



British Academy and ESRC press for shields for Humanities and Social Science Scholarship as UK Implements the new EU General Data Protection Regulation (GDPR)

The British Academy and the ESRC have submitted jointly to the [UK Government's Call for Views](#) on the implementation of the [EU General Data Protection Regulation 2016/679](#) (the GDPR) in the UK. This submission, which was developed with support from [Dr David Erdos](#) of the University of Cambridge's Law Faculty, has sought to ensure that valuable work in the humanities and social sciences is appropriately recognised when the new framework comes into force in May of next year. In this context, it is important to note that although the GDPR is generally significantly more prescriptive than the existing data protection framework, it also includes a number of both innovative and traditional provisions which aim to ensure that research in neither humanities nor the social sciences is subject to undue restriction.

The most novel and important change made by the GDPR here concerns its requirement on Member States to set out derogations from any part of the Regulation "*as necessary to reconcile the right to protection of personal data with the freedom of expression and information*" not just as regards "*journalistic purposes*" (together with literary and artistic expression) but also for the purpose of "*academic ... expression*" (Article 85 (2)). Following sustained advocacy not only by the [ESRC](#) but also by the [Wellcome Trust](#), the reference to academic expression is principally designed ensure that humanities and social science scholarship is shielded within this special expression clause on an equal basis to that of journalism. This reflects the similarly publicly-focused nature of these expressive activities, their critical social value and similar difficulties which may be faced with complying the GDPR's default provisions. It is therefore critical that this clause is fully executed in the UK.

Whilst the special expression clause should play a central role going forward, some work in social sciences rests on a special safeguarding of personal data (e.g. that received from data subjects who are in a fiduciary relationship with the researcher). These activities will in the first place be regulated through the research clause set out in Article 89 of the GDPR. In recognition of research's essential role in knowledge production of all kinds, this clause sets out a relatively small number of potential derogations. These should be fully utilised by the UK. As envisaged in Article 9 (2) (j) of the GDPR, a *vires* should also be provided for the processing of special personal data and this should also be extended to the cognate area of criminal data as set out in Article 10. Knowledge production in academic social science furthers "*important objectives of general public interest*", as well as constituting the exercise of a human right (namely, freedom of sciences as protected in the [EU Charter](#)). Such work should therefore benefit from further shielding as envisaged in Article 23 of the GDPR. In this regard, it is particularly important that the transparency provisions are clarified so as to ensure that organisations are not impeded from providing social scientists with access to critically important records, subject to appropriate safeguards for the data subject.

Ultimately, the future health and vitality of the humanities and social sciences in Britain depends on the implementation of clear and robust shielding for these activities during the GDPR's implementation. Research and higher education institutions should also take this as an opportunity to revisit their internal data protection regulations to ensure that they are appropriately balanced in this area.

A link to the British Academy and ESRC's full submission to the consultation is available [here](#).