
Debate in LIBE committee on the protection of individuals with regard to the processing of personal data, and the free movement of such data (General Data Protection Regulation)

July 2013

Introduction

1. The [General Medical Council](http://www.gmc-uk.org) (GMC) is the independent regulator for doctors in the UK. Our purpose is to protect, promote and maintain the health and safety of the public by ensuring proper standards in the practice of medicine.
2. The law gives us four main functions:
 - keeping up-to-date UK registers of qualified doctors
 - fostering good medical practice in the UK
 - promoting high standards of medical education in the UK
 - dealing firmly and fairly with doctors whose fitness to practise is in doubt.
3. To fulfil these functions we collect and use personal data in order to register doctors and to carry out our fitness to practise functions. We also provide guidance for doctors on standards of professional conduct. This includes guidance on the confidentiality of patient information, which we expect doctors to understand and follow.
4. We have closely followed the review of the Data protection Regulation and have produced the following briefing which sets out the GMC's position on some amendments tabled in the European Parliament's Committee on Civil Liberties, Justice and Home Affairs ahead of the consideration of the proposal.
5. This briefing focuses on those issues of importance to safe and effective medical regulation and patient safety:
 - a. Processing exemptions (Article 21)
 - b. Right to be forgotten (Article 17)
 - c. Consent (Articles 7, 81, 83)
 - d. Public interest test (Article 81, 83)

A. Processing exemptions (Article 21)

6. As the body responsible for doctors' registration and fitness to practise in the UK, the GMC has a statutory responsibility to keep a register of doctors who are safe and fit to practise medicine in the UK. To carry out our statutory functions, we may also hold information concerning past and present registration, including doctors no longer on the register for administrative or disciplinary reasons.

7. It is essential that the exemptions in the Commission proposal article 21, paragraph 1, subparagraph (d)), allowing us to *prevent, investigate, detect and prosecute* doctors whose fitness to practise is impaired, are maintained. The fundamental right to the protection of personal data should not endanger patient safety.

The GMC does not support amendments 1638 and 1640 as they would undermine our statutory role in protecting the public.

B. Right to be forgotten (Article 17)

8. We support the provisions of article 17 and recognise the importance of rectification and erasure in prescribed circumstances. Personal data should only be retained for a proportionate time period.

9. And, we welcome the derogations outlined in article 17, paragraph 3, subparagraph (b), (c), (d) which would allow us to continue to hold personal data to fulfil our statutory obligations to protect, promote and maintain the health and safety of the public.

The GMC supports amendment 1387 and 1431.

The GMC is concerned that amendments 1429, 1430, 1431, 1433 and 1434 have the potential to limit the derogation in a way that would affect our ability to protect the public and calls for the text proposed by the European Commission in Article 17(3) subparagraphs (b), (c) and (d) to be retained.

The GMC does not support amendment 1435 which would weaken our ability to analyse the data we hold to improve the regulatory system and our ability to protect the public.

C. The concept of 'broad consent' (Article 7, 81, 83)

10. We note the amendments proposing the introduction of the concept of 'one-time' or 'broad' consent, whereby data subjects give consent for their data to be used for a research purpose and this is accepted as consent 'for life' (i.e. consent with no defined time limit).

11. We would not support this proposal unless it included adequate safeguards to protect data subjects' rights to allow them to retract their consent at any time.

The GMC is concerned that amendments 981, 2987, 3067, 3079 would introduce the concept of one time/broad consent which may undermine the obligation on data processors to gain explicit consent when processing personal data.

12. We agree that it may be appropriate for patients to give consent to the use of their data for a broad category of uses - such as medical research or education. Where there is no specific end date to such a purpose, we agree that some checks to ensure the patient's continuing agreement should be undertaken. Where patients give consent to a specific use of data - such for use in considering a doctor's fitness to practise, or for a specific research project, then their consent should be considered valid irrespective of the time taken to complete the purpose.

D. Public interest test (Article 81 and Article 83)

13. The Rapporteur's amendment 337 to Article 83 proposes that personal data can be processed without consent for research purposes only when 'that research cannot possibly be carried out otherwise' and when the research 'serves an exceptionally high public interest'.

14. We would welcome clarity on the definition of 'exceptionally high public interest' as it appears to be a stricter test than is currently required in UK law.

15. We would suggest that a two-stage process is adopted that is similar to the approach taken in section 251 of the National Health Service Act 2006. This states that health data can be used for 'medical purposes' (which include preventative medicine, medical diagnosis, medical research) without consent when it is not 'reasonably practicable to achieve that purpose otherwise' and the processing is in the public interest.

The GMC would welcome clarity on the definition of 'exceptionally high interest' as outlined in amendments 328, 337, 3060, 3070.