DATA PROTECTION IMPACT ASSESSMENT FRAMEWORK

GUIDANCE FOR THE COMPLETION OF A DATA PROTECTION IMPACT ASSESSMENT

For more information on the status of this guidance and template, please contact:	
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Audience	All NHS South, Central and West CSU officers and staff (which includes temporary staff, contractors and seconded staff) and NHS South, Central and West CSU members in their capacity as commissioners. CCG customers are permitted to use both the template and guidance but it is recommended that approval is sought for this from the organisations appropriate committee before adopting. Other customers of NHS South, Central and West CSU are permitted to use both the template and guidance but it is recommended that approval is sought for this from the organisations appropriate committee before adopting

Version	Date Issued	Details	Brief Summary of Change	Author
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1.2	11.05.2016	Final	Screening questions added as Appendix 1 and referred to in the document	NHS South, Central and West CSU Information Governance Team
1.3	04.07.2016	Final	Updated PIA template added	NHS South, Central and West CSU Information Governance Team
1.3	29.11.16	Final	CSU generic inbox updated	NHS South, Central and West CSU Information Governance Team
2.0	27.03.17	Final	Complete review of PIA template and guidance	NHS South, Central and West CSU Information Governance Team
3.0	23.05.18	Final	Complete review of DPIA templates and guidance	NHS South, Central and West CSU Information Governance Team

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1. INTRODUCTION

The GDPR introduces a new obligation to complete a DPIA before carrying out types of processing likely to result in high risk to individuals' interests. This is a key element of the new focus on accountability and data protection by design. DPIAs are now mandatory in some cases, and there are specific legal requirements for content and process.

2. SCOPE

This guidance and associated templates is provided for customers of SCW CSU including Clinical Commissioning Groups.

3. ROLES AND RESPONSIBILITIES

3.1 Senior Information Risk Owner (SIRO)

The SIRO has ownership of the organisation's information risks and provides assurances to the Organisations Management Team. They are responsible for assessing the risks associated with changes to existing systems or the development of new information systems and for providing a final approval to such activities.

3.2 Caldicott Guardian

The Caldicott Guardian can provide advice and guidance where the proposed activity involves the collecting, processing, storage and sharing of Patient or other Personal confidential Data. They should be consulted as part of the DPIA process where necessary and can also provide final approval to proposed activities.

3.3 Data Protection Officer

The Data Protection Officer should be consulted as part of the DPIA process in order to provide specialist advice and guidance relating to the activity and the organisational objectives of its progress. They should also be consulted should any review of a completed DPIA indicate outstanding or unmitigated risks or recommendations that require consideration prior to their acceptance or rejection.

3.4 NHS South, Central and West CSU Information Governance Team

SCW CSU IG Team can provide a valuable source of advice and guidance throughout the design phase of any new service, process or information asset. The SCW CSU IG team will review any DPIA's in a regular panel chaired by a senior member of the IG team. Feedback and recommendations will be provided to you by the SCW IG Manager presenting your DPIA (where you use this process).

3.5 Information Asset Owners (IAOs)

Information Asset Owners (IAOs) are accountable for the information systems under their control and are responsible for managing any risks associated with data flows into and out of those systems and for the quality, security and confidentiality of any data held in them.

3.6 Information Asset Administrators

Information Asset Administrators will:

- ensure that guidance in this document is followed,
- recognise actual or potential risks when new processes are being introduced in their directorate/department,
- consult with their IAOs and where necessary the SCW CSU IG Manager to take steps to understand how to mitigate risks,
- encourage project/programme leads complete the DPIA template at the initiation stage of a project/process

Managing information risk effectively requires a structured approach involving work areas where accountability sits with senior managers, rather than specialist staff. All staff need to work together to help identify and mitigate information risk.

4. KEY PRINCIPLES

4.1 What is a DPIA

A DPIA is a way to systematically and comprehensively analyse processing activities and help identify and minimise data protection risks. DPIAs should consider compliance risks, but also broader risks to the rights and freedoms of individuals, including the potential for any significant social or economic disadvantage. The focus is on the potential for harm - to individuals or to society at large, whether it is physical, material or non-material.

To assess the level of risk, a DPIA must consider both the likelihood and the severity of any impact on individuals. A DPIA does not have to eradicate the risks altogether, but should help to minimise risks and assess whether or not remaining risks are justified.

DPIAs are a legal requirement for processing that is likely to be high risk. But an effective DPIA can also bring broader compliance, financial and reputational benefits, helping demonstrate accountability and building trust and engagement with individuals.

A DPIA may cover a single processing operation or a group of similar processing operations. A group of controllers can do a joint DPIA.

It's important to embed DPIAs into organisational processes and ensure the outcome can influence plans. A DPIA is not a one-off exercise and should be seen as an ongoing process, and regularly review it.

4.2 Do we need a DPIA?

A DPIA should be done before any type of processing which is "likely to result in a high risk". This means that although the actual level of risk has not been assessed, a DPIA screens for factors that point to the potential for a widespread or serious impact on individuals.

In particular, the GDPR says a DPIA must be done where there are plans to:

- use systematic and extensive profiling with significant effects;
- process special category or criminal offence data on a large scale; or
- systematically monitor publicly accessible places on a large scale

The ICO also requires a DPIA if there are plans to:

- use new technologies;
- use profiling or special category data to decide on access to services;
- profile individuals on a large scale;
- process biometric data;
- process genetic data;
- match data or combine datasets from different sources;
- collect personal data from a source other than the individual without providing them with a privacy notice ('invisible processing');
- track individuals' location or behaviour;
- profile children or target marketing or online services at them; or
- process data that might endanger the individual's physical health or safety in the event of a security breach

A DPIA should be considered for any other processing that is large scale, involves profiling or monitoring, decides on access to services or opportunities, or involves sensitive data or vulnerable individuals. For example, the NHS considers the following as specific situations worthy of a DPIA:

- the requirement for a change of the legal basis for processing data
- replacement of an existing personal data system by new software
- design and development of a system where the data held is on a consent basis
- changes to an existing system where additional personal data will be collected
- a proposal to collect personal data from a new source
- creation or redesign of web-forms for collecting personal data
- plans to outsource business processes involving storing and processing personal data
- intended reuse of information which was originally collected for a limited purpose in a new and unexpected way
- relocation of staff or equipment
- stakeholder Engagement e.g. surveys

Even if there is no specific indication of likely high risk, it is good practice to do a DPIA for any major new project involving the use of personal data. It is important to note that the individuals referred to are patient/service users and staff.

4.3 Who should carry out a Data Protection Impact Assessment?

DPIAs should be completed by key project personnel - this could be the project lead, manager, or any other key project team member. It is likely that multiple staff from the project will need to be involved with carrying out the DPIA.

It is essential that the person(s) undertaking the DPIA has clear knowledge of the project, the systems involved and the level of information required, therefore this document is for use by anyone who proposes or develops new systems/upgrades existing systems within the organisation.

4.4 When Should a DPIA Be Completed?

A DPIA can help evidence that data protection by design has been considered by assessing data protection and privacy issues upfront in every activity. It can help ensure compliance with the GDPR's fundamental principles and requirements, and forms part of the focus on accountability.

The GDPR states that data protection by design should happen:

- ✓ 'at the time of the determination of the means of the processing' – in other words, when you are at the design phase of any processing activity; and
- ✓ 'at the time of the processing itself' – i.e. during the lifecycle of your processing activity

It should begin at the initial phase of any system, service, product, or process. It should start by considering the intended processing activities, the risks that these may pose to individuals, and the possible measures available to ensure compliance with the data protection principles and protect individual rights. These considerations must cover:

- ✓ the state of the art and costs of implementation of any measures;
- ✓ the nature, scope, context and purposes of your processing; and
- ✓ the risks that your processing poses to the rights and freedoms of individuals

These considerations lead into the second step, where actual technical and organisational measures are put in place to implement the data protection principles and integrate safeguards into the processing.

4.5 What are the underlying concepts of data protection by design and by default?

- ➢ a proactive approach to data protection and anticipate privacy issues and risks before they happen, instead of waiting until after the fact
- ➢ privacy as the default setting - design any system, service, product, and/or business practice to protect personal data automatically, with privacy built into the system, the individual does not have to take any steps to protect their data – their privacy remains intact without them having to do anything
- ➢ privacy embedded into design - embed data protection into the design of any systems, services, products and business practices, ensure data protection forms part of the core functions of any system or service – essentially, it becomes integral to these systems and services
- ➢ avoid trade-offs and insist on privacy and security
- ➢ put in place strong security measures from the beginning, and extend this security throughout the 'data lifecycle' – process the data securely and then destroy it securely

- ensuring visibility and transparency to individuals, such as making sure they know what data is processed and for what purpose(s)
- Respect for user privacy – by offering strong privacy defaults, providing individuals with controls, and ensuring appropriate notice is given

4.6 The objective of the DPIA is to avoid the following risks

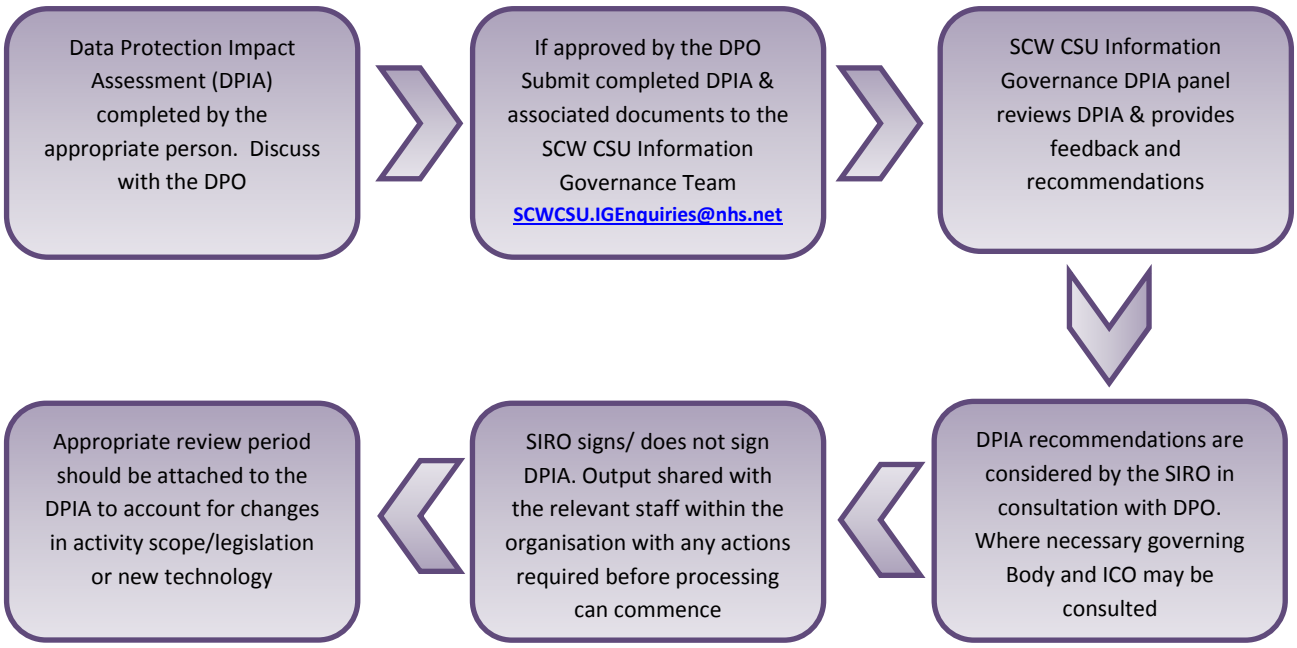
- **Loss of public credibility** as a result of perceived harm to privacy or a failure to meet expectations with regard to the protection of personal information;
- **Imposition of regulatory conditions** as a response to public concerns, with the inevitable cost that entails;
- **The need for system re-design** late in the development stage, and at considerable expense;
- **Collapse of the project, or even of the completed system,** as a result of adverse publicity and/or withdrawal of support by the organisation or one or more key participating organisations;
- **Compliance failure,** through breach of the requirements of the Data Protection Legislation and particularly the GDPR

4.7 Outcomes of an Effective DPIA

An effective DPIA will:

- identify the project's privacy impacts
- consider those impacts from the perspectives of all stakeholders
- provide an understanding of the acceptability of the project and its features by the organisations and people that will be affected by it
- identify and assess less privacy-invasive alternatives
- identify ways in which negative impacts on privacy can be avoided
- identify ways to lessen negative impacts on privacy
- clarify the business need that justifies where negative impacts on privacy are unavoidable,
- document the outcome

5 DATA PROTECTION IMPACT ASSESSMENT REVIEW PROCESS



6 COMPLETING THE PRIVACY IMPACT ASSEMENT TEMPLATE

Once the preparation has been completed and the information collated the DPIA template included as Appendix 1 should be completed. Detailed Guidance is included as Appendix 2 and supporting documents at Appendix 3.

7 REVIEW

This guidance will be reviewed annually or when changes in legislation or national policy dictate.

Appendix 1: How to complete the Template

To follow

Appendix 2: Template

CWS CCG DPIA Template.doc

Appendix 3: Other associated documents to support the template


Processor Checklist May 2018.docx


Checklist for IT security May 2018.dc