



Advice Note

Preparation for the Commencement of Sections 6(2) (3) of the Data Sharing and Governance Act 2019





Introduction

FAO: Data Officers and DPOs for All Public Service Bodies

The Data Sharing and Governance Act (DSGA) comes on foot of the GDPR and the Data Protection Act 2018 (DPA). It clarifies the legality of data sharing between public bodies, placing data governance within the Public Service on a statutory footing.

The DSGA has been commenced in stages to allow the various statutory requirements arising from this ACT be put in place. The final stage commences Sections 6(2) and (3) and is scheduled for 31st March 2022. This Advice Note outlines how your organisation must prepare for the third and final stage.

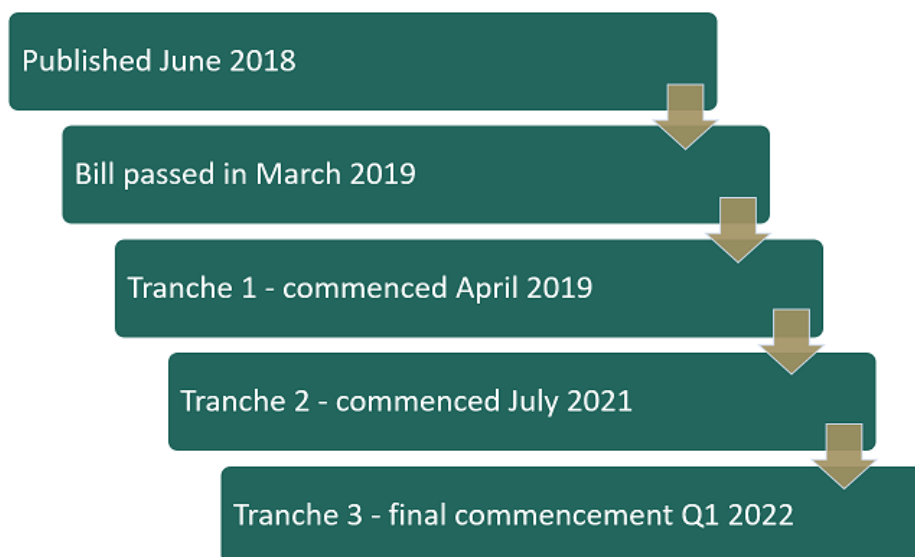
With the commencement of Sections 6(2) and (3) of the DSGA the existing legal basis for sharing data as defined in Section 38 of the DPA will be nullified. This may impact how organisations currently share data with other public bodies. The information contained within this Advice Note outlines what needs to be done in advance of commencement in order to remain compliant with current data protection legislation and GDPR.

We recommend you follow the approach detailed in this Advice Note and complete the attached mandatory return to the Data Governance Unit of OGCIO, datagovernance@per.gov.ie, before **31st October 2021**.



Background

A first tranche of commencements, in April 2019, brought several Sections of the DSGA into law immediately after the Bill was passed.



All remaining Sections, with the exception of Sections 6(2) and 6(3), have now been brought into law in a second tranche of commencements, 8th July 2021.

Further details of these Sections can be found online in the Guidance Note:

¹The New Governance Framework for Data Sharing under the Data Sharing & Governance Act 2019.

Your organisation now needs to prepare for the third and final tranche of commencements currently scheduled for 31st March 2022. This will commence Sections 6(2) and 6(3) of the DSGA only and will complete the full enactment of the DSGA.

¹ Note: Data Sharing Publications will be available on the OGClO website in the last week of August 2021.



Why are Sections 6(2) and 6(3) being commenced separately?

When these Sections are commenced they will nullify Section 38 DPA as a legal basis for data sharing between public bodies. At that point, any such sharing of data must be in accordance with either the requirements of the DSGA or an alternative legal basis, e.g. the Social Welfare and Consolidation Act 2005.

Any data sharing, with a dependency on Section 38 DPA as a legal basis that remains in place after the commencement of Sections 6(2) and 6(3) DSGA will not be in compliance with the GDPR, Data Protection Law and may be subject to action by the Data Protection Commission and respective data subjects.

The purpose of delaying the commencement of these Sections until March 2022 is to ensure that public bodies currently relying on Section 38 DPA as a legal basis for data sharing can continue to do so pending the development and execution of Data Sharing Agreements as required by the DSGA. This Advice Note outlines how your organisation should prepare for this in advance of the March 2022 deadline.

Also note that Section 38 DPA will remain a valid legal basis for all forms of processing which fall within its scope other than data sharing between public bodies.



How should my organisation prepare?

Prepare by following a 2 step approach:

Step 1. Review all your existing data sharing arrangements or agreements and record the results.

The aim of this review is to ensure that you are aware of the legal basis for each of your organisations data sharing agreements - where you are either the data discloser or the data receiver and that all data sharing agreements are predicated on a sound legal basis. The new Data Governance Board has the authority to ask you about this information at any time.

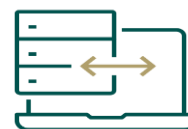
The attached template, "**Review of Data Sharing Agreements Template**" will assist in recording the outputs of your data sharing agreement(s) review. The template is designed to assist organisations understand the legal basis for any and all data sharing agreements they are party to and put in place measures to address any shortcomings.

- ✓ Your organisation should complete the "**Data Discloser**" tab where you are the disclosing party/parties to a data sharing arrangement and
- ✓ Similarly your organisation should complete the "**Data Receiver**" tab where you are the receiving party involved in a data sharing arrangement/agreement

Step 2. Complete a Mandatory Return detailing data sharing arrangements dependent on Section 38 of the DPA.

Based on the full review in Step 1, you will need to separately record the details of those data sharing agreements and arrangements that you are party to that are dependent on Section 38 DPA as the legal basis for the data sharing. You must complete the "**S38 Dependent**" tab in full for each agreement impacted.

You are required to send the results of Step 2, the Section38 Dependent worksheet, to the Data Governance Unit, datagovernance@per.gov.ie on or before 31st October 2021.

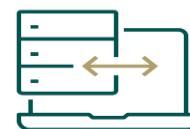


The information you provide will be used to quantify the impact of commencing Sections 6(2) and 6(3) across the Public Service. This is beneficial for two reasons:

1. This will assist you in understanding how many (if any) of your current data sharing arrangements will need to be replaced.
2. The information you provide will also assist the programme management of public consultations and reviews of new Data Sharing Agreements by the new Data Sharing and Governance Board and Data Sharing Committee.

If your organisation has no data sharing dependencies on Section 38 DPA you must still respond, with Nil.

General Advice: If a power to share personal information is not expressed in legislation, then it would be safer to assume that a Data Sharing Agreement under the Data Sharing and Governance Act 2019 will be needed for the sharing to take place.



What should my organisation do about existing data sharing arrangements that use Section 38 DPA as a legal basis to share data?

In order to remain compliant, any existing data sharing arrangements that use Section 38 DPA as their legal basis for data sharing should be replaced before Sections 6(2) and 6(3) are commenced.

There are 2 options:

For each data sharing arrangement impacted either:

1. Consider if an alternative statutory basis (other than DSGA) exists that may be more suited to the purpose of that data sharing. Follow that legislation and its defined processes to ensure that it provides the necessary legal basis.

OR

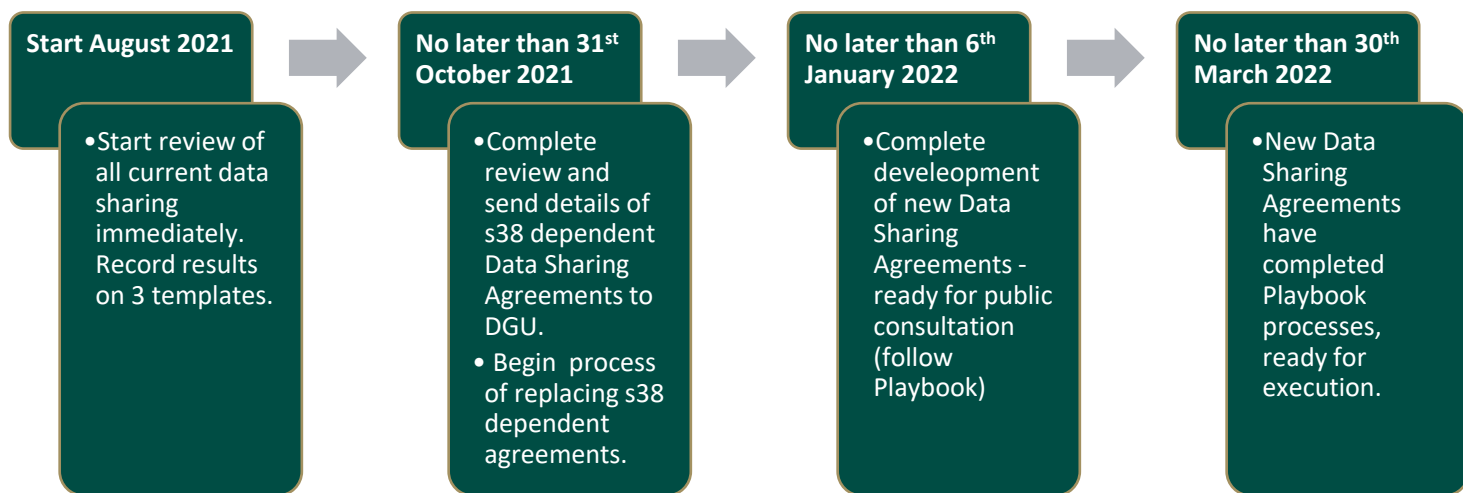
2. Follow the new processes defined in the new ²**DSGA Data Sharing Playbook** and use the ³**DRAFT DSGA Data Sharing Agreement template** as the basis on which the data will be shared.

It is important to note that there will be a lead time before any new Data Sharing Agreement can be executed, this is detailed in the ⁴**Playbook**. We would advise you to have your documentation (Data Sharing Agreement, DPO Statement and DPIA summary) ready for public consultation approximately 10 weeks or sooner in advance of final commencement - no later than 6th January 2022).

^{2,3,4} Note: Data Sharing Publications will be available on the OGCI website in the last week of August 2021.



Key Dates and Timeline



If you have any questions please direct them to the Data Governance Unit, data.governance@per.gov.ie

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