

Available next steps (in early July 2021) for implementing the despatch box commitment to strengthening the opt-out process

Beyond the (process) review announced by Lord Bethell,¹ it was announced in the Commons that the opt-out system was being strengthened.²

Absent details on what this might mean, and before the forthcoming NHS legislation makes anything more confusing, we offer a process that would resolve a number of key questions and concerns around GDPR:

1. Use the new NHS/HSC legislation to put the National Data Opt-out **onto a statutory footing** – with full details to be confirmed in secondary legislation, based on practical implementation.
 - a. This commitment can be made unilaterally by DHSC / NHSX – and can demonstrate a desire to **build confidence**.
 - b. If NHSX wishes to abolish the Type 1 GP data opt-outs, it must do so in primary legislation; this will have to be announced.
2. As the rollout of the National Data Opt-out reaches General Practice, it should be defined and implemented **at GP practice level** to (also) cover data **leaving GP practice systems** – irrespective of where it goes, unless patients have given their specific informed consent.
 - a. This means the National Data Opt-out will cover GP data in ways that matter for both GPs and patients and their families (currently there is no digital opt out for families).
 - b. The range of *other* data covered by the National Data Opt-out will also be examined (and will have to be resolved) in the next few weeks.
 - c. Type 1 opt-outs may still be made, but there will be no reason for them to be.
3. Once (1) and (2) are **both** in place, the existing Type 1 GP data opt-out will have been – and, as importantly, will be **seen** to have been – largely superseded by the National Data Opt-out. This will make future GDPR questions and processes far easier to resolve.
 - a. GDPR communications to the profession and to patients can then roll forward, **in full confidence** that the opt-out for ‘planning and research’, i.e. purposes beyond direct care, **does what is written in statute**.
 - b. Patients should be able to see how data about them has been used, and how it would have been used differently if different choices were made.

The publication of how many hundreds of thousands of people opted out in June will provide useful cover for the long pause to be announced, mirroring the amount of time needed to satisfy the Secretary of State’s announcement that the GDPR programme will be TRE-only.

medConfidential, July 2021

¹ <https://medconfidential.org/wp-content/uploads/2021/06/initial-note-to-Opt-outs-Review.pdf>

² “This important programme will have an opt-out system. We are strengthening the opt-out system already...”
<https://hansard.parliament.uk/Commons/2021-06-24/debates/2FA13B90-5377-4E73-A941-80F6A536B560/UseOfPatientData#1120>