

**REMARKS BY BILLY HAWKES, DATA PROTECTION COMMISSIONER,  
AT THE LAUNCH OF THE CHILDRENS RIGHTS ALLIANCE  
PUBLICATION *CHILDREN AND EU LAW***

**Europe House, Dublin, 13 December 2013**

I very much welcome the publication of the Children's Rights Alliance booklet on *Children and EU Law*.

The publication reminds us of the importance of EU law in all aspects of our lives, especially as it impacts on the rights of individuals. It rightly highlights the importance of the European Union's Charter of Fundamental Rights and the specific provision in Article 24 on the rights of children. We are increasingly seeing the impact of the Charter in legislative proposals being put forward by the Commission.

The booklet makes the key aspects of EU law applying to children available in an easily accessible manner and in simple language. It is remarkable how EU law has influenced so many aspects of the rights of children, varying from the right to education to the rights of asylum-seeking children.

European law is also a key foundation of our data protection law. Our original Data Protection Act of 1988 was based on the Council of Europe's Convention 108 which is annexed to the Act. The 2003 Amendment Act gave effect to the more demanding requirements of the EU's 1995 Data Protection Directive.

The Directive provides a comprehensive system of protection of the right to control the use of our personal data. The Lisbon Treaty further enhanced the status of the right to data protection by making it a Treaty obligation. The Treaty also gave enhanced status to the EU's Charter of Fundamental Rights which is rightly identified in the booklet as a key measure advancing the rights of EU residents across many areas – not only the specific recognition of the rights of children in Article 24. Article 8 is of key significance for the protection of data protection rights as it identifies data protection as a right separate to the general right to privacy contained in Article 7. I think it is worth quoting Article 8 as it provides a good summary of what data protection entails:

- 1. Everyone has the right to the protection of personal data concerning him or her.*
- 2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.*
- 3. Compliance with these rules shall be subject to control by an independent authority.*

And these basic provisions and rights are expressed clearly and simply in the Children Rights Alliance booklet.

The enhanced status granted to data protection in the Lisbon Treaty has inspired the EU Commission to propose a strengthening of EU law on data protection. A key change from the present is that the proposed law would take the form of a directly-applicable Regulation applying uniformly across the EU. This would ensure that European residents would have rights to control the collection and use of their personal data wherever they are and whoever has collected their personal data. It also provides that these European protections would apply to any organisation providing services to EU residents irrespective of whether they are based in the EU or not. This is particularly important in the Internet age when a service can be provided from any part of the globe. Any many services used by children are of this nature.

What is particularly significant in the proposed new law is the explicit recognition of the need to give special attention to the data protection rights of children. So we see a separate article – Article 8 – dealing specifically with the protection of the personal data of children. This provides that the personal data of a child under 13 years cannot be processed without the consent of a parent or guardian. It also provides that companies must take reasonable steps to verify such consent - easier said than done in view of the reports of the number of under-13s that are operating on social networks. The Regulation also provides that, where services are targeted at children, there is a particular obligation to convey information in a way that is intelligible to the child. It imposes an obligation on companies to carry out a privacy impact assessment when a proposed service involves large-scale processing of the personal data of children. The so-called “right to be forgotten” is given particular emphasis in relation to personal data made available when a person was a child. Finally data protection authorities are required to give specific attention to children when discharging their duty to promote awareness of data protection and the risks to it.

So we can see the increasing importance that EU law is having on the data protection rights of children.

As a national data protection authority, we have been doing our best to get across the data protection message to young people. In particular, we developed and distributed to all schools in the country a guide to data protection when using electronic media. It is particularly targeted at teachers delivering the CSPE syllabus but is also relevant to other subject-areas. We have been happy to see exam questions dealing with data protection in the Leaving Cert business paper – indeed when I was first appointed data protection commissioner, the only person in my family who knew what was involved was my niece who was doing business studies for the Leaving!

We have also addressed the data protection rights of children in our guidance notes dealing with the issues of CCTV and biometric attendance systems in schools and on the Age of Consent. As the Alliance’s booklet points out, our data protection law does not set a minimum age for exercising the rights that it grants to each individual. Under our law, a person under 18 is entitled to assert their data protection rights, including the right to demand a copy of information held about them by organisations that they deal with.

But the challenge in trying to ensure that children know how to protect themselves and their data – especially when on-line – is quite significant. Sharing often very personal information on social networks is now the norm among children – often of a

very young age – as a seamless extension to their real-life interactions with their friends. Educating children on how to protect themselves on-line must now be seen as no less important than other forms of protection. And especially getting across the message that, once personal data is “out there” on the Internet it is very difficult – in practice, often impossible – to delete it. And that there is a huge difference between having a face-to-face conversation between friends, leaving no trace, and the permanent record of an equivalent conversation on-line.

We must also recognise that data protection must sometimes be reconciled with the need to respect the best interests of the child. So, for example, the law permits sharing of personal data where this is necessary for child protection purposes. Balance and proportionality are the key issues in this area.

This booklet is only a small part of what the Children’s Rights Alliance and its constituent organisations do to advance the interests of children in our society. By giving practical advice on how EU law can be used in many areas to defend the rights of children the Alliance has made a further valuable contribution towards providing the tools to make Ireland a good place to be a child.

Thank you