

1 November 2023

Dear Department of Education,

**Re: Statutory Guidance on the Reduction and Management of Restrictive Practices in Educational Settings in Northern Ireland**

The ICO welcomes the opportunity to respond to the above public consultation. As you will be aware, the ICO is the UK's independent public authority set up to uphold information rights and enforces and oversees a range of legislation including the Freedom of Information Act (FOIA), the UK General Data Protection Regulation (UK GDPR) and the Data Protection Act 2018 (DPA 2018).

We recognise that the statutory guidance sets out requirements for the use of restrictive and supportive practices in the context of educational settings and aims to safeguard pupils and promote their welfare, with the best interests of the child being a primary consideration. This is closely aligned with our [ICO25](#) objective to 'safeguard and empower people'. We welcome this approach as child safeguarding is inextricably linked to children's privacy and their data protection rights, and therefore the implementation of the guidance must be read in conjunction with data protection legislation.

- **Article 36(4) consultation**

As the proposed guidance will become statutory within educational settings in Northern Ireland, we would like to draw your attention to the obligations under [Article 36\(4\) of the UK GDPR](#).

Article 36(4) of the UK GDPR 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](#).

The requirement to consult with the ICO under Article 36(4) of the UK GDPR applies to all public sector bodies where policy proposals relate to legislation. This includes:

- primary and secondary legislation;
- regulatory measures (such as directions and orders) made under primary or secondary legislation;
- statutory codes of practice; and
- statutory guidance.

As it is likely that the implementation of the statutory guidance outlined within the consultation will result in the processing of [personal data](#), the Department of Education (DE) must complete our Article 36(4) [Enquiry Form](#). Instructions on completing this are included on the form and in the accompanying guidance.

As part of our engagement with you under the Article 36(4) consultation process, we will often ask to view your [data protection impact assessment](#) (DPIA). DPIAs are an essential part of a controller's accountability obligations and will help to systematically analyse, identify and minimise the data protection risks of the statutory guidance and those who are bound by it. If the personal data processed under the proposals should pose a high risk to the rights and freedoms of individuals, you will be required by law to complete a DPIA. Completing a DPIA is also considered to be best practice when the processing does not pose high risks.

Please see below some comments which we would like you to consider for the purposes of this consultation. In addition to this, please note that these are areas that we can explore further with you if we deem engagement necessary under the Article 36(4) consultation process.

- **Good record keeping and reporting**

Educational settings bound by the guidance must implement [good records management](#) when processing personal data as this will support effective data governance and high levels of [information security](#). Compliance with the [data protection principles](#), such as data minimisation, will be key. The recording and reporting outlined in the consultation is also likely to capture [special category data](#) and [children's data](#), therefore it is essential that this data is given the extra protections required under data protection law.

The consultation states that 'all incidents of restrictive practices must be recorded'. It is important to bear in mind that a copy of this information may be subject to disclosure to parents/carers and the child involved under their [right of access](#). Educational settings may need to update their internal policies for dealing with such requests accordingly.

- **Transparency**

Educational settings must be mindful of their [transparency obligations](#) under the UK GDPR when implementing their policy on the use of

restrictive and supportive practices. Parents/carers and children must be fully informed about how personal information will be used and recorded under the policy, with information provided on how they can raise any concerns with the educational setting and [submit a complaint to the ICO](#) if they are not satisfied with how their personal information has been used. This information should be tailored to the intended reader in a way in which they will understand.

- **Consent**

The consultation makes reference to obtaining 'express consent' and 'written consent' from parents/carers and children in various situations. This may need to be considered further and clarification should be provided on whether consent is the [lawful basis](#) being relied upon under data protection legislation, or whether the references to seeking consent are in relation to a separate process or legal obligation.

- **Data sharing with third parties**

The proposals outlined within the consultation make reference to the sharing of information, reports and records with third parties such as parents/carers, the Chair of the Board of Governors and the Education Authority, therefore you may find it useful to consult our [data sharing code of practice](#). The sharing of any personal information must be compliant with data protection law and any other policies and procedures relevant to educational settings.

It is important to remember that data protection law allows you to share information when required to identify children at risk of harm and to safeguard them from harm, so you may also find our recently published [10-step guidance on sharing personal information for child safeguarding purposes](#) useful in these circumstances. Data protection should not be viewed as a barrier to data sharing, but as an enabler to the sharing of data in a safe and protected way.

- **Staff training**

We welcome how the consultation emphasises the importance of [staff training](#) when implementing the statutory guidance. This is a key requirement under DE's [accountability](#) obligations and those of the various educational settings. It is extremely important that staff members are provided with practical data protection training specific to their role and such training should be refreshed on a regular basis.

- **CCTV**

We note that the consultation does not make reference to the processing of personal data captured by CCTV within educational settings. DE should give consideration to the use of CCTV within these settings and provide supporting guidance on how to ensure compliance with data protection law where CCTV is operational. This is particularly important when the use of restrictive or supportive practices is captured on CCTV. Our [video surveillance guidance](#) will be useful in this respect. The application of individual rights, such as the [right of access](#) (SARs) and the [right to be informed](#) must also be considered within the context of CCTV usage.

Please note that the points raised above are not exhaustive, and it is important that DE ensures the statutory guidance and the resulting data processing is compliant with all aspects of data protection law. Please see our [guidance on the UK GDPR](#) for more detail. You may also find it useful to consult the points raised within the [ICO's public response](#) to the Department of Health's consultation on their 'Draft Regional Policy on the Use of Restrictive Practices in Health and Social Care Settings'.

I hope this is helpful, but if you have any further queries please do not hesitate to get in touch.