House of Commons

Thursday 15 March 2018

PUBLIC BILL COMMITTEE PROCEEDINGS

DATA PROTECTION BILL [*LORDS*]

[THIRD AND FOURTH SITTINGS]

GLOSSARY

This document shows the fate of each clause, schedule, amendment and new clause.

The following terms are used:

Agreed to: agreed without a vote.

Agreed to on division: agreed following a vote.

Negatived: rejected without a vote.

Negatived on division: rejected following a vote.

Not called: debated in a group of amendments, but not put to a decision.

Not moved: not debated or put to a decision.

Question proposed: debate underway but not concluded.

Withdrawn after debate: moved and debated but then withdrawn, so not put to a decision.

Not selected: not chosen for debate by the Chair.

Darren Jones

Negatived on division **152**

Schedule **6**, page **179**, line **17**, leave out paragraph 2 (as inserted by paragraph 49) and insert—

"2   The Commissioner must, in carrying out the Commissioner's functions under this Regulation, incorporate with any modifications which he or she considers necessary in any guidance or code of practice which the Commissioner issues, decisions, advice, guidelines, recommendations and best practices issued by the European Data Protection Board established under Article 68 of the GDPR.

2A   The Commissioner must, in carrying out the Commissioner's functions under this Regulation, have regard to any implementing acts adopted by the Commission under Article 67 of the GDPR (exchange of information)."

Margot James

Agreed to   **115**

Schedule   **6**,   page   **180**,   line   **2**,   leave out sub-paragraph (b) and insert—

        "(b)   in paragraph 2, for "Member States" substitute "The Secretary of State";

        (c)   after that paragraph insert—

           "3   The power under paragraph 2 may only be exercised by making regulations under section (*Duty to review provision for representation of data subjects*) of the 2018 Act."

Schedule, as amended, agreed to.

Clauses 23 and 24 agreed to.

Margot James

Agreed to   **17**

Clause   **25**,   page   **15**,   line   **40**,   leave out "individual" and insert "data subject"

Clause, as amended, agreed to.

Clause 26 agreed to.

Liam Byrne
Louise Haigh
Chris Elmore
Darren Jones

Negatived on division   **161**

Clause   **27**,   page   **17**,   line   **2**,   leave out subsection (1) and insert—

        "A Minister of the Crown must apply to a Judicial Commissioner for a certificate, if exemptions are sought from specified provisions in relation to any personal data for the purpose of safeguarding national security."

Liam Byrne
Louise Haigh
Chris Elmore
Darren Jones
Brendan O'Hara
Stuart C. McDonald

Not called   **162**

Clause   **27**,   page   **17**,   line   **5**,   at end insert—

    "(1A)   The decision to issue the certificate must be—

        (a)   approved by a Judicial Commissioner,

        (b)   laid before Parliament,

        (c)   published and publicly accessible on the Information Commissioner's Office website.

    (1B)   In deciding whether to approve an application under subsection (1), a Judicial Commissioner must review the Minister's conclusions as to the following matters—

Data Protection Bill [*Lords*], *continued*

(a)   whether the certificate is necessary on relevant grounds,

(b)   whether the conduct that would be authorised by the certificate is proportionate to what it sought to be achieved by that conduct, and

(c)   whether it is necessary and proportionate to exempt all provisions specified in the certificate.”

Liam Byrne
Louise Haigh
Chris Elmore
Darren Jones
Brendan O'Hara
Stuart C. McDonald

Not called   **163**

Clause   **27**,   page   **17**,   leave out lines 6 to 8 and insert—

“(2)   An application for a certificate under subsection (1)—

(a)   must identify the personal data to which it applies by means of a detailed description, and”

Liam Byrne
Louise Haigh
Chris Elmore
Darren Jones
Brendan O'Hara
Stuart C. McDonald

Not called   **164**

Clause   **27**,   page   **17**,   line   **9**,   leave out subsection (2)(b)

Liam Byrne
Louise Haigh
Chris Elmore
Darren Jones
Brendan O'Hara
Stuart C. McDonald

Not called   **165**

Clause   **27**,   page   **17**,   line   **9**,   at end insert—

“(c)   must specify each provision of this Act which it seeks to exempt, and

(d)   must provide a justification for both (a) and (b).”

Liam Byrne
Louise Haigh
Chris Elmore
Darren Jones
Brendan O'Hara
Stuart C. McDonald

Not called   **166**

Clause   **27**,   page   **17**,   line   **10**,   leave out “directly” and insert “who believes they are directly or indirectly”

Liam Byrne
Louise Haigh
Chris Elmore
Darren Jones
Brendan O'Hara
Stuart C. McDonald

Not called   **167**

Clause **27**, page **17**, line **12**, leave out ", applying the principles applied by a court on an application for judicial review,"

Liam Byrne
Louise Haigh
Chris Elmore
Darren Jones
Brendan O'Hara
Stuart C. McDonald

Not called   **168**

Clause **27**, page **17**, line **13**, leave out "the Minister did not have reasonable grounds for issuing" and insert "it was not necessary or proportionate to issue"

Liam Byrne
Louise Haigh
Chris Elmore
Darren Jones
Brendan O'Hara
Stuart C. McDonald

Not called   **169**

Clause **27**, page **17**, line **16**, at end insert—

"(4A)   Where a Judicial Commissioner refuses to approve a Minister's application for a certificate under this Chapter, the Judicial Commissioner must give the Minister of the Crown reasons in writing for the refusal.

(4B)   Where a Judicial Commissioner refuses to approve a Minister's application for a certificate under this Chapter, the Minister may apply to the Information Commissioner for a review of the decision.

(4C)   It is not permissible for exemptions to be specified in relation to—

    (a)   Chapter II of the applied GDPR (principles)—

        (i)   Article 5 (lawful, fair and transparent processing),

        (ii)   Article 6 (lawfulness of processing),

        (iii)   Article 9 (processing of special categories of personal data),

    (b)   Chapter IV of the applied GDPR—

        (i)   GDPR Articles 24 – 32 inclusive,

        (ii)   GDPR Articles 35 – 43 inclusive,

    (c)   Chapter VIII of the applied GDPR (remedies, liabilities and penalties)—

        (i)   GDPR Article 83 (general conditions for imposing administrative fines),

        (ii)   GDPR Article 84 (penalties),

    (d)   Part 5 of this Act, or

    (e)   Part 7 of this Act."

Clause agreed to.

Data Protection Bill [*Lords*], *continued*

Clauses 28 and 29 agreed to.

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Margot James

Agreed to **18**

Clause **30**, page **19**, line **4**, after "specified" insert "or described"

Margot James

Agreed to **19**

Clause **30**, page **19**, line **10**, leave out from "add" to end of line and insert "or remove a person or description of person"

Clause, as amended, agreed to.

Schedule 7 agreed to.

Clauses 31 to 34 agreed to.

▬▬▬▬▬▬

Brendan O'Hara
Stuart C. McDonald
Liam Byrne
Louise Haigh
Chris Elmore
Darren Jones

Not called **132**

Clause **35**, page **21**, line **29**, leave out subsections (6) and (7).

Clause agreed to.

▬▬▬▬▬▬

Margot James

Agreed to **116**

Schedule **8**, page **184**, line **32**, at end insert—

"Safeguarding of children and of individuals at risk

3A   (1) This condition is met if—
    (a) the processing is necessary for the purposes of—
        (i) protecting an individual from neglect or physical, mental or emotional harm, or
        (ii) protecting the physical, mental or emotional well-being of an individual,
    (b) the individual is—
        (i) aged under 18, or
        (ii) aged 18 or over and at risk,

    (c)   the processing is carried out without the consent of the data subject for one of the reasons listed in sub-paragraph (2), and

    (d)   the processing is necessary for reasons of substantial public interest.

  (2) The reasons mentioned in sub-paragraph (1)(c) are—

    (a)   in the circumstances, consent to the processing cannot be given by the data subject;

    (b)   in the circumstances, the controller cannot reasonably be expected to obtain the consent of the data subject to the processing;

    (c)   the processing must be carried out without the consent of the data subject because obtaining the consent of the data subject would prejudice the provision of the protection mentioned in sub-paragraph (1)(a).

  (3) For the purposes of this paragraph, an individual aged 18 or over is "at risk" if the controller has reasonable cause to suspect that the individual—

    (a)   has needs for care and support,

    (b)   is experiencing, or at risk of, neglect or physical, mental or emotional harm, and

    (c)   as a result of those needs is unable to protect himself or herself against the neglect or harm or the risk of it.

  (4) In sub-paragraph (1)(a), the reference to the protection of an individual or of the well-being of an individual includes both protection relating to a particular individual and protection relating to a type of individual."

Schedule, as amended, agreed to.

Clauses 36 to 40 agreed to.

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Margot James

                                                  Agreed to   **20**

Clause **41**, page **23**, line **34**, leave out "an individual" and insert "a data subject"

Clause, as amended, agreed to.

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Margot James

                                                  Agreed to   **21**

Clause **42**, page **24**, line **29**, leave out "with the day" and insert "when"

Clause, as amended, agreed to.

Clauses 43 to 46 agreed to.

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Margot James

Agreed to **22**

Clause **47**, page **28**, line **20**, leave out second "data"

Clause, as amended, agreed to.

Clauses 48 and 49 agreed to.

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Brendan O'Hara
Stuart C. McDonald
Liam Byrne
Louise Haigh
Chris Elmore
Darren Jones

Not called **133**

Clause **50**, page **30**, line **5**, at end insert ", and
    (c) it does not engage the rights of the data subject under the Human Rights
     Act 1998."

Margot James

Agreed to **23**

Clause **50**, page **30**, line **11**, leave out "21 days" and insert "1 month"

Margot James

Agreed to **24**

Clause **50**, page **30**, line **17**, leave out "21 days" and insert "1 month"

Clause, as amended, agreed to.

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Margot James

Agreed to **25**

Clause **51**, page **31**, line **2**, leave out from first "the" to end of line 3 and insert
  "restriction imposed by the controller was lawful;"

Margot James

Agreed to **26**

Clause **51**, page **31**, line **11**, leave out from first "the" to end of line 12 and insert
  "restriction imposed by the controller was lawful;"

Clause, as amended, agreed to.

Clause 52 agreed to.

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Data Protection Bill [*Lords*], *continued*

Margot James

Agreed to   **27**

   Clause   **53**,   page   **31**,   line   **39**,   leave out "or 47" and insert ", 47 or 50"

Margot James

Agreed to   **28**

   Clause   **53**,   page   **32**,   line   **4**,   leave out "or 47" and insert ", 47 or 50"

   Clause, as amended, agreed to.

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Margot James

Agreed to   **29**

   Clause   **54**,   page   **32**,   line   **14**,   leave out "day" and insert "time"

Margot James

Agreed to   **30**

   Clause   **54**,   page   **32**,   line   **15**,   leave out "day" and insert "time"

Margot James

Agreed to   **31**

   Clause   **54**,   page   **32**,   line   **15**,   leave out "days"

Margot James

Agreed to   **32**

   Clause   **54**,   page   **32**,   line   **16**,   leave out "the day on which" and insert "when"

Margot James

Agreed to   **33**

   Clause   **54**,   page   **32**,   line   **17**,   leave out "the day on which" and insert "when"

Margot James

Agreed to   **34**

   Clause   **54**,   page   **32**,   line   **19**,   leave out "the day on which" and insert "when"

   Clause, as amended, agreed to.

   Clauses 55 to 63 agreed to.

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Louise Haigh
Liam Byrne
Chris Elmore
Darren Jones

Withdrawn after debate   **142**

   Clause   **64**,   page   **37**,   line   **2**,   leave out "is likely to" and insert "may"

Data Protection Bill [*Lords*], *continued*

Louise Haigh
Liam Byrne
Chris Elmore
Darren Jones

Not called **143**

Clause **64**, page **37**, line **2**, leave out "high"

Louise Haigh
Liam Byrne
Chris Elmore
Darren Jones

Not called **144**

Clause **64**, page **37**, line **15**, leave out "is likely to" and insert "may"

Louise Haigh
Liam Byrne
Chris Elmore
Darren Jones

Not called **145**

Clause **64**, page **37**, line **15**, leave out "high"

Clause agreed to.

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Louise Haigh
Liam Byrne
Chris Elmore
Darren Jones

Not called **146**

Clause **65**, page **37**, line **19**, leave out subsection (1) and insert—
    "(1)   This section applies where a controller intends to—
        (a)   create a filing system and process personal data forming part of it, or
        (b)   use new technical or organisational measures to acquire, store or otherwise process personal data."

Louise Haigh
Liam Byrne
Chris Elmore
Darren Jones

Not called **147**

Clause **65**, page **37**, line **23**, leave out "would" and insert "could"

Louise Haigh
Liam Byrne
Chris Elmore
Darren Jones

Not called **148**

Clause **65**, page **37**, line **23**, leave out "high"

Data Protection Bill [*Lords*], *continued*

Louise Haigh
Liam Byrne
Chris Elmore
Darren Jones

Not called   **149**

Clause **65**, page **37**, line **44**, at end insert—

“(8)   If the Commissioner is not satisfied that the controller or processor (where the
controller is using a processor) has taken sufficient steps to remedy the failing in
respect of which the Commissioner gave advice under subsection (4), the
Commissioner may exercise powers of enforcement available to the
Commissioner under Part 6 of this Act.”

Clause agreed to.

Clauses 66 to 85 agreed to.

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Brendan O’Hara
Stuart C. McDonald
Liam Byrne
Louise Haigh
Chris Elmore
Darren Jones

Not called   **134**

Clause **86**, page **50**, line **33**, leave out subsections (3) and (4).

Clause agreed to.

[Adjourned until Tuesday 20 March at 9.25am