

# SOAS ICOP Policy Briefings

## To Inform Government and Parliamentary Debates

**Changes to Data Protection Law and the Risks to the Economy** by *Eleonor Duhs, Barrister, Partner and Head of Privacy at Bates Wells* (17<sup>th</sup> April 2023)

The free flow of personal data across borders is essential to the modern economy. Finance, banking, retail, and hospitality, which make up large segments of the service sector powering the UK's prosperity, all depend on the free flow of personal data. The free flow of data between the UK and its biggest trading partner, the EU, is therefore of crucial importance. Reforms to our data protection framework as well as sweeping changes to retained EU law could put EU-UK data flows at risk. [A lack of free flow of personal data from the EU to the UK could cost UK business up to £1.6bn.](#)

Currently, there is a free flow of data from the EU to the UK. This is because the EU [has assessed the UK's framework](#) as providing an equivalent level of protection of personal data to that in the EU. [The basis for this assessment](#) includes:

- The fact that the UK has an **independent regulator for data protection**, the Information Commissioner.
- The UK's **current data protection regime**, the UK GDPR (which is retained EU law) mirrors the EU's data protection framework.

The Data Protection and Digital Information (No. 2) Bill, as well as the government's wider legislative agenda could risk the free flow of data between the EU and the UK through:

- [Undermining the Information Commissioner's independence](#) (for example, clause 31 of the Data Protection and Digital Information (No. 2) Bill requires the Commissioner to seek approval from the Secretary of State when issuing codes of practice).
- Fundamentally **changing the way in which retained EU law** (of which the UK GDPR is an example) **operates and is interpreted**, giving rise to uncertainty (see the Retained EU Law (Revocation and Reform) Bill); and
- **Conferring powers on Ministers to remove fundamental protections that exist under the current regime**, such as the right not to be subject to solely automated decision-making (see clause 11 of the Data Protection and Digital Information (No. 2) Bill and the regulation-making power in new Article 22D). This power could be used to remove protections as recommended by the [Taskforce on Growth and Regulatory Reform](#) (see paragraph 225).

**MPs are being urged to use the second reading debate of the Data Protection and Digital Information (No. 2) Bill to highlight the potential risks of diverging from EU data protection standards and changing the interpretation of UK data protection law. The powers conferred on Ministers in the Bill could also lower data protection standards in the UK, leading to an increase in burdens on UK businesses and potentially impacting the free flow of data from the EU.**

In addition, the current [impact assessment](#) conducted by the government ignores the collective impact of the reforms. The changes could result in significant legal uncertainty and **make our data protection regime difficult to interpret, leading to increased costs.**