



House of Commons

NOTICES OF AMENDMENTS

given up to and including

Friday 9 March 2018

New Amendments handed in are marked thus ★

☆ *Amendments which will comply with the required notice period at their next appearance*

PUBLIC BILL COMMITTEE

DATA PROTECTION BILL [*LORDS*]

NOTE

This document includes all amendments tabled to date and includes any withdrawn amendments at the end. The amendments have been arranged in accordance with the Order to be proposed by Margot James.

Margot James

To move, That the Bill be considered in the following order, namely, Clauses 1 to 10, Schedule 1, Clauses 11 to 15, Schedules 2 to 4, Clauses 16 and 17, Schedule 5, Clauses 18 to 22, Schedule 6, Clauses 23 to 30, Schedule 7, Clauses 31 to 35, Schedule 8, Clauses 36 to 86, Schedules 9 and 10, Clauses 87 to 112, Schedule 11, Clauses 113 and 114, Schedule 12, Clauses 115 and 116, Schedule 13, Clauses 117 and 118, Schedule 14, Clauses 119 to 153, Schedule 15, Clause 154, Schedule 16, Clauses 155 to 181, Schedule 17, Clauses 182 to 204, Schedule 18, Clauses 205 to 208, new Clauses, new Schedules, remaining proceedings on the Bill.

Margot James

That, subject to the discretion of the Chair, any written evidence received by the Committee shall be reported to the House for publication.

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

Margot James

1

Clause 3, page 2, line 25, leave out “personal data” and insert “information”

Member’s explanatory statement

This amendment and Amendment 2 enable the definition of “processing” to be used in relation to any information, not just personal data.

Margot James

2

Clause 3, page 2, line 26, leave out “personal data, or on sets of personal data” and insert “information, or on sets of information”

Member’s explanatory statement

See the explanatory statement for Amendment 1.

Margot James

3

Clause 3, page 2, line 41, after “83” insert “and see also subsection (14)(c)”

Member’s explanatory statement

This amendment is consequential on Amendment 6.

Margot James

4

Clause 3, page 3, line 27, at end insert —

“(aa) references to Chapter 2 of Part 2, or to a provision of that Chapter, include that Chapter or that provision as applied by Chapter 3 of Part 2;”

Member’s explanatory statement

This amendment makes clear that references to Chapter 2 of Part 2 in Parts 5 to 7 of the bill include that Chapter as applied by Chapter 3 of Part 2.

Margot James

5

Clause 3, page 3, line 28, leave out “processing and personal data are to processing and personal data” and insert “personal data, and the processing of personal data, are to personal data and processing”

Member’s explanatory statement

This amendment is consequential on Amendment 1.

Margot James

6

Clause 3, page 3, line 29, at end insert —

“(c) references to a controller or processor are to a controller or processor in relation to the processing of personal data to which Chapter 2 or 3 of Part 2, Part 3 or Part 4 applies.”

Member’s explanatory statement

This amendment and Amendment 3 make clear that references to controllers and processors in Parts 5 to 7 of the bill are to controllers and processors in relation to processing to which the GDPR, the applied GDPR or Part 3 or 4 of the bill applies.

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

Margot James

Clause 7, page 5, line 8, leave out “a body specified” and insert “body specified or described” 7

Member’s explanatory statement

This amendment and Amendment 8 make clear that regulations under Clause 7 may identify an authority or body by describing a type of authority or body, as well as by specifying an authority or body.

Margot James

Clause 7, page 5, line 13, after “specified” insert “or described” 8

Member’s explanatory statement

See the explanatory statement for Amendment 7.

 Daniel Zeichner

☆ Clause 8, page 5, line 23, after “includes” insert “but is not limited to,”. 140

Margot James

Clause 8, page 5, line 29, at end insert— 9

“() an activity that supports or promotes democratic engagement.”

Member’s explanatory statement

This amendment adds a reference to processing of personal data that is necessary for activities that support or promote democratic engagement to Clause 8 (lawfulness of processing: public interest etc).

Daniel Zeichner

☆ Clause 8, page 5, line 29, at end insert “or 141

(e) the exercise of research functions by public bodies.”

Member’s explanatory statement

This amendment would ensure that university researchers and public bodies with a research function are able to use the ‘task in the public interest’ lawful basis for processing personal data, where consent is not a viable lawful basis.

Data Protection Bill [Lords], continued

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

129

☆ Clause 10, page 6, line 19, leave out subsections (6) and (7).

Member's explanatory statement

This amendment would remove delegated powers that would allow the Secretary of State to vary the conditions and safeguards governing the general processing of sensitive personal data.

Margot James

76

Schedule 1, page 123, line 21, at beginning insert "Except as otherwise provided,"

Member's explanatory statement

This amendment is consequential on Amendments 79, 82 and 90.

Margot James

77

Schedule 1, page 124, line 24, leave out from "subject" to end of line 25

Member's explanatory statement

In paragraph 8 of Schedule 1, sub-paragraph (3) contains an exception from the condition in sub-paragraph (1). This amendment would remove from the exception the requirement that the processing is carried out without the data subject's consent.

Margot James

78

Schedule 1, page 124, line 36, at end insert—

"Racial and ethnic diversity at senior levels of organisations

8A (1) This condition is met if the processing—

- (a) is of personal data revealing racial or ethnic origin,
 - (b) is carried out as part of a process of identifying suitable individuals to hold senior positions in a particular organisation, a type of organisation or organisations generally,
 - (c) is necessary for the purposes of promoting or maintaining diversity in the racial and ethnic origins of individuals who hold senior positions in the organisation or organisations, and
 - (d) can reasonably be carried out without the consent of the data subject, subject to the exception in sub-paragraph (3).
- (2) For the purposes of sub-paragraph (1)(d), processing can reasonably be carried out without the consent of the data subject only where—
- (a) the controller cannot reasonably be expected to obtain the consent of the data subject, and
 - (b) the controller is not aware of the data subject withholding consent.
- (3) Processing does not meet the condition in sub-paragraph (1) if it is likely to cause substantial damage or substantial distress to an individual.

Data Protection Bill [Lords], continued

- (4) For the purposes of this paragraph, an individual holds a senior position in an organisation if the individual—
- (a) holds a position listed in sub-paragraph (5), or
 - (b) does not hold such a position but is a senior manager of the organisation.
- (5) Those positions are—
- (a) a director, secretary or other similar officer of a body corporate;
 - (b) a member of a limited liability partnership;
 - (c) a partner in a partnership within the Partnership Act 1890, a limited partnership registered under the Limited Partnerships Act 1907 or an entity of a similar character formed under the law of a country or territory outside the United Kingdom.
- (6) In this paragraph, “senior manager”, in relation to an organisation, means a person who plays a significant role in—
- (a) the making of decisions about how the whole or a substantial part of the organisation’s activities are to be managed or organised, or
 - (b) the actual managing or organising of the whole or a substantial part of those activities.
- (7) The reference in sub-paragraph (2)(b) to a data subject withholding consent does not include a data subject merely failing to respond to a request for consent.”

Member’s explanatory statement

Part 2 of Schedule 1 describes types of processing of special categories of personal data which meet the requirement in Article 9(2)(g) of the GDPR (processing necessary for reasons of substantial public interest) for a basis in UK law (see Clause 10(3)). This amendment adds to Part 2 of Schedule 1 certain processing of personal data for the purposes of promoting or maintaining diversity in the racial and ethnic origins of individuals who hold senior positions in organisations.

Margot James

79

Schedule 1, page 125, line 3, at end insert—

- “() If the processing consists of the disclosure of personal data to a competent authority, or is carried out in preparation for such disclosure, the condition in sub-paragraph (1) is met even if, when the processing is carried out, the controller does not have an appropriate policy document in place (see paragraph 5 of this Schedule).

Member’s explanatory statement

This amendment, and Amendment 80, provide that where processing falling within paragraph 9 of Part 2 of Schedule 1 (preventing or detecting unlawful acts) consists of, or is carried out in preparation for, the disclosure of personal data to a competent authority, the condition in that paragraph is met even if the controller does not have an appropriate policy document in place when the processing is carried out.

Margot James

80

Schedule 1, page 125, line 4, at end insert—

- ““competent authority” has the same meaning as in Part 3 of this Act (see section 30).”

Member’s explanatory statement

See the explanatory statement for Amendment 79.

Data Protection Bill [Lords], continued

Margot James

81

Schedule 1, page 125, line 16, at end insert—

“Regulatory requirements relating to unlawful acts and dishonesty etc

10A (1) This condition is met if—

- (a) the processing is necessary for the purposes of complying with, or assisting other persons to comply with, a regulatory requirement which involves a person taking steps to establish whether another person has—
 - (i) committed an unlawful act, or
 - (ii) been involved in dishonesty, malpractice or other seriously improper conduct,
- (b) in the circumstances, the controller cannot reasonably be expected to obtain the consent of the data subject to the processing, and
- (c) the processing is necessary for reasons of substantial public interest.

(2) In this paragraph—

“act” includes a failure to act;

“regulatory requirement” means—

- (a) a requirement imposed by legislation or by a person in exercise of a function conferred by legislation, or
- (b) a requirement forming part of generally accepted principles of good practice relating to a type of body or an activity.”

Member’s explanatory statement

Part 2 of Schedule 1 describes types of processing of special categories of personal data which meet the requirement in Article 9(2)(g) of the GDPR (processing necessary for reasons of substantial public interest) for a basis in UK law (see Clause 10(3)). This amendment adds to Part 2 of Schedule 1 certain processing of personal data for the purposes of complying with, or assisting others to comply with, a regulatory requirement.

Margot James

82

Schedule 1, page 125, line 35, at end insert—

“() The condition in sub-paragraph (1) is met even if, when the processing is carried out, the controller does not have an appropriate policy document in place (see paragraph 5 of this Schedule).”

Member’s explanatory statement

This amendment provides that the condition in paragraph 11 of Part 2 of Schedule 1 (journalism etc in connection with unlawful acts and dishonesty etc) is met even if the controller does not have an appropriate policy document in place when the processing is carried out.

Margot James

83

Schedule 1, page 126, line 22, at end insert—

“Support for individuals with a particular disability or medical condition

13A (1) This condition is met if the processing—

- (a) is carried out by a not-for-profit body which provides support to individuals with a particular disability or medical condition,
- (b) is of a type of personal data falling within sub-paragraph (2) which relates to an individual falling within sub-paragraph (3),

Data Protection Bill [Lords], continued

- (c) is necessary for the purposes of—
 - (i) raising awareness of the disability or medical condition, or
 - (ii) providing support to individuals falling within sub-paragraph (3) or enabling such individuals to provide support to each other,
 - (d) can reasonably be carried out without the consent of the data subject, and
 - (e) is necessary for reasons of substantial public interest.
- (2) The following types of personal data fall within this sub-paragraph—
- (a) personal data revealing racial or ethnic origin;
 - (b) genetic data or biometric data;
 - (c) data concerning health;
 - (d) personal data concerning an individual’s sex life or sexual orientation.
- (3) An individual falls within this sub-paragraph if the individual is or has been a member of the body mentioned in sub-paragraph (1)(a) and—
- (a) has the disability or condition mentioned there, has had that disability or condition or has a significant risk of developing that disability or condition, or
 - (b) is a relative or carer of an individual who satisfies paragraph (a) of this sub-paragraph.
- (4) For the purposes of sub-paragraph (1)(d), processing can reasonably be carried out without the consent of the data subject only where—
- (a) the controller cannot reasonably be expected to obtain the consent of the data subject, and
 - (b) the controller is not aware of the data subject withholding consent.
- (5) In this paragraph—
- “carer” means an individual who provides or intends to provide care for another individual other than—
- (a) under or by virtue of a contract, or
 - (b) as voluntary work;
- “disability” has the same meaning as in the Equality Act 2010 (see section 6 of, and Schedule 1 to, that Act).
- (6) The reference in sub-paragraph (4)(b) to a data subject withholding consent does not include a data subject merely failing to respond to a request for consent.”

Member’s explanatory statement

Part 2 of Schedule 1 describes types of processing of special categories of personal data which meet the requirement in Article 9(2)(g) of the GDPR (processing necessary for reasons of substantial public interest) for a basis in UK law (see Clause 10(3)). This amendment adds to Part 2 of Schedule 1 certain processing of personal data by not-for-profit bodies involved in supporting individuals with a particular disability or medical condition.

Margot James

84

Schedule 1, page 126, line 27, leave out “a reason” and insert “one of the reasons”

Member’s explanatory statement

This amendment amends paragraph 14(1)(b) of Schedule 1 for consistency with paragraphs 18(2) and 19(2) of that Schedule.

Data Protection Bill [Lords], continued

Margot James

85

Schedule 1, page 126, line 38, at end insert—

“Safeguarding of children and of individuals at risk

14A (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.”

Member’s explanatory statement

Part 2 of Schedule 1 describes types of processing of special categories of personal data which meet the requirement in Article 9(2)(g) of the GDPR (processing necessary for reasons of substantial public interest) for a basis in UK law (see Clause 10(3)). This amendment adds to Part 2 of Schedule 1 certain processing of personal data which is necessary for the protection of children or of adults at risk. See also Amendments 116 and 117.

Margot James

86

Schedule 1, page 126, line 38, at end insert—

“Safeguarding of economic well-being of certain individuals

14B (1) This condition is met if the processing—

- (a) is necessary for the purposes of protecting the economic well-being of an individual at economic risk who is aged 18 or over,

Data Protection Bill [Lords], continued

- (b) is of data concerning health,
 - (c) is carried out without the consent of the data subject for one of the reasons listed in sub-paragraph (2), and
 - (d) 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) In this paragraph, “individual at economic risk” means an individual who is less able to protect his or her economic well-being by reason of physical or mental injury, illness or disability.”

Member’s explanatory statement

Part 2 of Schedule 1 describes types of processing of special categories of personal data which meet the requirement in Article 9(2)(g) of the GDPR (processing necessary for reasons of substantial public interest) for a basis in UK law (see Clause 10(3)). This amendment adds to Part 2 of Schedule 1 certain processing of personal data which is necessary to protect the economic well-being of adults who are less able to protect their economic well-being by reason of a physical or mental injury, illness or disability.

Louise Haigh
Liam Byrne
Chris Elmore
Darren Jones

150

☆ Schedule 1, page 126, line 38, at end insert—

“Register of missing persons

- “14A This condition is met if the processing—
- (a) is necessary for the establishment or maintenance of any register of missing persons, and
 - (b) is carried out in a manner which is consistent with any guidance which may be issued by the Secretary of State or by the Commissioner on the processing of data for the purposes of this paragraph.”

Margot James

87

Schedule 1, page 127, line 30, at end insert—

- “() The reference in sub-paragraph (4)(b) to a data subject withholding consent does not include a data subject merely failing to respond to a request for consent.”

Member’s explanatory statement

This amendment clarifies the intended effect of the safeguard in paragraph 15(4) of Schedule 1 (processing necessary for an insurance purpose).

Data Protection Bill [Lords], continued

Margot James

88

Schedule 1, page 127, line 39, at end insert—

“() is of data concerning health which relates to a data subject who is the parent, grandparent, great-grandparent or sibling of a member of the scheme.”

Member’s explanatory statement

This amendment provides that the condition in paragraph 16 of Schedule 1 (occupational pension schemes) can only be relied on in connection with the processing of data concerning health relating to certain relatives of a member of the scheme.

Margot James

89

Schedule 1, page 128, line 6, at end insert—

“() The reference in sub-paragraph (2)(b) to a data subject withholding consent does not include a data subject merely failing to respond to a request for consent.”

Member’s explanatory statement

This amendment clarifies the intended effect of the safeguard in paragraph 16(2) of Schedule 1 (processing necessary for determinations in connection with occupational pension schemes).

Margot James

90

Schedule 1, page 131, line 14, at end insert—

“() If the processing consists of the disclosure of personal data to a body or association described in sub-paragraph (1)(a), or is carried out in preparation for such disclosure, the condition in sub-paragraph (1) is met even if, when the processing is carried out, the controller does not have an appropriate policy document in place (see paragraph 5 of this Schedule).”

Member’s explanatory statement

This amendment provides that when processing consists of the disclosure of personal data to a body or association that is responsible for eliminating doping in sport, or is carried out in preparation for such disclosure, the condition in paragraph 22 of Part 2 of Schedule 1 (anti-doping in sport) is met even if the controller does not have an appropriate policy document in place when the processing is carried out.

Margot James

91

Schedule 1, page 133, line 17, leave out from “interest” to end of line 21

Member’s explanatory statement

This amendment removes provisions from paragraph 31 of Schedule 1 (extension of conditions in Part 2 of Schedule 1 referring to substantial public interest) which are unnecessary because they impose requirements which are already imposed by paragraph 5 of Schedule 1.

Margot James

92

Schedule 1, page 134, line 18, leave out “on the day” and insert “when”

Member’s explanatory statement

This amendment is consequential on Amendment 71.

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

Liam Byrne
 Louise Haigh
 Chris Elmore
 Darren Jones

153

☆ Clause 14, page 7, line 30, at end insert—

“(1A) A decision that engages an individual’s rights under the Human Rights Act 1998 does not fall within Article 22(2)(b) of the GDPR (exception from prohibition on taking significant decisions based solely on automated processing for decisions that are authorised by law and subject to safeguards for the data subject’s rights, freedoms and legitimate interests).

Member’s explanatory statement

This amendment would clarify that the exemption from prohibition on taking significant decisions based solely on automated processing must apply to purely automated decisions that engage an individual’s human rights.

Brendan O’Hara
 Stuart C. McDonald

130

☆ Clause 14, page 7, line 34, at end insert—

“(2A) A decision that engages an individual’s rights under the Human Rights Act 1998 does not fall within Article 22(2)(b) of the GDPR (exception from prohibition on taking significant decisions based solely on automated processing for decisions that are authorised by law and subject to safeguards for the data subject’s rights, freedoms and legitimate interests).

(2B) A decision is “based solely on automated processing” for the purposes of this section if, in relation to a data subject, there is no meaningful input by a natural person in the decision-making process.”

Member’s explanatory statement

This amendment would ensure that where human rights are engaged by automated decisions these are human decisions and provides clarification that purely administrative human approval of an automated decision does make an automated decision a ‘human’ one.

Margot James

10

Clause 14, page 8, line 4, leave out “21 days” and insert “1 month”

Member’s explanatory statement

Clause 14(4)(b) provides that where a controller notifies a data subject under Clause 14(4)(a) that the controller has taken a “qualifying significant decision” in relation to the data subject based solely on automated processing, the data subject has 21 days to request the controller to reconsider or take a new decision not based solely on automated processing. This amendment extends that period to one month.

Margot James

11

Clause 14, page 8, leave out line 10 and insert “within the period described in Article 12(3) of the GDPR—”

Member’s explanatory statement

This amendment removes provision from Clause 14(5) dealing with the time by which a controller has to respond to a data subject’s request under Clause 14(4)(b) and replaces it with a requirement for the controller to respond within the time periods set out in Article 12(3) of the GDPR, which is directly applicable.

Data Protection Bill [Lords], continued

Margot James

12

Clause 14, page 8, line 16, at end insert—

“(5A) In connection with this section, a controller has the powers and obligations under Article 12 of the GDPR (transparency, procedure for extending time for acting on request, fees, manifestly unfounded or excessive requests etc) that apply in connection with Article 22 of the GDPR.”

Member’s explanatory statement

This amendment inserts a signpost to Article 12 of the GDPR which is directly applicable and which confers powers and places obligations on controllers to whom Clause 14 applies.

Margot James

13

Clause 15, page 8, line 31, after “21” insert “and 34”

Member’s explanatory statement

This amendment is consequential on Amendment 94.

Margot James

14

Clause 15, page 8, line 34, after “21” insert “and 34”

Member’s explanatory statement

This amendment is consequential on an amendment made in the Lords which added Article 34 of the GDPR (communication of personal data breach to the data subject) to the list of GDPR provisions that are disapplied by paragraph 11 of Schedule 2 to the Bill.

Margot James

93

Schedule 2, page 135, line 7, at end insert—

“() Article 19 (notification obligation regarding rectification or erasure of personal data or restriction of processing);”

Member’s explanatory statement

This amendment adds Article 19 of the GDPR (notification obligation regarding rectification or erasure of personal data or restriction of processing) to the list of GDPR provisions that are disapplied by provisions in Part 1 of Schedule 2 to the Bill.

Margot James

94

Schedule 2, page 135, line 19, after “provisions” insert “and Article 34(1) and (4) of the GDPR (communication of personal data breach to the data subject)”

Member’s explanatory statement

This amendment adds Article 34 of the GDPR (communication of personal data breach to the data subject) to the list of GDPR provisions that are disapplied by paragraph 2(1) of Schedule 2 to the Bill (crime and taxation: general).

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

Liam Byrne
Louise Haigh
Chris Elmore
Darren Jones

156

☆ Schedule 2, page 136, line 30, leave out paragraph 4

Member's explanatory statement

This amendment would remove immigration from the exemptions from the GDPR.

Margot James

95

Schedule 2, page 138, line 15, at end insert—

“() Article 19 (notification obligation regarding rectification or erasure of personal data or restriction of processing);”

Member's explanatory statement

This amendment adds Article 19 of the GDPR (notification obligation regarding rectification or erasure of personal data or restriction of processing) to the list of GDPR provisions that are disapplied by provisions in Part 2 of Schedule 2 to the Bill.

Margot James

96

Schedule 2, page 139, leave out lines 17 to 27 and insert—

| | |
|--|---|
| <p>“2. The function is designed to protect members of the public against—</p> <p>(a) dishonesty, malpractice or other seriously improper conduct, or</p> <p>(b) unfitness or incompetence.</p> | <p>The function is—</p> <p>(a) conferred on a person by an enactment,</p> <p>(b) a function of the Crown, a Minister of the Crown or a government department, or</p> <p>(c) of a public nature, and is exercised in the public interest.”</p> |
|--|---|

Member's explanatory statement

This amendment extends the exemption provided for in paragraph 7 of Schedule 2. It amends the second entry in the table (functions designed to protect members of the public against dishonesty etc) by removing the requirement that the function relates to people who carry on activities which bring them into contact with members of the public. It also amends column 2 of the table to bring the second entry into line with the first and third entries.

Margot James

97

Schedule 2, page 140, line 42, at end insert—

“Audit functions

- 7A (1) The listed GDPR provisions do not apply to personal data processed for the purposes of discharging a function listed in sub-paragraph (2) to the extent that the application of those provisions would be likely to prejudice the proper discharge of the function.
- (2) The functions are any function that is conferred by an enactment on—
- the Comptroller and Auditor General;
 - the Auditor General for Scotland;
 - the Auditor General for Wales;

Data Protection Bill [Lords], continued

(d) the Comptroller and Auditor General for Northern Ireland.”

Member’s explanatory statement

This amendment inserts a new paragraph into Schedule 2 to provide for an exemption from “the listed GDPR provisions” (defined in paragraph 6 of Schedule 2) where personal data is processed for the purposes of discharging statutory functions of certain auditors.

Margot James

98

Schedule 2, page 140, line 42, at end insert—

“Functions of the Bank of England

- 7B (1) The listed GDPR provisions do not apply to personal data processed for the purposes of discharging a relevant function of the Bank of England to the extent that the application of those provisions would be likely to prejudice the proper discharge of the function.
- (2) “Relevant function of the Bank of England” means—
- (a) a function discharged by the Bank acting in its capacity as a monetary authority (as defined in section 244(2)(c) and (2A) of the Banking Act 2009);
 - (b) a public function of the Bank within the meaning of section 349 of the Financial Services and Markets Act 2000;
 - (c) a function conferred on the Prudential Regulation Authority by or under the Financial Services and Markets Act 2000 or by another enactment.”

Member’s explanatory statement

This amendment inserts a new paragraph into Schedule 2 to provide for an exemption from “the listed GDPR provisions” (defined in paragraph 6 of Schedule 2) where personal data is processed for the purposes of discharging specified functions of the Bank of England.

Margot James

99

Schedule 2, page 141, line 18, leave out “body” and insert “person”

Member’s explanatory statement

This amendment and Amendment 100 amend paragraph 9 of Schedule 2 to replace the reference to a “body” with a “person” for consistency with the table at paragraph 9, which includes functions that are conferred on individuals.

Margot James

100

Schedule 2, page 141, line 19, leave out “body” and insert “person”

Member’s explanatory statement

See the explanatory statement for Amendment 99.

Margot James

101

Schedule 2, page 142, line 7, column 2, at end insert—

“() section 244 of the Investigatory Powers Act 2016;”

Member’s explanatory statement

This amendment amends column 2 of the table at paragraph 9 of Schedule 2 so that functions

Data Protection Bill [Lords], continued

conferred on the Commissioner by section 244 of the Investigatory Powers Act 2016 will be included within the scope of the exemption provided for by paragraph 9.

Margot James

102

Schedule 2, page 142, line 37, at end insert—

| | |
|---|---|
| “1A. The Scottish Information Commissioner. | By or under— (a) the Freedom of Information (Scotland) Act 2002 (asp 13); (b) the Environmental Information (Scotland) Regulations 2004 (S.S.I. 2004/520); (c) the INSPIRE (Scotland) Regulations 2009 (S.S.I. 2009/440).” |
|---|---|

Member’s explanatory statement

This amendment amends the table at paragraph 9 of Schedule 2 so that functions conferred on the Scottish Information Commissioner by the legislation listed in column 2 of the table will be included within the scope of the exemption provided for by paragraph 9.

Margot James

103

Schedule 2, page 143, line 7, leave out “or under any” and insert “an”

Member’s explanatory statement

This amendment amends the reference to functions conferred by or under any enactment in entry 5 of the table at paragraph 9. The words “or under” are not necessary because the definition of “enactment” in Clause 198 includes subordinate legislation.

Margot James

104

Schedule 2, page 143, line 7, at end insert—

| | |
|---------------------------------------|---|
| “5A. The Financial Conduct Authority. | By or under the Financial Services and Markets Act 2000 or by another enactment.” |
|---------------------------------------|---|

Member’s explanatory statement

This amendment amends the table at paragraph 9 of Schedule 2 so that functions conferred on the Financial Conduct Authority by the legislation listed in column 2 of the table will be included within the scope of the exemption provided for by paragraph 9.

Data Protection Bill [Lords], continued

Margot James

105

Schedule 2, page 143, line 22, at end insert—

| | |
|------------------------------|--|
| “12. The Charity Commission. | By or under— (a) the Charities Act 1992; (b) the Charities Act 2006; (c) the Charities Act 2011.” |
|------------------------------|--|

Member’s explanatory statement

This amendment amends the table at paragraph 9 of Schedule 2 so that functions conferred on the Charity Commission by the legislation listed in column 2 of the table will be included within the scope of the exemption provided for by paragraph 9.

Margot James

106

Schedule 2, page 146, line 22, leave out “16(4)(a) or (b)” and insert “16(4)(a), (b) or (c)”

Member’s explanatory statement

This amendment is consequential on Amendment 112.

Margot James

107

Schedule 2, page 149, line 23, leave out “with the date on which” and insert “when”

Member’s explanatory statement

This amendment is consequential on Amendment 71.

Margot James

108

Schedule 2, page 149, line 25, leave out “the date of”

Member’s explanatory statement

This amendment is consequential on Amendment 71.

Margot James

109

Schedule 2, page 150, line 45, at end insert—

“() Article 19 (notification obligation regarding rectification or erasure of personal data or restriction of processing);”

Member’s explanatory statement

This amendment adds Article 19 of the GDPR (notification obligation regarding rectification or erasure of personal data or restriction of processing) to the list of GDPR provisions that are disapplied by paragraph 24 of Schedule 2 to the Bill (journalistic, academic, artistic and literary purposes).

Margot James

110

Schedule 2, page 151, line 1, after “processor)” insert “—

(i) Article 34(1) and (4) (communication of personal data breach to the data subject);

(ii) ”

Member’s explanatory statement

This amendment adds Article 34 of the GDPR (communication of personal data breach to the data

Data Protection Bill [Lords], continued

subject) to the list of GDPR provisions that are disapplied by paragraph 24 of Schedule 2 to the Bill (journalistic, academic, artistic and literary purposes).

Liam Byrne
Louise Haigh
Chris Elmore
Darren Jones

170

☆ Schedule 2, page 151, line 8, at end insert—

“(f) in Chapter IX of the GDPR (provisions relating to specific processing situations), Article 89(1) (safeguards and derogations relating to processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes).”

Member’s explanatory statement

This amendment adds the restrictions imposed on archiving by the GDPR and the Bill to the list of matters in the Bill that benefit from the Journalism, Art and Literature exemption.

Margot James

111

Schedule 3, page 160, line 21, leave out “with the day on which” and insert “when”

Member’s explanatory statement

This amendment is consequential on Amendment 71.

Margot James

112

Schedule 3, page 162, line 3, leave out paragraph 16 and insert—

“16 (1) This paragraph applies to a record of information which—

- (a) is processed by or on behalf of the Board of Governors, proprietor or trustees of, or a teacher at, a school in Northern Ireland specified in sub-paragraph (3),
 - (b) relates to an individual who is or has been a pupil at the school, and
 - (c) originated from, or was supplied by or on behalf of, any of the persons specified in sub-paragraph (4).
- (2) But this paragraph does not apply to information which is processed by a teacher solely for the teacher’s own use.
- (3) The schools referred to in sub-paragraph (1)(a) are—
- (a) a grant-aided school;
 - (b) an independent school.
- (4) The persons referred to in sub-paragraph (1)(c) are—
- (a) a teacher at the school;
 - (b) an employee of the Education Authority, other than a teacher at the school;
 - (c) an employee of the Council for Catholic Maintained Schools, other than a teacher at the school;
 - (d) the pupil to whom the record relates;
 - (e) a parent, as defined by Article 2(2) of the Education and Libraries (Northern Ireland) Order 1986 (S.I. 1986/594 (N.I. 3)).

Data Protection Bill [Lords], continued

- (5) In this paragraph, “grant-aided school”, “independent school”, “proprietor” and “trustees” have the same meaning as in the Education and Libraries (Northern Ireland) Order 1986 (S.I. 1986/594 (N.I. 3)).”

Member’s explanatory statement

This amendment expands the types of records that are “educational records” for the purposes of Part 4 of Schedule 3.

Margot James

113

Schedule 3, page 164, line 7, leave out “with the day on which” and insert “when”

Member’s explanatory statement

This amendment is consequential on Amendment 71.

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

131

☆ Page 9, line 12, leave out Clause 16

Member’s explanatory statement

This amendment would remove delegated powers that would allow the Secretary of State to add further exemptions.

Margot James

15

Clause 17, page 10, line 16, leave out “authority” and insert “body”

Member’s explanatory statement

This amendment corrects the reference in Clause 17(7) to the “national accreditation authority” by amending it to refer to the “national accreditation body”, which is defined in Clause 17(8).

Margot James

114

Schedule 5, page 170, line 21, leave out “In this paragraph” and insert—

“Meaning of “working day”

7 In this Schedule”

Member’s explanatory statement

This amendment applies the definition of “working day” for the purposes of the whole of Schedule 5. There are references to “working days” in paragraphs 5(2) and 6(3) of that Schedule.

Data Protection Bill [Lords], continued

Margot James

16

Clause 19, page 12, line 2, leave out “(d)” and insert “(e)”

Member’s explanatory statement

This amendment amends the definition of “relevant NHS body” in this Clause by adding special health and social care agencies established under Article 3 of the Health and Personal Social Services (Special Agencies) (Northern Ireland) Order 1990 (which fall within paragraph (e) of section 1(5) of the Health and Social Care (Reform) Act (Northern Ireland) 2009).

Darren Jones

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

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.”

Member’s explanatory statement

This amendment is consequential on NC2.

Margot James

17

Clause 25, page 15, line 40, leave out “individual” and insert “data subject”

Member’s explanatory statement

Clause 25 makes provision about the processing of manual unstructured data used in longstanding historical research. This amendment aligns Clause 25(1)(b)(i) with similar provision in Clause 19(2).

Data Protection Bill [Lords], continued

Liam Byrne
 Louise Haigh
 Chris Elmore
 Darren Jones

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.”

Member’s explanatory statement

This amendment would introduce a procedure for a Minister of the Crown to apply to a Judicial Commissioner for a National Security Certificate.

Liam Byrne
 Louise Haigh
 Chris Elmore
 Darren Jones

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—

- (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.”

Member’s explanatory statement

This amendment would ensure that oversight and safeguarding in the application for a National Security Certificate are effective, requiring sufficient detail in the application process.

Liam Byrne
 Louise Haigh
 Chris Elmore
 Darren Jones

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”

Member’s explanatory statement

This amendment would require a National Security Certificate to identify the personal data to which the Certificate applies by means of a detailed description.

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

Liam Byrne
 Louise Haigh
 Chris Elmore
 Darren Jones

164

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

Member's explanatory statement

This amendment would ensure that a National Security Certificate cannot be expressed to have prospective effect.

Liam Byrne
 Louise Haigh
 Chris Elmore
 Darren Jones

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).”

Member's explanatory statement

This amendment would ensure effective oversight of exemptions of this Act from the application for a National Security Certificate.

Liam Byrne
 Louise Haigh
 Chris Elmore
 Darren Jones

166

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

Member's explanatory statement

This amendment would broaden the application of subsection (3) so that any person who believes they are directly affected by a National Security Certificate may appeal to the Tribunal against the Certificate.

Liam Byrne
 Louise Haigh
 Chris Elmore
 Darren Jones

167

- ☆ Clause 27, page 17, line 12, leave out “, applying the principles applied by a court on an application for judicial review,”

Member's explanatory statement

This amendment removes the application to the appeal against a National Security Certificate of the principles applied by a court on an application for judicial review.

Liam Byrne
 Louise Haigh
 Chris Elmore
 Darren Jones

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”

Member's explanatory statement

These amendments would reflect that the Minister would not be the only authority involved in the process of applying for a National Security Certificate.

Data Protection Bill [Lords], continued

Liam Byrne
 Louise Haigh
 Chris Elmore
 Darren Jones

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.”

Member’s explanatory statement

This amendment would require a Judicial Commissioner to intimate in writing to the Minister reasons for refusing the Minister’s application for a National Security Certificate and allows the Minister to apply for a review by the Information Commissioner of such a refusal.

Margot James

18

Clause 30, page 19, line 4, after “specified” insert “or described”

Member’s explanatory statement

This amendment changes a reference to persons specified in Schedule 7 into a reference to persons specified or described there.

Margot James

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”

Member’s explanatory statement

This amendment makes clear that regulations under Clause 30 may identify a person by describing a type of person, as well as by specifying a person.

Data Protection Bill [Lords], continued

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

132

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

Member's explanatory statement

This amendment would remove delegated powers that would allow the Secretary of State to vary the conditions and safeguards governing the general processing of sensitive personal data.

Margot James

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.

Data Protection Bill [Lords], continued

- (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.”

Member’s explanatory statement

Schedule 8 makes provision about the circumstances in which the processing of special categories of personal data is permitted. This amendment adds to that Schedule certain processing of personal data which is necessary for the protection of children or of adults at risk. See also Amendments 85 and 117.

Margot James

20

- Clause 41, page 23, line 34, leave out “an individual” and insert “a data subject”

Member’s explanatory statement

Clause 41 makes provision about the processing of personal data for archiving purposes, for scientific or historical research purposes or for statistical purposes. This amendment aligns Clause 41(2)(b) with similar provision in Clause 19(2).

Margot James

21

- Clause 42, page 24, line 29, leave out “with the day” and insert “when”

Member’s explanatory statement

This amendment is consequential on Amendment 71.

Margot James

22

- Clause 47, page 28, line 20, leave out second “data”

Member’s explanatory statement

This amendment changes a reference to a “data controller” into a reference to a “controller” (as defined in Clauses 3 and 32).

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

133

- ☆ Clause 50, page 30, line 5, at end insert “, and

Data Protection Bill [Lords], continued

- (c) it does not engage the rights of the data subject under the Human Rights Act 1998.”

Member’s explanatory statement

This amendment would ensure that automated decisions should not be authorised by law if they engage an individual’s human rights.

Margot James

23

Clause 50, page 30, line 11, leave out “21 days” and insert “1 month”

Member’s explanatory statement

Clause 50(2)(b) provides that where a controller notifies a data subject under Clause 50(2)(a) that the controller has taken a “qualifying significant decision” in relation to the data subject based solely on automated processing, the data subject has 21 days to request the controller to reconsider or take a new decision not based solely on automated processing. This amendment extends that period to one month.

Margot James

24

Clause 50, page 30, line 17, leave out “21 days” and insert “1 month”

Member’s explanatory statement

Clause 50(3) provides that where a data subject makes a request to a controller under Clause 50(2)(b) to reconsider or retake a decision based solely on automated processing, the controller has 21 days to respond. This amendment extends that period to one month.

Margot James

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;”

Member’s explanatory statement

This amendment changes the nature of the request that a data subject may make to the Commissioner in cases where rights to information are restricted under Clause 44(4) or 45(4). The effect is that a data subject will be able to request the Commissioner to check that the restriction was lawful.

Margot James

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;”

Member’s explanatory statement

This amendment is consequential on Amendment 25.

Data Protection Bill [Lords], continued

Margot James

27

Clause 53, page 31, line 39, leave out “or 47” and insert “, 47 or 50”

Member’s explanatory statement

Clause 53(1) provides that where a request from a data subject under Clause 45, 46 or 47 is manifestly unfounded or excessive, the controller may charge a reasonable fee for dealing with the request or refuse to act on the request. This amendment applies Clause 53(1) to requests under Clause 50 (automated decision making). See also Amendment 28.

Margot James

28

Clause 53, page 32, line 4, leave out “or 47” and insert “, 47 or 50”

Member’s explanatory statement

Clause 53(3) provides that where there is an issue as to whether a request under Clause 45, 46 or 47 is manifestly unfounded or excessive, it is for the controller to show that it is. This amendment applies Clause 53(3) to requests under Clause 50 (automated decision making). See also Amendment 27.

Margot James

29

Clause 54, page 32, line 14, leave out “day” and insert “time”

Member’s explanatory statement

This amendment is consequential on Amendment 71.

Margot James

30

Clause 54, page 32, line 15, leave out “day” and insert “time”

Member’s explanatory statement

This amendment is consequential on Amendment 71.

Margot James

31

Clause 54, page 32, line 15, leave out “days”

Member’s explanatory statement

This amendment is consequential on Amendment 71.

Margot James

32

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

Member’s explanatory statement

This amendment is consequential on Amendment 71.

Margot James

33

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

Member’s explanatory statement

This amendment is consequential on Amendment 71.

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

Margot James

- Clause 54, page 32, line 19, leave out “the day on which” and insert “when”
Member’s explanatory statement
This amendment is consequential on Amendment 71.

34

 Louise Haigh
 Liam Byrne
 Chris Elmore
 Darren Jones

- ☆ Clause 64, page 37, line 2, leave out “is likely to” and insert “may”

142

 Louise Haigh
 Liam Byrne
 Chris Elmore
 Darren Jones

- ☆ Clause 64, page 37, line 2, leave out “high”

143

 Louise Haigh
 Liam Byrne
 Chris Elmore
 Darren Jones

- ☆ Clause 64, page 37, line 15, leave out “is likely to” and insert “may”

144

 Louise Haigh
 Liam Byrne
 Chris Elmore
 Darren Jones

- ☆ Clause 64, page 37, line 15, leave out “high”

145

 Louise Haigh
 Liam Byrne
 Chris Elmore
 Darren Jones

- ☆ 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.”

146

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

Louise Haigh
Liam Byrne
Chris Elmore
Darren Jones

☆ Clause 65, page 37, line 23, leave out “would” and insert “could”

147

Louise Haigh
Liam Byrne
Chris Elmore
Darren Jones

☆ Clause 65, page 37, line 23, leave out “high”

148

Louise Haigh
Liam Byrne
Chris Elmore
Darren Jones

☆ 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.”

149

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

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

Member’s explanatory statement

This amendment would remove delegated powers that would allow the Secretary of State to vary the conditions and safeguards governing the general processing of sensitive personal data.

134

Margot James

Schedule 10, page 187, line 5, 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

117

Data Protection Bill [Lords], continued

- (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.”

Member’s explanatory statement

Schedule 10 makes provision about the circumstances in which the processing of special categories of personal data is permitted. This amendment adds to that Schedule certain processing of personal data which is necessary for the protection of children or of adults at risk. See also Amendments 85 and 116.

Margot James

Clause 94, page 55, line 8, leave out “day” and insert “time”

35

Member’s explanatory statement

This amendment is consequential on Amendment 71.

Margot James

Clause 94, page 55, line 9, leave out “day” and insert “time”

36

Member’s explanatory statement

This amendment is consequential on Amendment 71.

Data Protection Bill [Lords], continued

- Margot James 37
 Clause 94, page 55, line 10, leave out “days”
Member’s explanatory statement
This amendment is consequential on Amendment 71.
- Margot James 38
 Clause 94, page 55, line 11, leave out “the day on which” and insert “when”
Member’s explanatory statement
This amendment is consequential on Amendment 71.
- Margot James 39
 Clause 94, page 55, line 12, leave out “the day on which” and insert “when”
Member’s explanatory statement
This amendment is consequential on Amendment 71.
- Margot James 40
 Clause 94, page 55, line 13, leave out “the day on which” and insert “when”
Member’s explanatory statement
This amendment is consequential on Amendment 71.
-
- Brendan O’Hara
 Stuart C. McDonald 135
 ☆ Clause 96, page 56, line 8, after “law” insert “unless the decision engages an individual’s rights under the Human Rights Act 1998”.
-
- Margot James 41
 Clause 97, page 56, line 34, leave out “21 days” and insert “1 month”
Member’s explanatory statement
Clause 97(4) provides that where a controller notifies a data subject under Clause 97(3) that the controller has taken a decision falling under Clause 97(1) (automated decisions required or authorised by law), the data subject has 21 days to request the controller to reconsider or take a new decision not based solely on automated processing. This amendment extends that period to one month.
- Margot James 42
 Clause 97, page 56, line 39, leave out “21 days” and insert “1 month”
Member’s explanatory statement
Clause 97(5) provides that where a data subject makes a request to a controller under Clause

Data Protection Bill [Lords], continued

97(4) to reconsider or retake a decision based solely on automated processing, the controller has 21 days to respond. This amendment extends that period to one month.

Margot James 43
 Clause 99, page 57, line 28, leave out “day” and insert “time”
Member’s explanatory statement
This amendment is consequential on Amendment 71.

Margot James 44
 Clause 99, page 58, line 3, leave out “day” and insert “time”
Member’s explanatory statement
This amendment is consequential on Amendment 71.

Margot James 45
 Clause 99, page 58, line 5, leave out “the day on which” and insert “when”
Member’s explanatory statement
This amendment is consequential on Amendment 71.

Margot James 46
 Clause 99, page 58, line 6, leave out “the day on which” and insert “when”
Member’s explanatory statement
This amendment is consequential on Amendment 71.

Liam Byrne
 Louise Haigh
 Chris Elmore
 Darren Jones 159
 ☆ Clause 109, page 61, line 13, after “is” insert “provided by law and is”
Member’s explanatory statement
This amendment would place meaningful safeguards on the sharing of data by the intelligence agencies.

Liam Byrne
 Louise Haigh
 Chris Elmore
 Darren Jones 160
 ☆ Clause 109, page 61, line 18, at end insert—
 “(3) The transfer falls within this subsection if the transfer—
 (a) is based on an adequacy decision (see section 74),
 (b) if not based on an adequacy decision, is based on there being appropriate safeguards (see section 75), or

Data Protection Bill [Lords], continued

- (c) if not based on an adequacy decision or on there being appropriate safeguards, is based on special circumstances (see section 76 as amended by subsection (5)).
- (4) A transfer falls within this subsection if—
 - (a) the intended recipient is a person based in a third country that has (in that country) functions comparable to those of the controller or an international organisation, and
 - (b) the transfer meets the following conditions—
 - (i) the transfer is strictly necessary in a specific case for the performance of a task of the transferring controller as provided by law or for the purposes set out in subsection (2),
 - (ii) the transferring controller has determined that there are no fundamental rights and freedoms of the data subject concerned that override the public interest necessitating the transfer,
 - (iii) the transferring controller informs the intended recipient of the specific purpose or purposes for which the personal data may, so far as necessary, be processed, and
 - (iv) the transferring controller documents any transfer and informs the Commissioner about the transfer on request.
- (5) The reference to law enforcement purposes in subsection (4) of section 76 is to be read as a reference to the purposes set out in subsection (2).”

Margot James

118

Schedule 11, page 190, line 4, leave out “day falls before the day on which” and insert “time falls before”
Member’s explanatory statement
This amendment is consequential on Amendment 71.

Margot James

119

Schedule 11, page 190, line 7, leave out “day” and insert “time”
Member’s explanatory statement
This amendment is consequential on Amendment 71.

Margot James

120

Schedule 11, page 190, line 9, leave out “the date of”
Member’s explanatory statement
This amendment is consequential on Amendment 71.

Margot James

121

Schedule 11, page 190, line 17, leave out “day” and insert “time”
Member’s explanatory statement
This amendment is consequential on Amendment 71.

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

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

136

☆ Page 63, line 1, leave out Clause 113

Member's explanatory statement

This amendment would remove delegated powers that would allow the Secretary of State to create new exemptions to Part 4 of the Bill.

Margot James

122

Schedule 13, page 194, line 36, leave out from beginning to end of line 4 on page 195

Member's explanatory statement

This amendment is consequential on the omission of Clause 121 (see Amendment 47).

Margot James

47

Page 66, line 23, leave out Clause 121

Margot James

48

Clause 124, page 68, line 24, leave out "with the day on which" and insert "when"

Member's explanatory statement

This amendment is consequential on Amendment 71.

Margot James

49

Clause 125, page 69, line 9, leave out "with the day on which" and insert "when"

Member's explanatory statement

This amendment is consequential on Amendment 71.

Data Protection Bill [Lords], continued

Brendan O'Hara
Stuart C. McDonald

137

☆ Clause 142, page 77, line 34, at end insert—

“(3) The Secretary of State must consult the Scottish Government and obtain its consent before establishing an inquiry under subsection (1).”

Member's explanatory statement

This amendment would ensure that before any inquiry was established, the UK Government must have consent from Scottish Government.

Margot James

50

Page 77, line 18, leave out Clause 142

Margot James

51

Clause 143, page 77, line 37, after “notice”)” insert “—
(a) ”

Member's explanatory statement

See the explanatory statement for Amendment 52.

Margot James

52

Clause 143, page 77, line 40, at end insert “, or

(b) require any person to provide the Commissioner with information that the Commissioner reasonably requires for the purposes of determining whether the processing of personal data is carried out by an individual in the course of a purely personal or household activity.”

Member's explanatory statement

This amendment and Amendments 51 and 54 enable the Information Commissioner to obtain information in order to work out whether processing is carried out in the course of purely personal or household activities. Such processing is not subject to the GDPR or the applied GDPR (see Article 2(2)(c) of the GDPR and Clause 21(3)).

Margot James

53

Clause 143, page 78, line 23, leave out “with the day on which” and insert “when”

Member's explanatory statement

This amendment is consequential on Amendment 71.

Margot James

54

Clause 143, page 78, line 30, at end insert—

“(10) Section 3(14)(b) does not apply to the reference to the processing of personal data in subsection (1)(b).”

Member's explanatory statement

This amendment secures that the reference to “processing” in the new paragraph (b) inserted by Amendment 52 includes all types of processing of personal data. It disapplies Clause 3(14)(b),

Data Protection Bill [Lords], continued

which provides that references to processing in Parts 5 to 7 of the bill are usually to processing to which Chapter 2 or 3 of Part 2, Part 3 or Part 4 applies.

Margot James

55

Clause 146, page 81, line 3, leave out “with the day on which” and insert “when”

Member’s explanatory statement

This amendment is consequential on Amendment 71.

Margot James

56

Clause 149, page 83, line 36, leave out “with the day on which” and insert “when”

Member’s explanatory statement

This amendment is consequential on Amendment 71.

Margot James

57

Clause 154, page 86, line 10, at end insert “or distress”

Member’s explanatory statement

This amendment is for consistency with Clause 149(2). It requires the Commissioner, when deciding whether to give a penalty notice to a person in respect of a failure to which the GDPR does not apply and when determining the amount of the penalty, to have regard to any action taken by the controller or processor to mitigate the distress suffered by data subjects as a result of the failure.

Margot James

123

Schedule 16, page 203, line 26, leave out “with the day after” and insert “when”

Member’s explanatory statement

This amendment is consequential on Amendment 71.

Margot James

124

Schedule 16, page 204, line 10, leave out “with the day on which” and insert “when”

Member’s explanatory statement

This amendment is consequential on Amendment 71.

Data Protection Bill [Lords], continued

Margot James

125

Schedule 16, page 205, line 5, leave out “with the day after the day on which” and insert “when”

Member’s explanatory statement

This amendment is consequential on Amendment 71.

Margot James

126

Schedule 16, page 205, line 37, leave out “controller or processor” and insert “person to whom the penalty notice was given”

Member’s explanatory statement

This amendment is consequential on Amendment 52.

 Margot James

58

Clause 159, page 89, line 37, leave out from “a” to end of line 38 and insert “person to make oral representations about the Commissioner’s intention to give the person a penalty notice;”

Member’s explanatory statement

This amendment is consequential on Amendment 52.

 Margot James

59

Clause 164, page 93, line 4, leave out “with the day on which” and insert “when”

Member’s explanatory statement

This amendment is consequential on Amendment 71.

 Margot James

60

Page 94, line 36, leave out Clause 168

 Margot James

61

Page 95, line 20, leave out Clause 169

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

Liam Byrne
 Louise Haigh
 Chris Elmore
 Darren Jones

157

- ☆ Clause 170, page 96, line 25, at end insert “or
 (d) was done in the process of making a protected disclosure for any of the purposes of the Employment Rights Act 1996 or the Employment Rights (Northern Ireland) Order 1996 (SI 1996/1919 (NI 16)).”

Member’s explanatory statement

This amendment seeks to ensure that the offences listed in the offences of the Bill do not infringe on a worker’s ability to raise public interest concerns about wrongdoing, risk or malpractice.

Liam Byrne
 Louise Haigh
 Chris Elmore
 Darren Jones

158

- ☆ Clause 171, page 97, line 28, at end insert “or
 (d) was done in the process of making a protected disclosure for any of the purposes of the Employment Rights Act 1996 or the Employment Rights (Northern Ireland) Order 1996 (SI 1996/1919 (NI 16)).”

Member’s explanatory statement

This amendment seeks to ensure that the offences listed in the offences of the Bill do not infringe on a worker’s ability to raise public interest concerns about wrongdoing, risk or malpractice.

Darren Jones

151

- ☆ Clause 177, page 102, line 13, at end insert—
 “(4) Notwithstanding any provision in section 6 of the European Union (Withdrawal) Act 2018, a court or tribunal shall have regard to decisions made by the European Court after exit day so far as they relate to any provision under this Act.”
-

Margot James

62

- Clause 179, page 103, line 35, at end insert—
 “() If a draft of a statutory instrument containing regulations under section 7 would, apart from this subsection, be treated for the purposes of the standing orders of either House of Parliament as a hybrid instrument, it is to proceed in that House as if it were not such an instrument.”

Member’s explanatory statement

This amendment disapplies the procedure for hybrid instruments in the House of Lords (and any

Data Protection Bill [Lords], continued

similar procedure that may be introduced in the House of Commons) in relation to regulations under Clause 7 (meaning of “public authority” and “public body” for the purposes of the GDPR).

Margot James

127

Schedule 17, page 206, line 15, leave out paragraph (a) and insert—

“(a) a relevant health record (see paragraph 1A),”

Member’s explanatory statement

This amendment, with Amendment 128, limits the types of health records (defined in Clause 198) which count as “relevant records” for the purposes of Clause 181 (prohibition of requirement to produce relevant records) to those obtained by a data subject in the exercise of a data subject access right (defined in paragraph 4 of Schedule 17).

Margot James

128

Schedule 17, page 206, line 21, at end insert—

“Relevant health records

1A “Relevant health record” means a health record which has been or is to be obtained by a data subject in the exercise of a data subject access right.”

Member’s explanatory statement

See the explanatory statement for Amendment 127.

Margot James

63

Clause 183, page 105, line 42, leave out “80” and insert “80(1)”

Member’s explanatory statement

This amendment changes a reference to Article 80 of the GDPR into a reference to Article 80(1) and is consequential on NC2.

Margot James

64

Clause 183, page 105, line 44, leave out “certain rights” and insert “the data subject’s rights under Articles 77, 78 and 79 of the GDPR (rights to lodge complaints and to an effective judicial remedy)”

Member’s explanatory statement

In words summarising Article 80(1) of the GDPR, this amendment adds information about the rights of data subjects that may be exercised by representative bodies under that provision.

Margot James

65

Clause 183, page 106, line 7, leave out “under the following provisions” and insert “of a data subject”

Member’s explanatory statement

This amendment and Amendments 66, 67 and 68 tidy up Clause 183(2).

Data Protection Bill [Lords], continued

Margot James

Clause 183, page 106, line 9, at beginning insert “rights under”
Member’s explanatory statement
 See the explanatory statement for Amendment 65.

66

Margot James

Clause 183, page 106, line 10, at beginning insert “rights under”
Member’s explanatory statement
 See the explanatory statement for Amendment 65.

67

Margot James

Clause 183, page 106, line 11, at beginning insert “rights under”
Member’s explanatory statement
 See the explanatory statement for Amendment 65.

68

Liam Byrne
 Louise Haigh
 Chris Elmore
 Darren Jones

154

☆ Clause 183, page 106, line 24, at end insert—

- “(4A) In accordance with Article 80(2) of the GDPR, a person who satisfies the conditions in Article 80(1) and who considers that the rights of a data subject under the GDPR have been infringed as a result of data processing, may bring proceedings, on behalf of the data subject and independently of the data subject’s mandate—
- (a) pursuant to Article 77 (right to lodge a complaint with a supervisory authority),
 - (b) to exercise the rights referred to in Article 78 (right to an effective judicial remedy against a supervisory authority),
 - (c) to exercise the rights referred to in Article 79 (right to an effective judicial remedy against a controller or processor).
- (4B) An individual who considers that rights under the GDPR, this Act or any other enactment relating to data protection have been infringed in respect of a class of individuals of which he or she forms part may bring proceedings in respect of the infringement as a representative of the class (independently of the mandate of other members of the class), and—
- (a) for the purposes of this subsection “proceedings” includes proceedings for damages, and any damages recovered are to be distributed or otherwise applied as directed by the court,
 - (b) in the case of a class consisting of or including children under the age of 18, an individual may bring proceedings as a representative of the class whether or not the individual’s own rights have been infringed,
 - (c) the court in which proceedings are brought may direct that the individual may not act as a representative, or may act as a representative only to a specified extent, for a specified purpose or subject to specified conditions,
 - (d) a direction under paragraph (c) may (subject to any provision of rules of court relating to proceedings under this subsection) be made on the application of a party or a member of the class, or of the court’s own motion, and

Data Protection Bill [Lords], continued

- (e) subject to any direction of the court, a judgment or order given in proceedings in which a party is acting as a representative under this subsection is binding on all individuals represented in the proceedings, but may only be enforced by or against a person who is not a party to the proceedings with the permission of the court.
- (4C) Subsections (4A) and (4B)—
 - (a) apply in respect of infringements occurring (or alleged to have occurred) whether before or after the commencement of this section,
 - (b) apply to proceedings begun before the commencement of this section as if references in subsections (4A) and (4B) to bringing proceedings included a reference to continuing proceedings, and
 - (c) are without prejudice to the generality of any other enactment or rule of law which permits the bringing of representative proceedings.”

Member’s explanatory statement

This amendment would create a collective redress mechanism whereby a not-for-profit body, organisation or association can represent multiple individuals for infringement of their rights under the General Data Protection Regulation.

Margot James

69

Clause 184, page 106, line 41, leave out “(including as applied by Chapter 3 of that Part)”.

Member’s explanatory statement

This amendment is consequential on Amendment 4.

Margot James

That Clause 184 be transferred to the end of line 39 on page 105

Margot James

70

Clause 198, page 114, line 25, at end insert “the following (except in the expression “United Kingdom government department”)”

Member’s explanatory statement

This amendment makes clear that the definition of “government department” does not operate on references to a “United Kingdom government department” (which can be found in Clause 185 and paragraph 1 of Schedule 7).

Margot James

71

Clause 198, page 115, line 8, at end insert—

“(2) References in this Act to a period expressed in hours, days, weeks, months or years are to be interpreted in accordance with Article 3 of Regulation (EEC, Euratom) No. 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits, except in—

- (a) section 125(4), (7) and (8);
- (b) section 160(3), (5) and (6);

Data Protection Bill [Lords], continued

- (c) section 176(2);
- (d) section 179(8) and (9);
- (e) section 180(4);
- (f) section 186(3), (5) and (6);
- (g) section 190(3) and (4);
- (h) paragraph 18(4) and (5) of Schedule 1;
- (i) paragraphs 5(4) and 6(4) of Schedule 3;
- (j) Schedule 5;
- (k) paragraph 11(5) of Schedule 12;
- (l) Schedule 15;

(and the references in section 5 to terms used in Chapter 2 or 3 of Part 2 do not include references to a period expressed in hours, days, weeks, months or years).”

Member’s explanatory statement

This amendment provides that periods of time referred to in the bill are generally to be interpreted in accordance with Article 3 of EC Regulation 1182/71, which makes provision about the calculation of periods of hours, days, weeks, months and years.

Margot James

72

Clause 205, page 120, line 37, leave out paragraph (b)

Member’s explanatory statement

This amendment is consequential on the omission of Clauses 168 and 169 (see Amendments 60 and 61).

Liam Byrne
Louise Haigh
Chris Elmore
Darren Jones

155

☆ Clause 205, page 120, line 38, at end insert—

“(ca) section 183 (4A) to (4C);”

Member’s explanatory statement

This amendment would create a collective redress mechanism whereby a not-for-profit body, organisation or association can represent multiple individuals for infringement of their rights under the General Data Protection Regulation.

Brendan O’Hara
Stuart C. McDonald

138

☆ Clause 207, page 121, line 12, after “subsections” insert “(1A),”

Member’s explanatory statement

This amendment is a paving amendment for Amendment 139.

Data Protection Bill [Lords], continued

Margot James

73

Clause 207, page 121, line 12, after “(2)” insert “, (2A)”
Member’s explanatory statement
See the explanatory statement for Amendment 74.

Brendan O’Hara
 Stuart C. McDonald

139

☆ Clause 207, page 121, line 13, at end insert—
 “(1A) Sections 168 and 169 extend to England and Wales only.”
Member’s explanatory statement
This amendment would ensure that Clauses 168 and 169 would only extend to England and Wales and not apply in Scotland.

Margot James

74

Clause 207, page 121, line 14, at end insert—
 “(2A) Sections (*Representation of data subjects with their authority: collective proceedings*) and (*Duty to review provision for representation of data subjects*) extend to England and Wales and Northern Ireland only.”
Member’s explanatory statement
This amendment and Amendment 73 provide that NC1 and NC2 extend only to England and Wales and Northern Ireland.

Margot James

75

Clause 208, page 121, line 24, leave out subsection (2)
Member’s explanatory statement
This amendment removes the privilege amendment inserted by the Lords.

Margot James

NC1

To move the following Clause—

“Representation of data subjects with their authority: collective proceedings

- (1) The Secretary of State may by regulations make provision for representative bodies to bring proceedings before a court or tribunal in England and Wales or Northern Ireland combining two or more relevant claims.
- (2) In this section, “relevant claim”, in relation to a representative body, means a claim in respect of a right of a data subject which the representative body is authorised to exercise on the data subject’s behalf under Article 80(1) of the GDPR or section 183.
- (3) The power under subsection (1) includes power—
 - (a) to make provision about the proceedings;

Data Protection Bill [Lords], continued

- (b) to confer functions on a person, including functions involving the exercise of a discretion;
 - (c) to make different provision in relation to England and Wales and in relation to Northern Ireland.
- (4) The provision mentioned in subsection (3)(a) includes provision about—
- (a) the effect of judgments and orders;
 - (b) agreements to settle claims;
 - (c) the assessment of the amount of compensation;
 - (d) the persons to whom compensation may or must be paid, including compensation not claimed by the data subject;
 - (e) costs.
- (5) Regulations under this section are subject to the negative resolution procedure.”

Member's explanatory statement

This new clause confers power on the Secretary of State to make regulations enabling representative bodies (defined in Clause 183) to bring collective proceedings in England and Wales or Northern Ireland combining two or more claims in respect of data subjects' rights.

Margot James

NC2

To move the following Clause—

“Duty to review provision for representation of data subjects

- (1) Before the end of the review period, the Secretary of State must—
 - (a) review the matters listed in subsection (2) in relation to England and Wales and Northern Ireland,
 - (b) prepare a report of the review, and
 - (c) lay a copy of the report before Parliament.
- (2) Those matters are—
 - (a) the operation of Article 80(1) of the GDPR,
 - (b) the operation of section 183,
 - (c) the merits of exercising the power under Article 80(2) of the GDPR (power to enable a body or other organisation which meets the conditions in Article 80(1) of the GDPR to exercise some or all of a data subject's rights under Articles 77, 78 and 79 of the GDPR without being authorised to do so by the data subject), and
 - (d) the merits of making equivalent provision in relation to data subjects' rights under Article 82 of the GDPR (right to compensation).
- (3) “The review period” is the period of 30 months beginning when section 183 comes into force.
- (4) After the report under subsection (1) is laid before Parliament, the Secretary of State may by regulations—
 - (a) exercise the powers under Article 80(2) of the GDPR in relation to England and Wales and Northern Ireland, and
 - (b) make provision enabling a body or other organisation which meets the conditions in Article 80(1) of the GDPR to exercise a data subject's rights under Article 82 of the GDPR in England and Wales and Northern Ireland without being authorised to do so by the data subject.

Data Protection Bill [Lords], continued

- (5) The powers under subsection (4) include power—
- (a) to make provision enabling a data subject to prevent a body or other organisation from exercising, or continuing to exercise, the data subject's rights;
 - (b) to make provision about proceedings before a court or tribunal where a body or organisation exercises a data subject's rights,
 - (c) to make provision for bodies or other organisations to bring proceedings before a court or tribunal combining two or more claims in respect of a right of a data subject;
 - (d) to confer functions on a person, including functions involving the exercise of a discretion;
 - (e) to amend sections 164 to 166, 177, 183, 196, 198 and 199;
 - (f) to insert new sections and Schedules into Part 6 or 7;
 - (g) to make different provision in relation to England and Wales and in relation to Northern Ireland.
- (6) The provision mentioned in subsection (5)(b) and (c) includes provision about—
- (a) the effect of judgments and orders;
 - (b) agreements to settle claims;
 - (c) the assessment of the amount of compensation;
 - (d) the persons to whom compensation may or must be paid, including compensation not claimed by the data subject;
 - (e) costs.
- (7) Regulations under this section are subject to the affirmative resolution procedure.”

Member's explanatory statement

This new clause imposes a duty on the Secretary of State to review the operation of provisions enabling a representative body to exercise data subjects' rights with their authority in England and Wales and Northern Ireland and to consider exercising powers under the GDPR to enable a representative body to exercise such rights there without being authorised to do so by the data subjects.

Louise Haigh
Liam Byrne
Chris Elmore
Darren Jones

NC3

- ☆ To move the following Clause—

“Data protection impact assessment: intelligence services processing

- (1) Where a type of processing proposed under section 103(1) may result in a risk to the rights and freedoms of individuals, the controller must, prior to the processing, carry out a data protection impact assessment.
- (2) A data protection impact assessment is an assessment of the impact of the envisaged processing operations on the protection of personal data.
- (3) A data protection impact assessment must include the following—
 - (a) a general description of the envisaged processing operations;
 - (b) an assessment of the risks to the rights and freedoms of data subjects;
 - (c) the measures envisaged to address those risks;

Data Protection Bill [Lords], continued

- (d) safeguards, security measures and mechanisms to ensure the protection of personal data and to demonstrate compliance with this Part, taking into account the rights and legitimate interests of the data subjects and other persons concerned.
 - (4) In deciding whether a type of processing could result in a risk to the rights and freedoms of individuals, the controller must take into account the nature, scope, context and purposes of the processing.”
-

Louise Haigh
Liam Byrne
Chris Elmore
Darren Jones

NC4

☆ To move the following Clause—

“Prior consultation with the Commissioner: intelligence services processing

- (1) This section applies where a controller proposes that a particular type of processing of personal data be carried out under section 103(1).
- (2) The controller must consult the Commissioner prior to the processing if a data protection impact assessment prepared under section [Data protection impact assessment: intelligence services processing] indicates that the processing of the data could result in a risk to the rights and freedoms of individuals (in the absence of measures to mitigate the risk).
- (3) Where the controller is required to consult the Commissioner under subsection (2), the controller must give the Commissioner—
 - (a) the data protection impact assessment prepared under section [*Data protection impact assessment: intelligence services processing*], and
 - (b) any other information requested by the Commissioner to enable the Commissioner to make an assessment of the compliance of the processing with the requirements of this Part.
- (4) Where the Commissioner is of the opinion that the intended processing referred to in subsection (1) would infringe any provision of this Part, the Commissioner must provide written advice to the controller and, where the controller is using a processor, to the processor.
- (5) The written advice must be provided before the end of the period of 6 weeks beginning with receipt of the request for consultation by the controller or the processor.
- (6) The Commissioner may extend the period of 6 weeks by a further period of one month, taking into account the complexity of the intended processing.
- (7) If the Commissioner extends the period of 6 weeks, the Commissioner must—
 - (a) inform the controller and, where applicable, the processor of any such extension before the end of the period of one month beginning with receipt of the request for consultation, and
 - (b) provide reasons for the delay.
- (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

Data Protection Bill [Lords], continued

Commissioner may exercise powers of enforcement available to the Commissioner under Part 6 of this Act.”

Liam Byrne
Louise Haigh
Chris Elmore
Darren Jones

NC5

☆ To move the following Clause—

“Bill of Data Rights in the Digital Environment

Schedule [*Bill of Data Rights in the Digital Environment*] shall have effect.”

Member’s explanatory statement

This new clause would introduce a Bill of Data Rights in the Digital Environment.

Liam Byrne
Louise Haigh
Chris Elmore
Darren Jones

NC6

☆ To move the following Clause—

“Bill of Data Rights in the Digital Environment (No. 2)

- (1) The Secretary of State shall, by regulations, establish a Bill of Data Rights in the Digital Environment.
- (2) Before making regulations under this section, the Secretary of State shall—
 - (a) consult—
 - (i) the Commissioner,
 - (ii) trade associations,
 - (iii) data subjects, and
 - (iv) persons who appear to the Commissioner or the Secretary of State to represent the interests of data subjects; and
 - (b) publish a draft of the Bill of Rights.
- (3) The Bill of Data Rights in the Digital Environment shall enshrine—
 - (a) a right for a data subject to have privacy from commercial or personal intrusion,
 - (b) a right for a data subject to own, curate, move, revise or review their identity as founded upon personal data (whether directly or as a result of processing of that data),
 - (c) a right for a data subject to have their access to their data profiles or personal data protected, and
 - (d) a right for a data subject to object to any decision made solely on automated decision-making, including a decision relating to education and employment of the data subject.

Data Protection Bill [Lords], continued

- (4) Regulations under this section are subject to the affirmative resolution procedure.”

Member’s explanatory statement

This new clause would empower the Secretary of State to introduce a Bill of Data Rights in the Digital Environment.

Liam Byrne
Louise Haigh
Chris Elmore
Darren Jones

NC7

- ☆ To move the following Clause—

“Application of Equality Act (Services and public functions)

- (1) Part 3 (Services and public functions) of the Equality Act 2010 (‘the Equality Act’) shall apply to the processing of personal data by an algorithm or automated system in making or supporting a decision under this section.
- (2) A ‘decision’ in this section means a decision or any part of a decision that engages a data subject (D)’s rights, freedoms or legitimate interests concerning—
 - (a) the provision of services to the public and
 - (b) the exercise of public functions by a service-provider.
- (3) Nothing in this section detracts from other rights, freedoms or legitimate interests in this Act, the Equality Act or in any other primary or secondary legislation relating to D’s personal data, employment, social security or social protection.”

Member’s explanatory statement

This new clause would apply Part 3 of the Equality Act 2010 to the processing of personal data by an algorithm or automated system or supporting a decision under this new clause.

Liam Byrne
Louise Haigh
Chris Elmore
Darren Jones

NC8

- ☆ To move the following Clause—

“Application of the Equality Act (Employment)

- (1) Part 5 (Employment) of the Equality Act (‘the Equality Act’) shall apply to the processing of personal data by an algorithm or automated system in making or supporting a decision under this section.
- (2) A ‘decision’ in this section means a decision that engages a data subject (D)’s rights, freedoms or legitimate interests concerning—
 - (a) recruitment,
 - (b) the terms and conditions of employment,
 - (c) access to opportunities for promotion, transfer or training, and
 - (d) dismissal.

Data Protection Bill [Lords], continued

- (3) Nothing in this section detracts from other rights, freedoms or legitimate interests in this Act, the Equality Act or in any other primary or secondary legislation relating to D's personal data, employment, social security or social protection.

Member's explanatory statement

This new clause would apply Part 5 of the Equality Act 2010 to the processing of personal data by an algorithm or automated system or supporting a decision under this new clause.

Liam Byrne
Louise Haigh
Chris Elmore
Darren Jones

NC9

- ☆ To move the following Clause—

“Right to algorithmic fairness at work

- (1) A person (“P”) has the right to fair treatment in the processing of personal data by an algorithm or automated system in making a decision under this section.
- (2) A “decision” in this section means a decision in which an algorithm or automated system is deployed to support or make a decision or any part of that decision that engages P's rights, freedoms or legitimate interests concerning—
- (a) recruitment,
 - (b) the terms and conditions of employment,
 - (c) access to opportunities for promotion, transfer or training, and
 - (d) dismissal.
- (3) “Fair treatment” in this section means equal treatment between P and other data subjects relevant to the decision made under subsection (2) insofar as that is reasonably practicable with regard to the purpose for which the algorithm or automated system was designed or applied.
- (4) In determining whether treatment of P is “fair” under this section the following factors shall be taken into account—
- (a) the application of rights and duties under equality and other legislation in relation to any protected characteristics or trade union membership and activities,
 - (b) whether the algorithm or automated system has been designed and trained with due regard to equality of outcome,
 - (c) the extent to which the decision is automated,
 - (d) the factors and weighting of factors taken into account in determining the decision,
 - (e) whether consent has been sought for the obtaining, recording, using or disclosing of any personal data including data gathered through the use of social media, and
 - (f) any guidance issued by the Centre for Data Ethics and Innovation.
- (5) “Protected characteristics” in this section shall be the protected characteristics defined in section 4 of the Equality Act 2010.”

Member's explanatory statement

This new clause would create a right to fair treatment in the processing of personal data by an

Data Protection Bill [Lords], continued

algorithm or automated system in making a decision regarding recruitment, terms and conditions of employment, access to opportunities for promotion etc. and dismissal.

Liam Byrne
Louise Haigh
Chris Elmore
Darren Jones

NC10

☆ To move the following Clause—

“Employer’s duty to undertake an Algorithmic Impact Assessment

- (1) An employer, prospective employer or agent must undertake an assessment to review the impact of deploying the algorithm or automated system in making a decision to which subsection (1) of section [*Application of Equality Act (Employment)*] applies [an ‘Algorithmic Impact Assessment’].
- (2) The assessment undertaken under subsection (1) must—
 - (a) identify the purpose for which the algorithm or automated system was designed or applied,
 - (b) test for potential discrimination or other bias by the algorithm or automated system,
 - (c) consider measures to advance fair treatment of data subjects relevant to the decision, and
 - (d) take into account any tools for Algorithmic Impact Assessment published by the Centre for Data Ethics and Innovation.”

Member’s explanatory statement

This new clause would impose a duty upon employers to undertake an Algorithmic Impact Assessment.

Liam Byrne
Louise Haigh
Chris Elmore
Darren Jones

NC11

☆ To move the following Clause—

“Right to an explanation

- (1) A person (“P”) may request and is entitled to be provided with a written statement from an employer, prospective employer or agent giving the following particulars of a decision to which subsection (1) of section [*Right to algorithmic fairness at work*] applies—
 - (a) any procedure for determining the decision,
 - (b) the purpose and remit of the algorithm or automated system deployed in making the decision,
 - (c) the criteria or other meaningful information about the logic involved in determining the decision, and

Data Protection Bill [Lords], continued

- (d) the factors and weighting of factors taken into account in determining the decision.
- (2) P is entitled to a written statement within 14 days of a request made under subsection (1).
- (3) A complaint may be presented to an employment tribunal on the grounds that—
 - (a) a person or body has unreasonably failed to provide a written statement under subsection (1),
 - (b) the particulars given in purported compliance with subsection (1) are inadequate,
 - (c) an employer or agent has failed to comply with its duties under section [*Employer’s duty to undertake an Algorithmic Impact Assessment*],
 - (d) P has not been treated fairly under section [*Right to algorithmic fairness at work*].
- (4) Where an employment tribunal finds a complaint under this section well-founded the tribunal may—
 - (a) make a declaration giving particulars of unfair treatment,
 - (b) make a declaration giving particulars of any failure to comply with duties under section [*Employer’s duty to undertake an Algorithmic Impact Assessment*] or section [*Right to algorithmic fairness at work*],
 - (c) make a declaration as to the measures that ought to have been undertaken or considered so as to comply with the requirements of subsection (1) or section [*Employer’s duty to undertake an Algorithmic Impact Assessment*] or section [*Right to algorithmic fairness at work*],
 - (d) make an award of compensation as may be just and equitable.
- (5) An employment tribunal shall not consider a complaint presented under subsection (3) in a case where the decision to which the reference relates was made—
 - (a) before the end of the period of 3 months, or
 - (b) within such further period as the employment tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the application to be made before the end of that period of 3 months.
- (6) Nothing in this section detracts from other rights, freedoms or legitimate interests in this Bill or any other primary or secondary legislation relating to P’s personal data, employment, social security or social protection.”

Member’s explanatory statement

This new clause would create a right to an explanation in writing from an employer, prospective employer or agent giving the particulars of a decision to which the Right to algorithmic fairness at work applies.

Liam Byrne
 Louise Haigh
 Chris Elmore
 Darren Jones

NC12

☆ To move the following Clause—

“Right to protection of personal data

- (1) A person (“P”) has the right to protection of personal data concerning him or her.

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- (2) Personal data must be processed fairly for specified purposes as set out in the GDPR, and in accordance with the provisions, exceptions and derogations of this Act; and on the basis of the consent of P or some other legitimate basis.
- (3) The Information Commissioner shall be responsible for ensuring compliance with the rights contained within this section.”

Member’s explanatory statement

This new clause would incorporate Article 8 of the Charter of Fundamental Rights of the European Union (Protection of personal data) into the Bill.

Liam Byrne
Louise Haigh
Chris Elmore
Darren Jones

NC13

- ☆ To move the following Clause—

“Review of Electronic Commerce (EC Directive) Regulations

- (1) The Secretary of State shall lay before both Houses of Parliament a review of the application and operation of the Electronic Commerce (EC Directive) Regulations 2002 in relation to the processing of data.
- (2) A review under subsection (1) shall be laid before Parliament by 31 January 2019.”

Member’s explanatory statement

This new clause would order the Secretary of State to review the application and operation of the Electronic Commerce (EC Directive) Regulations 2002 in relation to the processing of data and lay that review before Parliament before 31 January 2019.

Liam Byrne
Louise Haigh
Chris Elmore
Darren Jones

NC14

- ☆ To move the following Clause—

“Subsequent transfers

- (1) Where personal data is transferred in accordance with section 109, the transferring controller must make it a condition of the transfer that the data is not to be further transferred to a third country or international organisation without the authorisation of the transferring controller.
- (2) A transferring controller may give an authorisation under subsection (1) only where the further transfer is necessary for the purposes in subsection (2).
- (3) In deciding whether to give the authorisation, the transferring controller must take into account (among any other relevant factors)—
 - (a) the seriousness of the circumstances leading to the request for authorisation,
 - (b) the purpose for which the personal data was originally transferred, and

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- (c) the standards for the protection of personal data that apply in the third country or international organisation to which the personal data would be transferred.”

Member’s explanatory statement

This new clause would place meaningful safeguards on the sharing of data by the intelligence agencies.

Liam Byrne
Louise Haigh
Chris Elmore
Darren Jones

NC15

- ☆ To move the following Clause—

“Automated number plate recognition

- (1) The Secretary of State shall issue a code of practice in connection with the operation by the police of automated number plate recognition systems.
- (2) Any code of practice under subsection (1) shall conform to section 67 of the Police and Criminal Evidence Act 1984.”

Member’s explanatory statement

This new clause requires the Secretary of State to issue a code of practice in connection with the operation by the police of automated number plate recognition systems.

Liam Byrne
Louise Haigh
Chris Elmore
Darren Jones

NC16

- ☆ To move the following Clause—

“Code on processing personal data in education

- (1) The Commissioner must consult on, prepare and publish a code of practice on standards to be followed in relation to the collection, processing, publication and other dissemination of personal data concerning children and pupils in connection with the provision of education services, which relates to the rights of data subjects, appropriate to their capacity and stage of education.
- (2) Before preparing a code or amendments under this section the Commissioner must consult the Secretary of State and such other persons as the Commissioner considers appropriate as set out in Clause 124 (3).
- (3) In preparing a code or amendments under this section, the Commissioner must have regard—
 - (a) that children have different capacity independent of age, including pupils who may be in provision up to the age of 25, and
 - (b) to the United Kingdom’s obligations under the United Nations Convention on the Rights of the Child, and United Nations Convention on the Rights of Persons with Disabilities.

Data Protection Bill [Lords], continued

- (4) For the purposes of subsection (1), “the rights of data subjects” must include—
- (a) measures related to Articles 24(3) (responsibility of the controller), 25 (data protection by design and by default) and 32(3) (security of processing) of the GDPR;
 - (b) safeguards and suitable measures with regard to Articles 22(2)(b) (automated individual decision-making, including profiling), Recital 71 (data subject rights on profiling as regard a child) and 23 (restrictions) of the GDPR;
 - (c) the rights of data subjects to object to or restrict the processing of their personal data collected during their education, under Articles 8 (child’s consent to Information Society Services), 21 (right to object to automated individual decision making, including profiling) and 18(2) (right to restriction of processing) of the GDPR;
 - (d) where personal data are biometric or special categories of personal data as described in Article 9(1) of the GDPR, the code should set out obligations on the controller and processor to register processing of this category of data with the Commissioner where it concerns a child, or pupil in education; and
 - (e) matters related to the understanding and exercising of rights relating to personal data and the provision of education services.”

Member’s explanatory statement

This new clause would require the Information Commissioner to consult on, prepare and publish a code of practice on standards to be followed in relation to the collection, processing, publication and other dissemination of personal data concerning children and pupils in connection with the provision of education services.

ORDER OF THE HOUSE [5 MARCH 2018]

That the following provisions shall apply to the Data Protection Bill [Lords]:

Committal

1. The Bill shall be committed to a Public Bill Committee.

Proceedings in Public Bill Committee

2. Proceedings in the Public Bill Committee shall (so far as not previously concluded) be brought to a conclusion on Tuesday 27 March 2018.
3. The Public Bill Committee shall have leave to sit twice on the first day on which it meets.

Proceedings on Consideration and up to and including Third Reading

4. Proceedings on Consideration and proceedings in legislative grand committee shall (so far as not previously concluded) be brought to a conclusion one hour before the moment of interruption on the day on which proceedings on Consideration are commenced.
5. Proceedings on Third Reading shall (so far as not previously concluded) be brought to a conclusion at the moment of interruption on that day.

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

6. Standing Order No. 83B (Programming committees) shall not apply to proceedings on Consideration and up to and including Third Reading.

Other proceedings

7. Any other proceedings on the Bill may be programmed.
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