

Data Protection Bill [HL]

AMENDMENTS
TO BE MOVED
IN COMMITTEE OF THE WHOLE HOUSE

Clause 6

BARONESS ROYALL OF BLAISDON
LORD PANNICK
LORD MACDONALD OF RIVER GLAVEN

Page 4, line 35, at end insert –

“() A college, school or university is not a public authority or public body for the purposes of the GDPR.”

Clause 7

LORD PATEL

Page 5, line 6, after “includes” insert “, without prejudice to the generality of the expression “necessary for the performance of a task carried out in the public interest”,”

Page 5, line 11, at end insert –

“() The Secretary of State may by regulation made under the affirmative resolution procedure add to the illustrative examples of processing that is necessary for the performance of a task carried out in the public interest or in the exercise of the controller’s official authority set out in subsection (1).”

Clause 8

BARONESS KIDRON
BARONESS HARDING OF WINSCOMBE
LORD STEVENSON OF BALMACARA
LORD STOREY

Leave out Clause 8 and insert the following new Clause –

“Child's consent in relation to information society services

In Article 8(1) of the GDPR (conditions applicable to child’s consent in relation to information society services) –

Clause 8 - continued

- (a) references to “16 years” are to be read as references to “13 years” provided that the information society service meets the minimum standards of age appropriate design as determined by the Commissioner, and
- (b) the reference to “information society services” does not include preventive or counselling services.”

After Clause 8

BARONESS KIDRON
 BARONESS HARDING OF WINSCOMBE
 LORD STEVENSON OF BALMACARA
 LORD STOREY

Insert the following new Clause—

“Parental consent in relation to children under the age of 13 years

A data controller which offers information society services direct to a child under the age of 13 years may lawfully process the personal data of that child based on the consent or authorisation of the holder of parental responsibility for that child provided that the data controller meets the minimum standards of age appropriate design as determined by the Commissioner under section (*Guidance on minimum standards of age appropriate design*).”

Clause 9

LORD STEVENSON OF BALMACARA
 LORD KENNEDY OF SOUTHWARK

Page 5, line 42, leave out subsection (6)

Schedule 1

LORD STEVENSON OF BALMACARA
 LORD KENNEDY OF SOUTHWARK

Page 113, line 8, after “professional” insert “who owes a duty of confidentiality”

Page 113, line 13, leave out paragraph (a) and insert—

- “(a) is necessary for archiving or statistical purposes, scientific, social science or historical research, technological sciences, humanity studies or for new ideas,”

Page 113, line 17, at end insert—

- “() In this paragraph “research” includes—
 - (a) science, technology, humanities and new ideas, and
 - (b) all research conducted under the auspices of the UK Research and Innovation programme.”

Schedule 1 - continued

LORD ASHTON OF HYDE

Page 116, line 36, after “on” insert “relevant”

Page 117, line 5, at beginning insert “relevant”

Page 117, line 14, after “of ” insert “relevant”

Page 117, line 16, leave out “sub-paragraph” and insert “definition”

Page 117, line 35, at end insert –

“15A(1) This condition is met if –

- (a) the processing is necessary for the purposes of –
 - (i) automatically renewing a pre-GDPR insurance contract, or
 - (ii) carrying out, or managing the expiry of, an insurance contract resulting from the automatic renewal of a pre-GDPR insurance contract,
 - (b) the controller has taken reasonable steps to obtain the data subject’s consent to the processing of personal data necessary for those purposes in accordance with sub-paragraph (2), and
 - (c) the controller is not aware of the data subject withholding such consent.
- (2) The steps described in sub-paragraph (1)(b) must have been taken –
- (a) in the case of a contract which automatically renews after a period of less than 10 months, on at least one automatic renewal of the contract in each period of 12 months that has ended since 25 May 2018;
 - (b) in any other case, each time the contract has automatically renewed since 25 May 2018.
- (3) For the purposes of this paragraph, an insurance contract is automatically renewed if –
- (a) a new insurance contract between the same parties is made without the insured person taking any steps, and
 - (b) the new contract provides cover which is the same as, or substantially similar to, the cover provided by the expired contract,
- and references in this paragraph to the automatic renewal of a contract include both the first automatic renewal on the expiry of that contract and subsequent automatic renewal originating with that contract.
- (4) For the purposes of sub-paragraph (3)(a), the new contract and the expired contract are to be treated as made with the same insurer if they are made with different insurers but arranged by the same intermediary.
- (5) In this paragraph –
- “insurance contract” means a contract of general insurance or long-term insurance;

Schedule 1 - continued

“insurer” means a person carrying on business which consists of effecting or carrying out insurance contracts;

“pre-GDPR”, in relation to an insurance contract, means made before 25 May 2018.

- (6) Terms used in the definition of “insurance contract” in sub-paragraph (5) and also in an order made under section 22 of the Financial Services and Markets Act 2000 (regulated activities) have the same meaning in that definition as they have in that order.”

LORD MOYNIHAN

Page 121, line 3, leave out paragraph 21 and insert the following new paragraph—

“21(1) This condition is met if the processing is carried out—

- (a) in connection with measures designed to protect sport in the United Kingdom from athletes taking performance enhancing substances listed in the World Anti-Doping Code which are undertaken by UK Anti-Doping (UKAD) or any successor body mandated by the Secretary of State as a non-departmental public body responsible for such objectives, or
 - (b) for the purposes of national governing bodies of sports, sports clubs, institutions of higher education, schools or managers of sporting events providing information about individual athletes who may be in receipt of performance enhancing substances to UKAD or its successor body.
- (2) The reference in sub-paragraph 1(a) to measures designed to protect sport in the United Kingdom from athletes taking performance enhancing substances include measures designed to identify or prevent doping including, but not limited to, requesting information about the gender of the data subject if thought to be relevant to the use of banned performance enhancing substances.
- (3) For the purposes of this paragraph—
- (a) data controllers include, but are not limited to, the UK Anti-Doping Agency, medical practitioners recognised by the British Medical Association, national governing bodies of sport, sports clubs, higher education institutions, schools and managers of sporting events;
 - (b) data processors include but are not limited to all sports bodies and individuals appointed by the controller; and
 - (c) data subjects are athletes competing in national junior and senior teams aged 12 years and above.”

Clause 13**LORD CLEMENT-JONES
LORD PADDICK**

Page 7, line 11, at end insert—

- “() 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.”

Clause 13 - continued

LORD PADDICK
BARONESS HAMWEE
BARONESS JONES OF MOULSECOOMB

Page 7, line 11, at end insert –

“() 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 (exemption 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).”

After Clause 13

LORD CLEMENT-JONES
LORD PADDICK

Insert the following new Clause –

“Review of Article 22

- (1) Within three years of the implementation of the GDPR, the Secretary of State must review the operation of Article 22 of the GDPR in the United Kingdom.
- (2) A review under subsection (1) must have particular reference to how many qualifying significant decisions are fully automated and so interact with the right not to be subject to a decision based solely on automated processing.
- (3) The Secretary of State must lay a report of the review before Parliament.”

Schedule 4

LORD ASHTON OF HYDE

Page 153, line 31, leave out “, or rules with equivalent effect replacing those rules”

Page 153, line 44, leave out “, or rules with equivalent effect replacing those rules”

Page 153, line 47, leave out “, or rules with equivalent effect replacing those rules”

Clause 18

LORD PATEL

Page 10, line 40, at end insert –

“unless the processing is carried out for research which has been approved by a relevant ethics review body.”

Schedule 6

LORD CLEMENT-JONES
LORD PADDICK

Page 160, line 38, at end insert –

“(b) in paragraph 3, after “point of view” insert “, to obtain an explanation of the decision reached after such assessment”.”

Clause 47

LORD CLEMENT-JONES
LORD PADDICK

Page 28, line 23, at end insert –

“(3) 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.”

Clause 48

LORD CLEMENT-JONES
LORD PADDICK

Page 29, line 12, at end insert –

“() In this section “based solely on automated processing” has the meaning given by section 47(3).”

After Clause 120

LORD STEVENSON OF BALMACARA
LORD KENNEDY OF SOUTHWARK

Insert the following new Clause –

“Public interest code

- (1) The Commissioner must prepare and publish a code of practice which contains –
 - (a) practical guidance in relation to the processing of personal data in the public interest,
 - (b) practical guidance in relation to the processing of personal data in the substantial public interest, and
 - (c) such other guidance as the Commissioner considers appropriate to promote understanding of the application of the terms public interest and substantial public interest in the context of this Act.
- (2) Where a code of practice under this section is in force, the Commissioner may prepare amendments of the code or a replacement code.
- (3) Before preparing a code of practice, or amendments to the code of practice, under this section, the Commissioner must consult the Secretary of State and –
 - (a) data subjects, or
 - (b) any persons who appear to the Commissioner to represent the interests of data subjects.

After Clause 120 - continued

- (4) A code under this section may include transitional provision or savings.
- (5) In this section—
 - “public interest” has the same meaning as in section 7 of this Act and the GDPR;
 - “the processing of personal data in the substantial public interest” includes those processes where the conditions of Part 2 of Schedule 1, or the conditions of the GDPR, are met.”

After Clause 124

BARONESS KIDRON
BARONESS HARDING OF WINSCOMBE
LORD STEVENSON OF BALMACARA
LORD STOREY

Insert the following new Clause—

“Guidance on minimum standards of age appropriate design

- (1) For the purposes of sections 8 and (*Parental consent in relation to children under the age of 13 years*), the Commissioner must produce and publish guidance on the minimum standards of age appropriate design necessary to meet the development needs of children.
- (2) The Commissioner’s guidance under subsection (1) must include the minimum standards of age appropriate design in relation to—
 - (a) default privacy settings;
 - (b) data minimisation standards;
 - (c) presentation and language of terms and conditions;
 - (d) transparency of paid for activity, such as product placement and marketing;
 - (e) sharing and resale of data;
 - (f) veracity and accuracy of information;
 - (g) strategies used to encourage extended user engagement;
 - (h) user reporting and resolution processes and systems; and
 - (i) any other aspect of design that the Commissioner considers relevant.
- (3) For each aspect of the guidance under subsection (2), the Commissioner must provide guidance on best practice for age appropriate design relevant at different stages of childhood.
- (4) The Commissioner’s guidance under this section must also highlight opportunities for the design of information society services to support the Commissioner’s obligation to promote public awareness and understanding of the risks, rules, safeguards and rights in relation to processing as set out in Article 57(1)(b) of the GDPR.
- (5) Before preparing such guidance, the Commissioner must consult the Secretary of State and such of the following as the Commissioner considers appropriate—
 - (a) children;

After Clause 124 - continued

- (b) parents;
 - (c) persons who appear to represent the interests of children;
 - (d) child development experts; and
 - (e) trade associations.
- (6) Guidance under this section may include transitional provisions.
- (7) When preparing or amending the guidance under this section and when determining whether a data controller has complied with minimum standards of age appropriate design contained within the guidance, the Commissioner must have regard to the UK's status as a signatory to the United Nations Convention on the Rights of the Child."

Insert the following new Clause –

“Approval of guidance on minimum standards of age appropriate design

- (1) When guidance is prepared under section (*Guidance on minimum standards of age appropriate design*) –
- (a) the Commissioner must submit the final version of the guidance to the Secretary of State, and
 - (b) the Secretary of State must by regulations specify the guidance.
- (2) A statutory instrument containing regulations under subsection (1)(b) is subject to the affirmative resolution procedure.
- (3) If the statutory instrument under subsection (1)(b) is approved, the guidance comes into force at the end of the period of 21 days beginning with the day on which it was approved by the second House.”

Insert the following new Clause –

“Review of guidance on minimum standards of age appropriate design

- (1) The Commissioner must keep under review guidance issued under section (*Approval of guidance on minimum standards of age appropriate design*).
- (2) The Commissioner must submit any amendments to the guidance to the Secretary of State and the Secretary of State must by regulations specify those amendments to the guidance.
- (3) A statutory instrument containing regulations under subsection (2) is subject to the negative resolution procedure.”

After Clause 153

LORD CLEMENT-JONES
LORD PADDICK

As an amendment to the amendment printed on sheet HL Bill 66(d) to insert a new Clause after Clause 153

In subsection (1), after “businesses” insert “and charities”

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25 October 2017
