

DELEGATED POWERS AND REGULATORY REFORM COMMITTEE

DATA PROTECTION BILL

Supplementary Memorandum by the Department for Digital, Culture, Media and Sport

Introduction

1. This supplementary memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee by the Department for Digital, Culture, Media and Sport (“DCMS”).
2. It identifies an additional provision proposed for addition to the Data Protection Bill (the “**Bill**”) which confers powers to make delegated legislation and explains why the power has been proposed and the nature of, and reason for, the procedure selected.
3. DCMS have considered this addition to the Bill as set out below and is satisfied that it is necessary and justified.

PART 7: SUPPLEMENTARY AND FINAL PROVISION

New clause: Framework for Data Processing by Government

<i>Power conferred on:</i>	<i>Secretary of State</i>
<i>Power exercisable by:</i>	<i>Statutory Guidance</i>
<i>Parliamentary Procedure:</i>	<i>Negative resolution</i>

Context and purpose

4. The first data protection principle, which continues to exist under Article 5 of the GDPR, requires that the processing of personal data is lawful. The power to process data does not derive from the GDPR which merely places restrictions and conditions on lawful processing. All government and public sector data processing requires some form of power as a basis for this. The government

currently relies on powers derived from statute and common law. The GDPR says that powers to process data should be clear, precise and foreseeable.

5. Given the volume of data that government processes and the public interest in understanding this processing, the Government believes that further guidance would serve to improve the transparency and clarity of existing government data processing. This clause does not allow the government to create any new data processing powers but provides the Secretary of State with the power to issue a Framework in relation to the processing of personal data by government under existing powers. Government will be required to have regard to the Framework when processing personal data.

Justification for taking the power

6. The clause is intended to provide greater clarity and transparency surrounding the processes that Government adopts in practice when processing data and the legal basis on which it relies. The Framework should provide reassurance to data subjects about the approach government takes to processing data and the procedures that it follows when doing so. It will also help further strengthen the government's compliance with the requirements of the GDPR and contribute to the provision of a clear, precise and foreseeable basis for government's processing of data. Before preparing such a Framework the Secretary of State must consult the Information Commissioner.
7. The Framework will set out the manner in which government should process data. It is important that the Framework is able to keep up to date as the jurisprudence of the higher courts develops; not just to inform government departments using the Framework, but also to assist other individuals to better understand the operation of government data processing.

Justification for procedure selected

8. Clause [Approval of the Framework] sets out the procedure applying in relation to the approval of the Framework. The procedure requires the Secretary of State to lay the Framework before Parliament. The Secretary of State is unable to issue the Framework if within the 40 day period (as defined in subsection (5)) either House of Parliament resolves not to approve the Framework.
9. In the absence of a resolution within the 40 day period not to approve the Framework, the Secretary of State must issue the Framework which will come into force at the end of the period of 21 days beginning with the day on which the Framework is issued. The Secretary of State is then required by clause [Publication and review of the Framework] to publish the Framework or, in the case of an amendment, the amendment or the amended Framework.
10. As set out above, the purpose of the Framework is to provide greater transparency and clarity as to how the Government will process data in accordance with the data protection legislation; it does not alter those legislative requirements and does not create or modify any government powers.
11. Whilst the government view is that guidance should not normally be subject to a Parliamentary procedure, in this instance, the use of a Parliamentary procedure serves to provide further reassurance that the Framework will not inappropriately impinge on the role and functions of the Information Commissioner, who reports to Parliament, as well as reassurance to the courts who, together with the Information Commissioner, under new clause [Effect of the Framework] are required to take it into account if it appears relevant to a question they are considering.
12. Clauses 119 and 120 require the Information Commissioner to prepare separate Codes of Practice, which will also provide guidance in respect of data processing. For consistency, the same procedure as set out in clause 121 (in

respect of the Information Commissioner's Codes) of the Bill is used for the new Framework.

New Clause: Framework for Data Processing by Government – power to extend application of the framework

<i>Power conferred on:</i>	<i>Secretary of State</i>
<i>Power exercisable by:</i>	<i>Regulations made by statutory instrument</i>
<i>Parliamentary Procedure:</i>	<i>Negative resolution procedure</i>

Context and purpose

13. Clause [Framework for Data Processing by Government] provides for the Secretary of State to issue a Framework about the processing of personal data in connection with the exercise of functions of the Crown, a Minister of the Crown or a United Kingdom government department. Subsection (1)(b) provides that regulations may make provision so as to extend the list of those in respect of whom the Framework may apply.

Justification for taking the power

14. The Government has considered whether there are any public authorities beyond the Crown, a Minister of the Crown or a United Kingdom government department who rely on powers derived from statute and common law. The Government has chosen to draw the application of the Framework as narrowly as possible but it may be necessary to widen it to apply to further public authorities if appropriate. Without a power to extend the application of the Framework through secondary legislation it would be necessary to make further primary legislation to add a body in respect of whom the Secretary of State may issue a Framework. The application of the requirements in clause 169 of the Bill is considered the most appropriate way to enable changes to be made in future, if needed.

Justification for the procedure

15. The negative resolution procedure will apply to regulations made under subsection (1)(b). The Government considers that the negative procedure is appropriate since adding bodies to the scope of the Framework is a narrowly drawn power and this procedure would still provide Parliament with an opportunity to prevent the scope of the Framework being extended in this way.

Department for Digital, Culture, Media and Sport

14 November 2017