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Committee Stage: Wednesday 17 May 2023

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# Data Protection and Digital Information (No. 2) Bill

## (Amendment Paper)

This document lists all amendments tabled to the Data Protection and Digital Information (No. 2) Bill. Any withdrawn amendments are listed at the end of the document. The amendments are arranged in the order in which it is expected they will be decided.

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

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**Stephanie Peacock**

**105**

Clause 25, page 44, line 6, leave out “must consult the Commissioner” and insert “must apply to the Commissioner for authorisation of the designation notice on the grounds that it satisfies subsection (1)(b).”

**Member's explanatory statement**

This amendment seeks to increase independent oversight of designation notices by replacing the requirement to consult the Commissioner with a requirement to seek the approval of the Commissioner.

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**Carol Monaghan**

**63**

Page 42, line 25, leave out Clause 25

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**Carol Monaghan**

**64**

Page 46, line 14, leave out Clause 26

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**Stephanie Peacock**

**106**

Clause 27, page 47, line 27, after “subjects”, insert “decision subjects,”

**Member's explanatory statement**

This amendment would require the ICO to have regard to decision subjects (see NC12) as well as data subjects as part of its obligations.

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**Stephanie Peacock****107**

Page 49, line 14, leave out Clause 28

**Member's explanatory statement**

This amendment would remove clause 28 so that the Commissioner would not have to have regard to a statement of strategic priorities set out by the Government.

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**Stephanie Peacock****108**

Clause 29, page 53, line 11, at end insert—

“(ba) decision subjects;”

**Member's explanatory statement**

This amendment, together with Amendments 109 and 110, would require codes of conduct produced by the ICO to have regard to decision subjects (see NC12) as well as data subjects.

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**Stephanie Peacock****109**

Clause 29, page 53, line 13, at end insert—

“(d) persons who appear to the Commissioner to represent the interests of decision subjects.”

**Member's explanatory statement**

See explanatory statement to Amendment 108.

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**Stephanie Peacock****110**

Clause 29, page 53, line 21, after “subjects”, insert “, decision subjects”

**Member's explanatory statement**

See explanatory statement to Amendment 108.

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**Stephanie Peacock****111**

Clause 31, page 56, line 30, leave out lines 30 and 31 and insert—

“(6) If the Commissioner submits a revised code under subsection (5)(b), the Secretary of State must approve the code.”

**Member's explanatory statement**

This amendment seeks to limit the ability of the Secretary of State to require the Commissioner to provide a revised code to only one occasion, after which the Secretary of State must approve the revised code.

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**Sir John Whittingdale**

**Gov 40**

Clause 32, page 57, line 16, leave out paragraphs (a) and (b) insert—

“(a) for the heading substitute “Vexatious or excessive requests”,

(b) before subsection (1) insert—

“(A1) This section makes provision about cases in which a request made to the Commissioner, to which the Commissioner is required or authorised to respond under the data protection legislation, is vexatious or excessive (see section 204A).”,

(ba) in subsection (1) omit the words from the beginning to “excessive”,

(bb) after subsection (1) insert—

“(1A) In subsection (1)—

(a) the reference in paragraph (a) to charging a reasonable fee is, in a case in which section 134 is relevant, a reference to doing so under that section, and

(b) paragraph (b) is not to be read as implying anything about whether the Commissioner may refuse to act on requests that are neither vexatious nor excessive.”,

**Member's explanatory statement**

This amendment adds further amendments of section 135 of the Data Protection Act 2018 to clause 32 to make clear that the Information Commissioner may refuse to deal with a vexatious or excessive request made by any person.

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**Sir John Whittingdale**

**Gov 41**

Clause 32, page 57, line 21, after “(3)” insert “—

“(i) for “(1)” substitute “(A1)”, and

(ii)”

**Member's explanatory statement**

This amendment is consequential on Amendment 40.

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**Sir John Whittingdale**

**Gov 47**

Clause 42, page 72, line 12, at end insert—

“(7A) In paragraph 13 (modification of section 155 (penalty notices)), in sub-paragraph (3)(c), for “for “data subjects”” there were substituted “for the words from “data subjects” to the end”.”

**Member's explanatory statement**

This amendment inserts an amendment of Schedule 2 to the EITSET Regulations which is consequential on the amendment of section 155(3)(c) of the Data Protection Act 2018 by Schedule 4 to the Bill.

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**Sir John Whittingdale**

**Gov 6**

Clause 58, page 84, line 5, after “55” insert “or (*Information disclosed by the Welsh Revenue Authority*)”

**Member's explanatory statement**

This amendment prevents the Secretary of State requesting a disclosure of information which would contravene the new clause inserted by NC3.

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**Sir John Whittingdale**

**Gov 7**

Clause 58, page 84, line 5, after “55” insert “or (*Information disclosed by Revenue Scotland*)”

**Member's explanatory statement**

This amendment prevents the Secretary of State requesting a disclosure of information which would contravene the new clause inserted by NC4.

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**Sir John Whittingdale**

**Gov 46**

Clause 61, page 85, line 24, after “supplied” insert “or provided”

**Member's explanatory statement**

The definition of “business data” in clause 61 refers to the supply or provision of goods, services and digital content. For consistency with that, this amendment amends an example given in the definition so that it refers to what is provided, as well as what is supplied.

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**Stephanie Peacock**

**112**

Clause 62, page 87, line 2, at end insert—

“(3A) The Secretary of State or the Treasury may only make regulations under this section if—

- (a) the Secretary of State or the Treasury has conducted an assessment of the impact the regulations may have on customers, businesses, or industry,
- (b) the assessment mentioned in paragraph (a) has been published, and
- (c) the assessment concludes that the regulations achieve their objective without imposing disproportionate, untargeted or unnecessary cost on customers or businesses."

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**Stephanie Peacock**

**113**

Clause 62, page 87, line 12, at end insert—

- "(5) The Secretary of State or the Treasury may invite a relevant sectoral regulator to contribute to, or to conduct, any impact assessment conducted in order to enable the Secretary of State or the Treasury to fulfil their obligation under subsection (4)."

**Member's explanatory statement**

This amendment would allow the Secretary of State or the Treasury to enable a relevant sectoral regulator to contribute to, or conduct, any impact assessments on smart data regulations.

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**Stephanie Peacock**

**114**

Clause 62, page 87, line 12, at end insert—

- "(5) The Secretary of State or the Treasury must consult representatives of the relevant business or industry sector to inform their decision whether to make regulations under this section."

**Member's explanatory statement**

This amendment would require the Secretary of State or the Treasury to consult representatives of the relevant business or industry sector before making smart data regulations.

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**Stephanie Peacock**

**115**

Clause 62, page 87, line 12, at end insert—

- "(5) Within six months of the passage of this Act, the Secretary of State must—
- (a) publish a target date for the coming into force of the first regulations under this section, and
  - (b) make arrangements for the completion of an assessment of the impact of those regulations."

**Member's explanatory statement**

This amendment would require Government to identify a target for a first smart data scheme within 6 months, and make arrangements for an impact assessment for these regulations.

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**Sir John Whittingdale**

**Gov 5**

Clause 78, page 100, line 30, after "86" insert "and [*Codes of conduct*]"

**Member's explanatory statement**

This amendment is consequential on NC2.

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**Sir John Whittingdale**

**Gov 48**

Clause 78, page 100, line 30, after "86" insert "and [*Pre-commencement consultation*]"

**Member's explanatory statement**

This amendment is consequential on NC7.

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**Stephanie Peacock**

**116**

Clause 79, page 101, line 15, leave out "making improvements to the service" and insert "making changes to the service which are intended to improve the user's experience"

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**Sir John Whittingdale**

**Gov 49**

Clause 79, page 102, leave out lines 21 to 23

**Member's explanatory statement**

Clause 79 amends regulation 6 of the PEC Regulations to create new exceptions from the prohibition on storing and accessing information in terminal equipment. New paragraph (2C) contains an exception for software updates that satisfy specified requirements. This amendment removes a requirement that the subscriber or user can object to the update and does not object.

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**Sir John Whittingdale**

**Gov 50**

Clause 79, page 102, line 25, leave out "disable or"

**Member's explanatory statement**

Clause 79 amends regulation 6 of the PEC Regulations to create new exceptions from the prohibition on storing and accessing information in terminal equipment. New paragraph (2C) contains an exception for software updates that satisfy specified requirements. This amendment removes a requirement for subscribers and users to be able to disable, not just postpone, the update.

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**Sir John Whittingdale**

**Gov 51**

Clause 79, page 102, leave out lines 27 to 29

**Member's explanatory statement**

Clause 79 amends regulation 6 of the PEC Regulations to create new exceptions from the prohibition on storing and accessing information in terminal equipment. New paragraph (2C) contains an exception for software updates that satisfy specified requirements. This amendment removes a requirement that, where the update takes effect, the subscriber or user can remove or disable the software.

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**Sir John Whittingdale**

**Gov 52**

Clause 79, page 104, line 20, leave out "or supplementary provision" and insert ", supplementary, transitional, transitory or saving provision, including provision"

**Member's explanatory statement**

This amendment provides that regulations under the new regulation 6A of the PEC Regulations, inserted by clause 79, can include transitional, transitory or saving provision.

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**Stephanie Peacock**

**117**

Clause 79, page 104, line 32, leave out from the beginning to end of line 38 on page 105

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**Sir John Whittingdale**

**Gov 53**

Clause 79, page 105, line 11, after "transitional" insert ", transitory"

**Member's explanatory statement**

This amendment makes clear that regulations under the new regulation 6B of the PEC Regulations, inserted by clause 79, can include transitory provision.

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**Sir John Whittingdale**

**Gov 54**

Clause 79, page 105, line 15, at end insert—

"(aa) the Competition and Markets Authority, and"

**Member's explanatory statement**

This amendment requires the Secretary of State to consult the Competition and Markets Authority before making regulations under regulation 6B of the PEC Regulations.

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**Sir John Whittingdale**

**Gov 55**

Clause 83, page 107, line 41, leave out "or transitional" and insert ", transitional, transitory or saving"

**Member's explanatory statement**

This amendment provides that regulations under clause 83 can make transitory or saving provision.

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**Sir John Whittingdale**

**Gov 31**

Clause 84, page 110, line 31, leave out “fourth day after” and insert “period of 30 days beginning with the day after”

**Member's explanatory statement**

Clauses 83 and 84 enable regulations to make exceptions from direct marketing rules in the PEC Regulations, including for certain processing by elected representatives. This amendment increases the period for which former members of the Westminster Parliament and the devolved legislatures continue to be treated as “elected representatives” following an election. See also NC6 and Amendment 30.

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**Sir John Whittingdale**

**Gov 56**

Clause 85, page 112, line 35, at end insert—

- “(13A) Regulations under paragraph (13) may make transitional provision.
- (13B) Before making regulations under paragraph (13), the Secretary of State must consult—
- (a) the Commissioner, and
  - (b) such other persons as the Secretary of State considers appropriate.”

**Member's explanatory statement**

This amendment enables regulations changing the amount of a fixed penalty under regulation 26B of the PEC Regulations to include transitional provision. It also requires the Secretary of State to consult the Information Commissioner and such other persons as the Secretary of State considers appropriate before making such regulations.

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**Stephanie Peacock**

**118**

Clause 85, page 113, line 3, at end insert—

- “(1A) Guidance under this section must—
- (a) make clear that a provider of a public electronic communications service is not obligated to monitor the content of individual electronic communications in order to determine whether those communications contravene the direct marketing regulations; and
  - (b) include illustrative examples of the grounds on which a provider may reasonably suspect that a person is contravening or has contravened any of the direct marketing regulations.”



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Sir John Whittingdale

Gov 33

Clause 85, page 113, line 28, at end insert—

“(4) After regulation 18 insert—

**“Direct marketing**

**18A—**(1) Regulations 19 to 26C make provision about direct marketing.

(2) See also section 83 of the Data Protection and Digital Information Act 2023 (which provides for regulations to make exceptions to regulations 19 to 24).”

**Member's explanatory statement**

This amendment inserts into the PEC Regulations provision introducing the regulations dealing with direct marketing (including regulations amended or inserted by the Bill) and cross-referring to the regulation-making power in clause 83 of the Bill.

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Sir John Whittingdale

Gov 57

Clause 86, page 113, line 38, at end insert—

“(13A) Regulations under paragraph (13) may make transitional provision.

(13B) Before making regulations under paragraph (13), the Secretary of State must consult—

- (a) the Information Commissioner, and
- (b) such other persons as the Secretary of State considers appropriate.”

**Member's explanatory statement**

This amendment enables regulations changing the amount of a fixed penalty under regulation 5C of the PEC Regulations to include transitional provision. It also requires the Secretary of State to consult the Information Commissioner and such other persons as the Secretary of State considers appropriate before making such regulations.

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Sir John Whittingdale

Gov 32

Schedule 10, page 180, line 25, leave out “for “data subjects”” and insert “for the words from “data subjects” to the end”

**Member's explanatory statement**

This amendment adjusts provision applying section 155(3)(c) of the Data Protection Act 2018 (penalty notices) for the purposes of the PEC Regulations to take account of the amendment of section 155(3)(c) by Schedule 4 to the Bill.

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Sir John Whittingdale

Gov 58

Schedule 10, page 183, line 5, at end insert “15”

**Member's explanatory statement**

This amendment inserts a missing Schedule number, so that the provision refers to Schedule 15 to the Data Protection Act 2018.

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**Sir John Whittingdale**

**Gov 8**

Clause 93, page 119, line 18, leave out first "Secretary of State" and insert "appropriate national authority"

**Member's explanatory statement**

This amendment, Amendment 10 and NC5 enable the regulation-making power conferred by clause 93 to be exercised concurrently by the Secretary of State and, in relation to devolved matters, by Scottish Ministers and Welsh Ministers.

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**Sir John Whittingdale**

**Gov 9**

Clause 93, page 119, line 18, leave out second "Secretary of State" and insert "authority"

**Member's explanatory statement**

This amendment is consequential on Amendment 8.

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**Sir John Whittingdale**

**Gov 10**

Clause 93, page 119, line 36, at end insert—

""appropriate national authority" has the meaning given in section (*Meaning of "appropriate national authority"*);"

**Member's explanatory statement**

See the explanatory statement for Amendment 8.

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**Sir John Whittingdale**

**Gov 44**

Schedule 13, page 195, line 21, after "members" insert "or in accordance with paragraph 23A"

**Member's explanatory statement**

This amendment is consequential on Amendment 45.

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**Sir John Whittingdale**

**Gov 45**

Schedule 13, page 204, line 6, at end insert—

*“Transitional provision: interim chief executive*

- 23A(1) The first chief executive of the Commission is to be appointed by the chair of the Commission.
- (2) Before making the appointment the chair must consult the Secretary of State.
  - (3) The appointment must be for a term of not more than 2 years.
  - (4) The chair may extend the term of the appointment but not so the term as extended is more than 2 years.
  - (5) For the term of appointment, the person appointed under sub-paragraph (1) is “the interim chief executive”.
  - (6) Until the expiry of the term of appointment, the powers conferred on the non-executive members by paragraph 11(2) and (3) are exercisable in respect of the interim chief executive by the chair (instead of by the non-executive members).
  - (7) In sub-paragraphs (5) and (6), the references to the term of appointment are to the term of appointment described in sub-paragraph (3), including any extension of the term under sub-paragraph (4).”

**Member's explanatory statement**

The Bill establishes the Information Commission. This new paragraph enables the chair of the new body, in consultation with the Secretary of State, to appoint the first chief executive (as opposed to the appointment being made by non-executive members). It also enables the chair to determine the terms and conditions, pay, pensions etc relating to the appointment.

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**Stephanie Peacock**

**119**

Clause 106, page 130, line 7, leave out “which allows or confirms the unique identification of that individual”

**Member's explanatory statement**

This amendment is intended to ensure that the definition of biometric data in the Bill includes cases where that data is used for the purposes of classification (and not just unique identification).

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**Sir John Whittingdale**

**Gov 11**

Clause 108, page 131, line 2, after “Act” insert “made by the Secretary of State, the Treasury or the Welsh Ministers”

**Member's explanatory statement**

This amendment is consequential on Amendments 8 and 10 and NC5.

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**Sir John Whittingdale**

**Gov 12**

Clause 108, page 131, line 2, at end insert—

“(1A) For regulations under this Act made by the Scottish Ministers, see section 27 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10) (Scottish statutory instruments).”

**Member's explanatory statement**

This amendment is consequential on Amendments 8 and 10 and NC5.

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**Sir John Whittingdale**

**Gov 13**

Clause 108, page 131, line 3, after “Act” insert “made by the Secretary of State or the Treasury”

**Member's explanatory statement**

This amendment is consequential on Amendments 8 and 10 and NC5.

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**Sir John Whittingdale**

**Gov 14**

Clause 108, page 131, line 8, after “procedure” insert “—

(a) if made by the Secretary of State or the Treasury,”

**Member's explanatory statement**

This amendment is consequential on Amendments 8 and 10 and NC5.

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**Sir John Whittingdale**

**Gov 15**

Clause 108, page 131, line 9, at end insert—

“(b) if made by the Scottish Ministers, the regulations are subject to the negative procedure (see section 28 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10));

(c) if made by the Welsh Ministers, the statutory instrument containing the regulations is subject to annulment in pursuance of a resolution of Senedd Cymru.”

**Member's explanatory statement**

This amendment is consequential on Amendments 8 and 10 and NC5. It makes provision about the meaning of the negative resolution procedure in connection with regulations made by Scottish Ministers or Welsh Ministers.

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Sir John Whittingdale

Gov 16

Clause 108, page 131, line 10, after “Act” insert “made by the Secretary of State or the Treasury”

**Member's explanatory statement**

This amendment is consequential on Amendments 8 and 10 and NC5.

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Sir John Whittingdale

Gov NC1

To move the following Clause—

**“General processing and codes of conduct**

In Article 41 of the UK GDPR (monitoring of approved codes of conduct)—

- (a) in paragraph 4, omit the words from “, including suspension” to the end, and
- (b) after that paragraph insert—

“4A. If the action taken by a body under paragraph 4 consists of suspending or excluding a controller or processor from the code, the body must inform the Commissioner, giving reasons for taking that action.””

**Member's explanatory statement**

This new clause clarifies that bodies accredited under Article 41 of the UK GDPR to monitor compliance with codes of conduct under Article 40 are only required to notify the Information Commissioner if they suspend or exclude a person from a code.

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Sir John Whittingdale

Gov NC2

To move the following Clause—

**“Codes of conduct**

- (1) The PEC Regulations are amended as follows.
- (2) After regulation 32 insert—

**“Codes of conduct**

**32A**—(1) The Commissioner must encourage representative bodies to produce codes of conduct intended to contribute to compliance with these Regulations.

(2) Under paragraph (1), the Commissioner must encourage representative bodies to produce codes which take account of, among other things, the specific features of different sectors.

(3) A code of conduct described in paragraph (1) may, for example, make provision with regard to—

- (a) rights and obligations under these Regulations;
  - (b) out-of-court proceedings and other dispute resolution procedures for resolving disputes arising in connection with these Regulations.
- (4) The Commissioner must encourage representative bodies to submit codes of conduct described in paragraph (1) to the Commissioner in draft.
- (5) Where a representative body does so, the Commissioner must—
- (a) provide the representative body with an opinion on whether the code correctly reflects the requirements of these Regulations,
  - (b) decide whether to approve the code, and
  - (c) if the code is approved, register and publish the code.
- (6) The Commissioner may only approve a code if, among other things—
- (a) the code contains a mechanism for monitoring whether persons who undertake to apply the code comply with its provisions, and
  - (b) in relation to persons other than public bodies, the mechanism involves monitoring by a body which is accredited for that purpose by the Commissioner under regulation 32B.
- (7) In relation to amendments of a code of conduct that is for the time being approved under this regulation—
- (a) paragraphs (4) and (5) apply as they apply in relation to a code, and
  - (b) the requirements in paragraph (6) must be satisfied by the code as amended.
- (8) A code of conduct described in paragraph (1) may be contained in the same document as a code of conduct described in Article 40 of the UK GDPR (and a provision contained in such a document may be a provision of both codes).
- (9) In this regulation—
- “public body” has the meaning given in section 7 of the Data Protection Act 2018 (for the purposes of the UK GDPR);
- “representative body” means an association or other body representing categories of—
- (a) communications providers, or
  - (b) other persons engaged in activities regulated by these Regulations;
- “the UK GDPR” has the meaning given in section 3(10) of the Data Protection Act 2018.

### **Accreditation of bodies monitoring compliance with codes of conduct**

**32B.—**(1) The Commissioner may, in accordance with this regulation, accredit a body for the purpose of monitoring whether persons other than public bodies comply with a code of conduct described in regulation 32A(1).

(2) The Commissioner may accredit a body only where the Commissioner is satisfied that the body has—

- (a) demonstrated its independence,

- (b) demonstrated that it has an appropriate level of expertise in relation to the subject matter of the code,
- (c) established procedures which allow it—
  - (i) to assess a person's eligibility to apply the code,
  - (ii) to monitor compliance with the code, and
  - (iii) to review the operation of the code periodically,
- (d) established procedures and structures to handle complaints about infringements of the code or about the manner in which the code has been, or is being, implemented by a person,
- (e) made arrangements to publish information about the procedures and structures described in sub-paragraph (d), and
- (f) demonstrated that it does not have a conflict of interest.

(3) The Commissioner must prepare and publish guidance about how the Commissioner proposes to take decisions about accreditation under this regulation.

(4) A body accredited under this regulation in relation to a code must take appropriate action where a person infringes the code.

(5) If the action taken by a body under paragraph (4) consists of suspending or excluding a person from the code, the body must inform the Commissioner, giving reasons for taking that action.

(6) The Commissioner must revoke the accreditation of a body under this regulation if the Commissioner considers that the body—

- (a) no longer meets the requirements for accreditation, or
- (b) has failed, or is failing, to comply with paragraph (4) or (5).

(7) In this regulation, "public body" has the same meaning as in regulation 32A.

### **Effect of codes of conduct**

**32C.** Adherence to a code of conduct approved under regulation 32A may be used by a person as a means of demonstrating compliance with these Regulations."

- (3) In regulation 33 (technical advice to the Commissioner)—
  - (a) omit ", in connection with his enforcement functions," and
  - (b) at the end insert "where the request is made in connection with—
    - (a) the Commissioner's enforcement functions, or
    - (b) the Commissioner's functions under regulation 32A or 32B (codes of conduct)."
- (4) In Schedule 1 (Information Commissioner's enforcement powers) (inserted by Schedule 10 to this Act), in paragraph 18(b)(ii) (maximum amount of penalty), for "or 24" substitute ", 24 or 32B(4) or (5)".

**Member's explanatory statement**

This new clause inserts provision requiring the Information Commissioner to encourage representative bodies to prepare codes of conduct relating to compliance with the PEC Regulations and makes provision about the content of such codes.

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Sir John Whittingdale

Gov NC3

To move the following Clause—

**“Information disclosed by the Welsh Revenue Authority**

- (1) This section applies where the Welsh Revenue Authority discloses personal information to a person under section 54 for the purpose of enabling the person to provide digital verification services for an individual.
- (2) The person must not further disclose the information otherwise than for the purpose of providing digital verification services for the individual, except with the consent of the Welsh Revenue Authority.
- (3) Any other person who receives the information, whether directly or indirectly from the person to whom the Welsh Revenue Authority discloses the information, must not further disclose the information, except with the consent of the Welsh Revenue Authority.
- (4) A person who discloses information in contravention of subsection (2) or (3) commits an offence.
- (5) It is a defence for a person charged with an offence under subsection (4) to prove that the person reasonably believed—
  - (a) that the disclosure was lawful, or
  - (b) that the information had already lawfully been made available to the public.
- (6) A person who commits an offence under subsection (4) is liable—
  - (a) on summary conviction in England and Wales, to imprisonment for a term not exceeding the general limit in a magistrates' court or a fine (or both);
  - (b) on summary conviction in Scotland, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both);
  - (c) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum (or both);
  - (d) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both).
- (7) In this section, “personal information” means information relating to a person whose identity—
  - (a) is specified in the information, or
  - (b) can be deduced from it.”



**Member's explanatory statement**

If the Welsh Revenue Authority discloses information under clause 54, this new clause prevents further disclosure of that information without the consent of the Welsh Revenue Authority.

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Sir John Whittingdale

Gov NC4

To move the following Clause—

**“Information disclosed by Revenue Scotland**

- (1) This section applies where Revenue Scotland discloses personal information to a person under section 54 for the purpose of enabling the person to provide digital verification services for an individual.
- (2) The person must not further disclose the information otherwise than for the purpose of providing digital verification services for the individual, except with the consent of Revenue Scotland.
- (3) Any other person who receives the information, whether directly or indirectly from the person to whom Revenue Scotland discloses the information, must not further disclose the information, except with the consent of Revenue Scotland.
- (4) A person who discloses information in contravention of subsection (2) or (3) commits an offence.
- (5) It is a defence for a person charged with an offence under subsection (4) to prove that the person reasonably believed—
  - (a) that the disclosure was lawful, or
  - (b) that the information had already lawfully been made available to the public.
- (6) A person who commits an offence under subsection (4) is liable—
  - (a) on summary conviction in England and Wales, to imprisonment for a term not exceeding the general limit in a magistrates' court or a fine (or both);
  - (b) on summary conviction in Scotland, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both);
  - (c) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum (or both);
  - (d) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both).
- (7) In this section, “personal information” means information relating to a person whose identity—
  - (a) is specified in the information, or
  - (b) can be deduced from it.”

**Member's explanatory statement**

If Revenue Scotland discloses information under clause 54, this new clause prevents further disclosure of that information without the consent of Revenue Scotland.

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Sir John Whittingdale

Gov NC5

To move the following Clause—

**“Meaning of “appropriate national authority”**

- (1) In section 93, “appropriate national authority” means the Secretary of State, subject as follows.
- (2) The Scottish Ministers are also an appropriate national authority in relation to regulations under section 93 which contain only provision which would be within the legislative competence of the Scottish Parliament if contained in an Act of that Parliament.
- (3) The Welsh Ministers are also an appropriate national authority in relation to regulations under section 93 which contain only provision which would be within the legislative competence of Senedd Cymru if contained in an Act of the Senedd (ignoring any requirement for the consent of a Minister of the Crown).
- (4) The consent of a Minister of the Crown is required before any provision is made by the Welsh Ministers in regulations under section 93 so far as that provision, if contained in an Act of Senedd Cymru, would require the consent of a Minister of the Crown.
- (5) In Schedule 7B to the Government of Wales Act 2006 (general restrictions on legislative competence of Senedd Cymru), in paragraph 11(6)(b) (exceptions to restrictions relating to Ministers of the Crown)—
  - (a) omit the “or” at the end of sub-paragraph (viii), and
  - (b) after sub-paragraph (ix) insert “; or
    - (x) section 93 of the Data Protection and Digital Information Act 2023.”
- (6) In this section, “Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975.”

**Member's explanatory statement**

This new clause makes provision about the exercise of the regulation-making power conferred by clause 93 on the Secretary of State, Scottish Ministers and Welsh Ministers. See also Amendments 8, 9 and 10.

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Sir John Whittingdale

Gov NC6

To move the following Clause—

**“Special categories of personal data: elected representatives responding to requests**

In paragraph 23 of Schedule 1 to the 2018 Act (special categories of personal data: elected representatives responding to requests), in sub-paragraph (4), for “fourth day after” substitute “period of 30 days beginning with the day after”.

**Member's explanatory statement**

Schedule 1 to the Data Protection Act 2018 includes provision about certain processing of special categories of personal data by elected representatives. This new clause increases the period for which former members of the Westminster Parliament and the devolved legislatures continue to be treated as “elected representatives” following an election. See also Amendments 30 and 31.

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Sir John Whittingdale

Gov NC7

To move the following Clause—

**“Pre-commencement consultation**

- (1) A requirement to consult under section 83 may be satisfied by consultation before, as well as by consultation after, that section comes into force.
- (2) A requirement to consult under a provision inserted into the PEC Regulations by any of sections 79 to 86 may be satisfied by consultation before, as well as by consultation after, the provision inserting that provision comes into force.”

**Member's explanatory statement**

This new clause provides that requirements imposed by the Bill to consult under or in connection with the PEC Regulations can be satisfied by consultation which takes place before the relevant provision of the Bill comes into force.

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Stephanie Peacock

NC8

To move the following Clause—

**“Processing of special categories of personal data: biometric data**

- (1) Article 9 of UK GDPR is amended as follows.
- (2) In paragraph (1), after “biometric data”, omit “for the purpose of uniquely identifying a natural person.”

**Member's explanatory statement**

This new clause would extend the same protections that are currently in place for the processing of biometric data for the purposes of identification to the processing of all biometric data, including

if the processing is for the purpose of classification (i.e. identification as part of a group, rather than identification as an individual).

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**Stephanie Peacock**

**NC9**

To move the following Clause—

**“Transparency in use of algorithmic tools**

- (1) The Secretary of State must by regulations make provision requiring Government departments, public authorities and Government contractors using algorithmic tools to process personal data to use the UK Algorithmic Transparency Standard.
- (2) The UK Algorithmic Transparency Standard (“the Standard”) is the standard published by the Central Digital and Data Office and Centre for Data Ethics and Innovation as part of the Government’s National Data Strategy.
- (3) Regulations under subsection (1) must require the publication of the information required by the Standard.
- (4) Regulations under subsection (1) may provide for exemptions to the requirement for publication where necessary—
  - (a) to avoid obstructing an official or legal inquiry, investigation or procedure,
  - (b) to avoid prejudicing the prevention, detection, investigation or prosecution of criminal offences or the execution of criminal penalties,
  - (c) to protect public security, or
  - (d) to safeguard national security.”

**Member's explanatory statement**

This new clause puts legislative obligation on public bodies using personal data to use the UK Algorithmic Transparency Standard.

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**Stephanie Peacock**

**NC10**

To move the following Clause—

**“Provision about representation of data subjects**

- (1) Section 190 of the Data Protection Act 2018 is amended as follows.
- (2) In subsection (1), leave out “After the report under section 189(1) is laid before Parliament, the Secretary of State may” and insert “The Secretary of State must, within three months of the passage of the Data Protection and Digital Information Act 2023, ”.

**Member's explanatory statement**

This new clause would require the Secretary of State to exercise powers under s190 DPA2018 to allow organisations to raise data breach complaints on behalf of data subjects generally, in the

absence of a particular subject who wishes to bring forward a claim about misuse of their own personal data.

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**Stephanie Peacock**

**NC11**

To move the following Clause—

**“Privacy enhancing technologies**

- (1) Within six months of the passage of this Act, the Secretary of State must publish and lay before Parliament a report on the potential impact of privacy enhancing technologies on the use and protection of personal data.
- (2) “Privacy enhancing technologies” are software and hardware systems encompassing technical processes, methods or knowledge to achieve specific privacy or data protection functionality or to protect against risks of privacy of an individual or a group of natural persons.”

**Member's explanatory statement**

This new clause would require the Secretary of State to publish a report on the potential impact of Privacy Enhancing Technologies.

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**Stephanie Peacock**

**NC12**

To move the following Clause—

**“Decision subjects**

- (1) The UK GDPR is amended as follows.
- (2) In Article 4, after paragraph (A1), insert—  
“(A1A) \*decision subject” means an identifiable individual who is subject to data-based and automated decision making;””

**Member's explanatory statement**

This new clause would provide a definition of “decision subjects”, enabling them to be given rights similar to those given to data subjects (see, for example, Amendment 78).

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**Stephanie Peacock**

**NC13**

To move the following Clause—

**“Oversight of biometric technology use by the Information Commission**

- (1) The Information Commission must establish a Biometrics Office.
- (2) The Biometrics Office is to consist of a committee of three commissioners with relevant expertise, appointed by the Commission.
- (3) The functions of the Biometrics Office are—

- (a) to establish and maintain a public register of relevant entities engaged in processing biometric data;
  - (b) to oversee and review the biometrics use of relevant entities;
  - (c) to produce a Code of Practice for the use of biometric technology by registered parties, which must include—
    - (i) compulsory standards of accuracy and reliability for biometric technologies,
    - (ii) a requirement for the proportionality of biometrics use to be assessed prior to use and annually thereafter, and a procedure for such assessment, and
    - (iii) a procedure for individual complaints about the use of biometrics by registered parties;
  - (d) to receive and publish annual reports from all relevant entities, which must include the relevant entity's proportionality assessment of their biometrics use;
  - (e) to enforce registration and reporting by the issuing of enforcement notices and, where necessary, the imposition of fines for non-compliance with the registration and reporting requirements;
  - (f) to ensure lawfulness of biometrics use by relevant entities, including issuing compliance and abatement notices where necessary.
- (4) The Secretary of State may by regulations add to the responsibilities of the Biometrics Office.
- (5) Regulations made under subsection (4) are subject to the affirmative resolution procedure.
- (6) For the purposes of this Part—
- "biometric data " has the meaning given by section 106 of this Act (see subsection 13);
  - "relevant entity" means any organisation or body corporate (whether public or private) which processes biometric data, other than where the biometric processing undertaken by the organisation or body corporate is otherwise overseen by the Investigatory Powers Commissioner, because it is—
    - (a) for the purposes of making or renewing a national security determination as defined by s.20(2) Protection of Freedoms Act 2012; or
    - (b) for the purposes set out in s.20(6) Protection of Freedoms Act 2012."

#### **Member's explanatory statement**

This new clause, together with NC14 and NC15, are intended to form a new Part of the Bill which creates a mechanism for the Information Commission to oversee biometric technology use by private parties.

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Stephanie Peacock

NC14

To move the following Clause—

**“Requirement to register with the Information Commission**

- (1) Any relevant entity intending to process biometric data for purposes other than those contained in section 20(2) and section 20(6) of the Protection of Freedoms Act 2012 must register with the Information Commission prior to the deployment of the biometric technology.
- (2) An application for registration must include an explanation of the intended biometrics use, including an assessment of its proportionality and its extent.
- (3) All relevant entities must provide an annual report to the Biometrics Office addressing their processing of biometric data in the preceding year and their intended processing of biometrics in the following year .
- (4) Each annual report must contain a proportionality assessment of the relevant entity’s processing of biometric data in the preceding year and intended processing of biometric data in the following year.
- (5) Any relevant entity which processes biometric data without having registered with the Information Commission, or without providing annual reports to the Biometrics Office, is liable to an unlimited fine imposed by the Information Commission.”

**Member's explanatory statement**

See explanatory statement to NC13.

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Stephanie Peacock

NC15

To move the following Clause—

**Private biometrics use prior to entry into force of the Act**

Any relevant entity engaged in processing biometric data other than for the purposes contained in section 20(2) and section 20(6) of the Protection of Freedoms Act 2012 prior to the entry into force of this Part must register with the Information Commission in accordance with section [*Requirement to register with the Information Commission*] within six months of the date of entry into force of this Part; and subsection (5) of that section does not apply to such an entity during that period.”

**Member's explanatory statement**

See explanatory statement to NC13. This new clause would provide a transitional period of six months for entities which were already engaged in the processing of biometric data to register with the Commission.

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Jane Hunt

NC16

☆ To move the following Clause—

**“Processing of data in relation to a case-file prepared by the police service for submission to the Crown Prosecution Service for a charging decision**

- (1) The 2018 Act is amended in accordance with subsection (2).
- (2) In the 2018 Act, after section 40 insert—

**“40A Processing of data in relation to a case-file prepared by the police service for submission to the Crown Prosecution Service for a charging decision**

- (1) This section applies to a set of processing operations consisting of the preparation of a case-file by the police service for submission to the Crown Prosecution Service for a charging decision, the making of a charging decision by the Crown Prosecution Service, and the return of the case-file by the Crown Prosecution Service to the police service after a charging decision has been made.
- (2) The police service is not obliged to comply with the first data protection principle except insofar as that principle requires processing to be fair, or the third data protection principle, in preparing a case-file for submission to the Crown Prosecution Service for a charging decision.
- (3) The Crown Prosecution Service is not obliged to comply with the first data protection principle except insofar as that principle requires processing to be fair, or the third data protection principle, in making a charging decision on a case-file submitted for that purpose by the police service.
- (4) If the Crown Prosecution Service decides that a charge will not be pursued when it makes a charging decision on a case-file submitted for that purpose by the police service it must take all steps reasonably required to destroy and delete all copies of the case-file in its possession.
- (5) If the Crown Prosecution Service decides that a charge will be pursued when it makes a charging decision on a case-file submitted for that purpose by the police service it must return the case-file to the police service and take all steps reasonably required to destroy and delete all copies of the case-file in its possession.
- (6) Where the Crown Prosecution Service decides that a charge will be pursued when it makes a charging decision on a case-file submitted for that purpose by the police service and returns the case-file to the police service under subsection (5), the police service must comply with the first data protection principle and the third data protection principle in relation to any subsequent processing of the data contained in the case-file.
- (7) For the purposes of this section—
  - (a) The police service means—
    - (i) constabulary maintained by virtue of an enactment, or



- (ii) subject to section 126 of the Criminal Justice and Public Order Act 1994 (prison staff not to be regarded as in police service), any other service whose members have the powers or privileges of a constable.
- (b) The preparation of, or preparing, a case-file by the police service for submission to the Crown Prosecution Service for a charging decision includes the submission of the file.
- (c) A case-file includes all information obtained by the police service for the purpose of preparing a case-file for submission to the Crown Prosecution Service for a charging decision." "

**Member's explanatory statement**

This new clause adjusts Section 40 of the Data Protection Act 2018 to exempt the police service and the Crown Prosecution Service from the first and third data protection principles contained within the 2018 Act so that they can share unredacted data with one another when making a charging decision.

## Order of the House

[17 April 2023]

That the following provisions shall apply to the Data Protection and Digital Information (No. 2) Bill:

**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 13 June 2023.
3. The Public Bill Committee shall have leave to sit twice on the first day on which it meets.

**Consideration and Third Reading**

4. Proceedings on Consideration shall (so far as not previously concluded) be brought to a conclusion one hour before the moment of interruption on the day on which those proceedings 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.
6. Standing Order No. 83B (Programming committees) shall not apply to proceedings on Consideration and Third Reading.

**Other proceedings**

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

## Order of the Committee

[10 May 2023]

That—

1. the Committee shall (in addition to its first meeting at 9.25 am on Wednesday 10 May) meet—
  - (a) at 2.00 pm on Wednesday 10 May;
  - (b) at 9.25 am and 2.00 pm on Tuesday 16 May;
  - (c) at 11.30 am and 2.00 pm on Thursday 18 May;
  - (d) at 9.25 am and 2.00 pm on Tuesday 23 May;
  - (e) at 9.25 am and 2.00 pm on Tuesday 6 June;
  - (f) at 11.30 am and 2.00 pm on Thursday 8 June;
  - (g) at 9.25 am and 2.00 pm on Tuesday 13 June;
2. the Committee shall hear oral evidence in accordance with the following Table:

Date	Time	Witness
Wednesday 10 May	Until no later than 9.55 am	Information Commissioner's Office
Wednesday 10 May	Until no later than 10.25 am	Hogan Lovells; London Stock Exchange Group; Centre for Information Policy Leadership
Wednesday 10 May	Until no later than 10.50 am	techUK; Data & Marketing Association
Wednesday 10 May	Until no later than 11.25 am	Connected by Data; Institute for the Future of Work; Ada Lovelace Institute
Wednesday 10 May	Until no later than 2.25 pm	Medtronic; UK Biobank
Wednesday 10 May	Until no later than 2.50 pm	ZILO; UK Finance
Wednesday 10 May	Until no later than 3.05 pm	Better Hiring Institute

Date	Time	Witness
Wednesday 10 May	Until no later than 3.30 pm	National Crime Agency; Metropolitan Police
Wednesday 10 May	Until no later than 3.55 pm	Prospect; Trades Union Congress
Wednesday 10 May	Until no later than 4.25 pm	Public Law Project; Law Society of Scotland; Rights and Security International
Wednesday 10 May	Until no later than 4.40 pm	AWO

3. proceedings on consideration of the Bill in Committee shall be taken in the following order: Clauses 1 to 5; Schedule 1; Clause 6; Schedule 2; Clauses 7 to 11; Schedule 3; Clauses 12 to 20; Schedule 4; Clause 21; Schedules 5 to 7; Clauses 22 to 41; Schedule 8; Clauses 42 to 45; Schedule 9; Clauses 46 to 86; Schedule 10; Clauses 87 to 98; Schedule 11; Clause 99; Schedule 12; Clause 100; Schedule 13; Clauses 101 to 114; new Clauses; new Schedules; remaining proceedings on the Bill;
4. the proceedings shall (so far as not previously concluded) be brought to a conclusion at 5.00 pm on Tuesday 13 June.