

Digital Economy Bill

AMENDMENTS
TO BE MOVED
IN COMMITTEE OF THE WHOLE HOUSE

After Clause 35

LORD COLLINS OF Highbury
LORD STEVENSON OF BALMACARA

Insert the following new Clause –

“Public register of information disclosures

- (1) No disclosure of information by a public authority under Part 5 shall be lawful unless detailed by an entry in a public register.
- (2) Each entry in the register must contain, or include information on –
 - (a) the uniform resource locator of the entry,
 - (b) the purpose of the disclosure,
 - (c) the specific information to be disclosed,
 - (d) the data controllers and data processors involved in the sharing of the information,
 - (e) any exchange of letters between the data controllers on the disclosure,
 - (f) any other information deemed relevant.
- (3) In this section, “uniform resource locator” means a standardised naming convention for entries made in a public register.”

Insert the following new Clause –

“Personal data breaches

- (1) The Data Protection Act 1998 is amended as follows.
- (2) After section 24 insert –

“24A Personal data breaches: notification to the Commissioner

- (1) In this section, section 24B and section 24C “personal data breach” means unauthorised or unlawful processing of personal data or accidental loss or destruction of, or damage to, personal data.
- (2) Subject to subsections (3), (4)(c) and (4)(d), if a personal data breach occurs, the data controller in respect of the personal data concerned in that breach shall, without undue delay, notify the breach to the Commissioner.

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- (3) The notification referred to in subsection (2) is not required to the extent that the personal data concerned in the personal data breach are exempt from the seventh data protection principle.
- (4) The Secretary of State may by regulations –
 - (a) prescribe matters which a notification under subsection (2) must contain;
 - (b) prescribe the period within which, following detection of a personal data breach, a notification under subsection (2) must be given;
 - (c) provide that subsection (2) shall not apply to certain data controllers;
 - (d) provide that subsection (2) shall not apply to personal data breaches of a particular description or descriptions.

24B Personal data breaches: notification to the data subject

- (1) Subject to subsections (2), (3), (4), (6)(b) and (6)(c), if a personal data breach is likely to adversely affect the personal data or privacy of a data subject, the data controller in respect of the personal data concerned in that breach shall, without undue delay, notify the breach to the data subject concerned, insofar as it is reasonably practicable to do so.
- (2) The notification referred to in subsection (1) is not required to the extent that the personal data concerned in the personal data breach are exempt from the seventh data protection principle.
- (3) The notification referred to in subsection (1) is not required to the extent that the personal data concerned in the personal data breach are exempt from section 7(1).
- (4) The notification referred to in subsection (1) is not required if the data controller has demonstrated, to the satisfaction of the Commissioner –
 - (a) that the data controller has implemented appropriate measures which render the data unintelligible to any person who is not authorised to access it; and
 - (b) that those measures were applied to the data concerned in that personal data breach.
- (5) If the data controller has not notified the data subject in compliance with subsection (1), the Commissioner may, having considered the likely adverse effects of the personal data breach, require the data controller to do so.
- (6) The Secretary of State may by regulations –
 - (a) prescribe matters which a notification under subsection (1) must contain;
 - (b) provide that subsection (1) shall not apply to certain data controllers;
 - (c) provide that subsection (1) shall not apply to personal data breaches of a particular description or descriptions.

24C Personal data breaches: audit

- (1) Data controllers shall maintain an inventory of personal data breaches comprising –
 - (a) the facts surrounding the breach;

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- (b) the effects of that breach; and
 - (c) remedial action taken;

which shall be sufficient to enable the Commissioner to verify compliance with the provisions of sections 24A and 24B.

The inventory shall only include information necessary for this purpose.
- (2) The Commissioner may audit the compliance of data controllers with the provisions of sections 24A, 24B and 24C(1)."
- (3) In section 40 (Enforcement notices) –
 - (a) in subsection (1) –
 - (i) after “data protection principles,” insert “or section 24A, 24B or 24C”;
 - (ii) for “principle or principles” substitute “principle, principles, section or sections”;
 - (b) in subsection (6)(a) after “principles” insert “or the section or sections”.
- (4) In section 41 (cancellation of enforcement notice) –
 - (a) in subsection (1) after “principles” insert “or the section or sections”;
 - (b) in subsection (2) after “principles” insert “or the section or sections”.
- (5) In section 41A (Assessment notices) –
 - (a) in subsection (1) after “data protection principles” insert “or section 24A, 24B or 24C”;
 - (b) in subsection (10)(b) after “data protection principles” insert “or section 24A, 24B or 24C”.
- (6) In section 41C (code of practice about assessment notices) –
 - (a) in subsection (4)(a) after “principles” insert “and sections 24A, 24B and 24C”;
 - (b) in subsection (4)(b) after “principles” insert “or sections”.
- (7) In section 43 (Information notices) –
 - (a) in subsection (1) –
 - (i) after “data protection principles” insert “or section 24A, 24B or 24C”;
 - (ii) after “the principles” insert “or those sections”;
 - (b) in subsection (2)(b) after “principles” insert “or section 24A, 24B or 24C”.
- (8) In section 55A (power of Commissioner to impose monetary penalty) –
 - (a) after subsection (1) insert –

“(1A) The Commissioner may also serve a data controller with a monetary penalty notice if the Commissioner is satisfied that there has been a serious contravention of section 24A, 24B or 24C by the data controller.”;
 - (b) in subsection (3A) after “subsection (1)” insert “or (1A)”;
 - (c) in subsection (4) omit “determined by the Commissioner and”;
 - (d) in subsection (5) –

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- (i) after “The amount” insert “specified in a monetary penalty notice served under subsection (1) shall be”;
 - (ii) after “Commissioner” insert “and”;
- (e) after subsection (5) insert—
 - “(5A) The amount specified in a monetary penalty notice served under subsection (1A) shall be £1,000.
 - (5B) The Secretary of State may by regulations amend subsection (5A) to change the amount specified therein.”
- (9) In section 55B (monetary penalty notices: procedural rights) —
 - (a) in subsection (3)(a) omit “and”;
 - (b) after subsection (3)(a) insert—
 - “(aa) specify the provision of this Act of which the Commissioner is satisfied there has been a serious contravention, and”;
 - (c) after subsection (3) insert—
 - “(3A) A data controller may discharge liability for a monetary penalty in respect of a contravention of section 24A, 24B or 24C if he pays to the Commissioner the amount of £800 before the time within which the data controller may make representations to the Commissioner has expired.
 - (3B) A notice of intent served in respect of a contravention of section 24A, 24B or 24C must include a statement informing the data controller of the opportunity to discharge liability for the monetary penalty.
 - (3C) The Secretary of State may by regulations amend subsection (3A) to change the amount specified therein, save that the amount specified in subsection (3A) must be less than the amount specified in section 55A(5A).”;
 - (d) in subsection (5) after “served” insert “under section 55A(1)”;
 - (e) after subsection (5) insert—
 - “(5A) A person on whom a monetary penalty notice is served under section 55A(1A) may appeal to the Tribunal against the issue of the monetary penalty notice.”
- (10) In section 55C(2)(b) (guidance about monetary penalty notices) at the end insert “specified in a monetary penalty notice served under section 55A(1)”.
- (11) In section 67 (orders, regulations and rules) —
 - (a) in subsection (4) —
 - (i) after “order” insert “or regulations”;
 - (ii) after “section 22(1),” insert “section 24A(4)(c) or (d), 24B(6)(b) or (c),”;
 - (b) in subsection (5) —
 - (i) after paragraph (c) insert “(ca) regulations under section 24A(4)(a) or (b) or section 24B(6)(a),”;
 - (ii) for “(ca) regulations under section 55A(5) or (7) or 55B(3)(b),” substitute “(cb) regulations under section 55A(5), (5B) or (7) or 55B(3)(b) or (3C),”.

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- (12) In section 71 (Index of defined expressions) after “personal data section 1(1)” insert—
- ““personal data breach section 24A(1)”.
- (13) In paragraph 1 of Schedule 9—
- (a) after sub-paragraph (1)(a) insert—
- “(aa) that a data controller has contravened or is contravening any provision of section 24A, 24B or 24C, or”;
- (b) in sub-paragraph (1B) after “principles” insert “or section 24A, 24B or 24C”;
- (c) in sub-paragraph (3)(d)(ii) after “principles” insert “or section 24A, 24B or 24C”;
- (d) in sub-paragraph (3)(f) after “principles” insert “or section 24A, 24B or 24C.””

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5 January 2017
