation of policy proposals for statutory or legislative measures that relate to the processing of personal data. DCMS have produced [guidance on the application of Article 36\(4\)](#) that will be of use in meeting this obligation.

## Conclusion

33. The ICO is happy to provide further input on these matters and welcomes further engagement from BEIS on these proposals. We look forward to receiving an A36(4) consultation on changes to the legislation.

## **Information Commissioner's Office**

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