# Legislation Outlook

August 2022

This monthly legislation briefing is a **supplement** to our BAB Activ Comply service to help you to **plan ahead** for maintenance of your ISO 14001, ISO 45001, ISO 50001, ISO 22301 and ISO 27001 systems. In addition to giving you advance warning about important legislation that will affect your compliance with the standards, we'll provide news, newly published guidance, and government consultations that you might find useful, as well as any other significant legislation beyond the scope of the standards listed that will potentially impact your organisation. Unlike other services, we only report items of value: we don't waste your time on items such as an increase in administrative fees or changes that only affect enforcement agencies.

When legislative changes are announced with short notice (<1 month) they are not reported here. All changes are automatically delivered direct into the **BAB Activ Comply** system as they come into effect so you can be confident that you are always 100% up to date.

As Parliament enters the summer recess, we are unlikely to see much in the way of new legislation until September. However, the Government has released the much-anticipated Data Protection and Digital Information Bill; we have summarised the most important changes in our Focus section.

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## Upcoming Standard-Related Legislation

There was no relevant standard-related legislation announced in July with an effective date of August onwards.



**Remember: short notice changes to legislation are not reported in this briefing; all changes are delivered direct into your BAB Activ Comply system as they come into effect.**

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## News

**UK Publishes Hydrogen Strategy**

The Department for Business, Energy & Industrial Strategy has published a policy paper setting out the UK's approach to developing a low carbon hydrogen sector to meet a target of 10GW of low carbon hydrogen production capacity by 2030. Hydrogen can be used in a fuel cell or combusted in a boiler, turbine or engine to generate heat or electricity. It can also be stored in various ways, including at very large scales, and can be transported to different end users, in much the same way as natural gas or liquid fuels today. Hydrogen is also an essential input to a range of chemical processes and in industrial production. Low carbon hydrogen, alongside clean electricity, will be essential for decarbonising the UK by 2050.



## Consultations

**Carbon Fuels Recycling**

The Department for Transport have launched a consultation seeking views on ways to support the production and use of recycled carbon fuels (RCFs) in transport by adopting:

- a flexible approach to determining feedstock eligibility, setting out a principles-based framework for assessing the eligibility of new RCF feedstocks;
- a reward rate that provides substantial support to the industry while managing risk and maximising value for money;
- a tailored greenhouse gas emissions methodology that follows a counterfactual approach, comparing the greenhouse gas emissions from RCF production to the most likely alternative option;
- a GHG emission savings threshold that remains stringent as the electricity grid decarbonises and ensures that RCFs make substantial greenhouse gas reductions; and
- reporting and verification requirements, including additional sustainability criteria, to give confidence that RCFs are supplied sustainably.

The consultation closes on 19 September 2022.

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## Focus: Data Protection and Digital Information Bill

The Government introduced the Data Protection and Digital Information Bill on 18 July 2022. The Bill was previously referred to as the Data Reform Bill in the Government's 2021 consultation Data: A New Direction, which proposed radical changes to the current data protection regime in order to promote data-driven innovation and reduce burdens on organisations. However, the changes in the Bill are considerably toned down compared to the original proposals. The Bill retains the UK GDPR and the Privacy and Electronic Communications (EC Directive) Regulations 2003, but with various amendments. The following changes will be of the most interest to our clients:

**Definition of Personal Data** - The Bill retains the same basic definition of personal data but clarifies whether data is related to an 'identifiable' individual. An individual will only be considered 'identifiable' if the controller or processor either:

- can identify the individual from the information by reasonable means at the time of processing; or
- ought to know that another person will likely obtain the information as a result of the processing and the individual will likely be identifiable by that person by reasonable means at the time of the processing.

This change should limit the assessment of identifiability in practice and make it easier for organisations to achieve anonymisation of data.

**Legitimate Interest** – Currently, the UK GDPR requires an organisation to assess whether processing for legitimate interests is overridden by the interests or rights of the data subject. The Bill removes the need to carry out an assessment for certain 'recognised' legitimate interests such as national security, public security, defence, emergencies, preventing crime, safeguarding and democratic engagement. Further 'recognised' legitimate interests may be added to the list in future.

**Purpose Limitation** - The UK GDPR prohibits further processing of data where that further processing is incompatible with the original purpose of the processing. The Bill introduces a list of additional scenarios where processing for a new purpose will be considered as compatible, such as public security, emergencies, preventing crime, protection of vital interests, safeguarding tax collection and compliance with a legal obligation.

**Subject Access Requests** - The Bill lowers the current 'manifestly unfounded or excessive' threshold for refusing to undertake subject access requests to a new 'vexatious or excessive' threshold and sets out several factors to be considered when determining whether requests meet this threshold. Examples of such requests are provided in the Bill, such as those intended to cause distress, not made in good faith, or which are an abuse of process. The Bill also clarifies that the time period for responding to a request does not run whilst waiting for a response to a request to confirm the identity of the sender, provide any reasonably necessary clarifications requested by the controller, or to pay any fees due.

**Automated Decision Making** - The UK GDPR currently provides data subjects with the right, subject to certain exemptions, not to be subject to decisions based solely on automated decision-making, including profiling, which have legal or similarly significant effects. The Bill removes this prohibition for non-special category personal data, which will significantly reduce the need for human oversight of decisions that affect individuals based on the processing of their personal data. To counter this somewhat, safeguards for individuals on automated processing have been expanded to ensure that controllers provide the data subject with information about the decisions, and data subjects will still be allowed to contest 'significant' decisions.

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**Record Keeping** – Currently the exemptions on keeping records are so narrow that pretty much every organisation is required to keep records of their processing activities. The Bill expands those exemptions and removes the obligation from organisations with less than 250 employees which do not conduct high-risk processing. This should considerably reduce the regulatory burden on smaller companies.

**Assessment of High-Risk Processing** - The Bill retains the need to carry out an assessment of any high-risk processing undertaken but has changed the name of such an assessment from 'data protection impact assessment' (DPIA) to 'assessment of high-risk processing'. The contents of the assessment remain the same, but there is a list of specific circumstances in which an assessment is no longer needed, such as in relation to the processing of large-scale special category data.

**Data Protection Officer** – The Bill removes the requirement for certain organisations to appoint a Data Protection Officer. However, organisations that are public bodies or carry out high-risk processing will need to appoint a 'senior responsible individual' (SRI). For controllers, the functions of the DPO and SRI remain nearly identical in practice, but SRIs for processors are only required to monitor compliance and act as a point of contact with the ICO. It is worth noting that there will no longer be a requirement to appoint an SRI for organisations that would previously have had to appoint a DPO because they processed personal data on a large scale or processed large amounts of special category data.

**Cookies** - The Bill introduces an expanded range of exemptions to the consent requirement for cookies and other tracking technologies, including:

- for the purpose of collecting statistical information about an information society service in order to improve that service;
- for enabling the way in which a website appears or functions in order to adapt to the preferences of the user.
- for the installation of necessary security updates to software on a device; and
- to identify the geolocation of an individual in an emergency.

These exemptions (other than for emergency geolocation) still require that the user is provided with clear and comprehensive information and a simple means of objecting.

**Direct Marketing Opt-Out Exemption** – Currently, prior consent is not required for electronic direct marketing to individuals where their contact details were obtained in the context of a previous sale, subject to providing them with the right to opt-out (known as 'the opt-out exemption'). The opt-out exemption is expanded by the Bill to allow non-commercial organisations to send electronic marketing communications without consent for the purposes of furthering charitable, political, or other non-commercial objectives, if they obtained the contact details in the course of the individual expressing interest or offering support to the objective.

**What Happens Next? -** The Bill will now progress through Parliament after the summer recess and is likely to be enacted in September without significant changes to the text. As yet, no commencement date has been set. We will keep you informed of the progress of the Bill and any changes that occur.

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