

Data Protection Bill [HL]

MARSHALLED
LIST OF AMENDMENTS
TO BE MOVED
IN COMMITTEE OF THE WHOLE HOUSE

The amendments have been marshalled in accordance with the Instruction of 24th October 2017, as follows –

Clauses 1 to 9	Clauses 111 and 112
Schedule 1	Schedule 12
Clauses 10 to 14	Clauses 113 and 114
Schedules 2 to 4	Schedule 13
Clauses 15 and 16	Clauses 115 and 116
Schedule 5	Schedule 14
Clauses 17 to 20	Clauses 117 to 147
Schedule 6	Schedule 15
Clauses 21 to 28	Clause 148
Schedule 7	Schedule 16
Clauses 29 to 33	Clauses 149 to 171
Schedule 8	Schedule 17
Clauses 34 to 84	Clauses 172 to 190
Schedules 9 and 10	Schedule 18
Clauses 85 to 110	Clauses 191 to 194
Schedule 11	Title.

[Amendments marked ★ are new or have been altered]

**Amendment
No.**

Clause 1

LORD STEVENSON OF BALMACARA
BARONESS LUDFORD

1

Page 1, line 5, at end insert –

“() Section (*Right to protection of personal data*) makes provision for a general right to the protection of personal data.”

Clause 2

LORD CLEMENT-JONES
LORD MCNALLY

2 Page 2, line 4, at end insert –

“() In this Act, unless the context otherwise requires –

- (a) “obtaining” or “recording”, in relation to personal data, includes obtaining or recording the information to be contained in the data, and
- (b) “using” or “disclosing”, in relation to personal data, includes using or disclosing the information contained in the data.”

LORD STEVENSON OF BALMACARA
LORD KENNEDY OF SOUTHWARK

3 Page 2, line 12, after second “data,” insert “including data held by providers of Information Society Services,”

After Clause 2

LORD STEVENSON OF BALMACARA
BARONESS LUDFORD

4 Insert the following new Clause –

“Right to protection of personal data

- (1) A person (“P”) has the right to protection of personal data concerning him or her.
- (2) Personal data must be processed fairly for specified purposes and on the basis of the consent of P or some other legitimate basis.
- (3) P has the right to –
 - (a) access personal data which has been collected concerning him or her, and
 - (b) have personal data rectified if P believes it to be inaccurate.
- (4) The Information Commissioner shall be responsible for ensuring compliance with the rights contained within this section.
- (5) So far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with those rights.”

Clause 3

LORD STEVENSON OF BALMACARA
LORD KENNEDY OF SOUTHWARK

5★ Page 3, line 27, at end insert –

“() does not apply in the course of an activity which falls outside the scope of EU law.”

6 Page 3, line 31, leave out “broadly equivalent” and insert “identical in all major respects”

Clause 3 - continued

BARONESS NEVILLE-ROLFE
LORD ARBUTHNOT OF EDROM

7 Page 3, line 32, at end insert –

“(4) This Act does not apply to any organisation employing five employees or fewer.

(5) Organisations covered by subsection (4) include, but are not limited to –

(a) small businesses,

(b) charities,

(c) parish councils.”

Clause 4

LORD ASHTON OF HYDE

8 Page 3, line 40, at end insert “and to section 183”

LORD STEVENSON OF BALMACARA
LORD KENNEDY OF SOUTHWARK

9 Page 4, line 12, at end insert –

“() Reference to the GDPR in this Act includes reference to the recitals thereof.”

Clause 6

BARONESS ROYALL OF BLAISDON
LORD PANNICK
LORD MACDONALD OF RIVER GLAVEN

10 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 CLEMENT-JONES
LORD MCNALLY

11 Page 5, line 6, leave out “includes” and insert “means”

LORD PATEL

12 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”,”

LORD CLEMENT-JONES
LORD MCNALLY

13 Page 5, line 11, at end insert –

“() In Article 6(1) of the GDPR, reference to “the public interest” is to be read as a reference to the overall good of the general public.”

Clause 7 - continued

LORD PATEL

14 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).”

LORD STEVENSON OF BALMACARA
LORD KENNEDY OF SOUTHWARK

15★ Page 5, line 11, at end insert –

“() Reference in this section to “the public interest” is not restricted to the substantial public interest as referred to in Part 2 of Schedule 1 to this Act.”

Clause 8

BARONESS HOWE OF IDLICOTE

16★ Page 5, line 15, leave out from “as” to “and” and insert “an age between 13 and 16 years, to be decided by the Commissioner based on relevant evidence and consultation,”

LORD STEVENSON OF BALMACARA
LORD KENNEDY OF SOUTHWARK

17 Page 5, line 16, leave out paragraph (b)

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

18 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) –

- (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

19 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)*.”

LORD MCNALLY
 LORD STOREY

20★ Insert the following new Clause—

“Education for children of school age relating to the rights of data subjects

- (1) Upon the passing of this Act, the Secretary of State must make arrangements for all children of school age to receive education relating to the rights of data subjects, appropriate to their age.
- (2) For the purposes of subsection (1) “the rights of data subjects” must include—
 - (a) rights under this Act and other Acts and Regulations relating to data protection and privacy,
 - (b) security of personal data, and
 - (c) other matters related to the understanding and exercise of rights under this Act and other Acts and Regulations relating to data protection.”

Clause 9

LORD CLEMENT-JONES
 LORD PADDICK

21 Page 5, line 25, leave out “substantial”

LORD STEVENSON OF BALMACARA
 LORD KENNEDY OF SOUTHWARK
 BARONESS JONES OF MOULSECOOMB

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

BARONESS JONES OF MOULSECOOMB

23★ Page 6, line 4, leave out subsection (7)

Clause 9 - continued

LORD CLEMENT-JONES
LORD PADDICK

- 24 Page 6, line 4, leave out “affirmative resolution procedure” and insert “super-affirmative resolution procedure under section 18 of the Legislative and Regulatory Reform Act 2006, with references in that section to section 14 to be read as references to this section of this Act”

Schedule 1

LORD STEVENSON OF BALMACARA
LORD KENNEDY OF SOUTHWARK

- 25 Page 112, line 8, leave out paragraph (a)

LORD TOPE

- 26★ Page 112, line 10, leave out “the law relating to” and insert “for the purpose of”

LORD STEVENSON OF BALMACARA
LORD KENNEDY OF SOUTHWARK

- 27 Page 112, line 30, leave out paragraph (b)

- 28 Page 112, line 34, leave out paragraph (f)

- 29 Page 113, line 5, leave out paragraph (a)

LORD ASHTON OF HYDE

- 30 Page 113, line 8, leave out “supervision” and insert “responsibility”

LORD STEVENSON OF BALMACARA
LORD KENNEDY OF SOUTHWARK

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

- 32 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,”

- 33 Page 113, line 17, at end insert –
“() In this paragraph, “archiving” includes collections of physical and digital materials.”

- 34 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

35 Page 113, line 22, after “document” insert “, which has been made available to the data subject without charge,”

36 Page 113, line 28, leave out paragraph (b)

LORD STEVENSON OF BALMACARA

37 Page 114, line 16, at end insert –

“Personal data revealing age	People of different ages
Personal data revealing an individual’s gender	People of different genders
Personal data revealing an individual to be transsexual	People who have the protected characteristic of “gender reassignment” under section 7(1) of the Equalities Act 2010 (gender reassignment)
Personal data revealing a disability	People with a disability or disabilities
Personal data revealing an individual’s pregnancy or period of maternity leave or shared parental leave	People who are pregnant or are recent parents
Personal data revealing marital status	People of different marital statuses”

LORD STEVENSON OF BALMACARA

LORD KENNEDY OF SOUTHWARK

38 Page 114, line 34, leave out “an” and insert “a serious”

39★ Page 114, line 38, at end insert –
 “() is under circumstances in which it is reasonably clear that a data subject is unlikely to give consent.”

40 Page 115, line 9, leave out “dishonesty,”

Schedule 1 - continued

LORD STEVENSON OF BALMACARA
 LORD KENNEDY OF SOUTHWARK
 LORD MCNALLY
 LORD CLEMENT-JONES

41★ Page 115, line 12, at end insert –

“() In this paragraph, “protective function” can also mean a function which is intended to protect a body or association against dishonesty, malpractice or other seriously improper conduct.”

LORD STEVENSON OF BALMACARA
 LORD KENNEDY OF SOUTHWARK

42 Page 115, line 19, leave out “substantial”

43 Page 116, line 11, leave out “in good faith”

LORD STEVENSON OF BALMACARA
 LORD KENNEDY OF SOUTHWARK
 LORD MCNALLY

44★ Page 116, line 17, at end insert –

“() This condition is further met if the processing is necessary for the purposes of making a disclosure in good faith in –

- () compliance with laws that require measures to be taken to prevent or detect money laundering, terrorist financing or other financial crime; or
- () adherence to a code for the prevention or detection of money laundering, terrorist financing or other financial crime, which has been approved by either –
 - (i) the Commissioner or other competent authority; or
 - (ii) an intergovernmental body in which the United Kingdom is represented.”

LORD STEVENSON OF BALMACARA
 LORD KENNEDY OF SOUTHWARK

45 Page 116, line 20, after “advice” insert “and guidance”

LORD ASHTON OF HYDE

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

LORD STEVENSON OF BALMACARA
 LORD KENNEDY OF SOUTHWARK

47 Page 116, line 42, leave out paragraph (d)

LORD ASHTON OF HYDE

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

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

Schedule 1 - continued

- 50 Page 117, line 16, leave out “sub-paragraph” and insert “definition”
- 51 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;
 - “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.”

Schedule 1 - continuedLORD STEVENSON OF BALMACARA
LORD KENNEDY OF SOUTHWARK

52 Page 117, line 38, leave out paragraph (a)

53 Page 118, line 19, leave out first “substantial”

54 Page 118, line 19, leave out second “substantial”

LORD ASHTON OF HYDE

55 Page 120, line 37, after “Commons” insert “, a member of the National Assembly for Wales”

56 Page 121, line 1, at end insert –

“20A This condition is met if the processing –

- (a) consists of the publication of a judgment or other decision of a court, or
- (b) is necessary for the purposes of publishing such a judgment or decision.”

LORD MOYNIHAN

57 Page 121, line 3, leave out paragraph 21 and insert –

“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;

Schedule 1 - continued

- (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.”

LORD ASHTON OF HYDE

- 58 Page 121, line 3, leave out “carried out” and insert “necessary”
- 59 Page 121, line 4, leave out “in connection with” and insert “for the purposes of”
- 60 Page 121, line 5, leave out “supervision of a body with responsibility” and insert “responsibility of a body or association that is responsible”

LORD STEVENSON OF BALMACARA
LORD KENNEDY OF SOUTHWARK

- 61 Page 121, line 6, leave out from first “sport” to “, or” in line 7

LORD ASHTON OF HYDE

- 62 Page 121, line 9, at end insert “or association”
- 63 Page 121, line 11, at end insert –
 “21A(1) This condition is met if the processing –
 (a) is necessary for the purposes of measures designed to protect the integrity of a sport or a sporting event,
 (b) must be carried out without the consent of the data subject so as not to prejudice those purposes, and
 (c) is necessary for reasons of substantial public interest.
 (2) In sub-paragraph (1)(a), the reference to measures designed to protect the integrity of a sport or a sporting event is a reference to measures designed to protect a sport or a sporting event against –
 (a) dishonesty, malpractice or other seriously improper conduct, or
 (b) failure by a person participating in the sport or event in any capacity to comply with standards of behaviour set by a body or association with responsibility for the sport or event.”

BARONESS NEVILLE-JONES

- 64 Page 121, line 25, after “religious” insert “, patient support”

LORD ASHTON OF HYDE

- 65 Page 121, line 36, leave out from “processing” to end of line 38 and insert “ –
 (a) is necessary for the purpose of, or in connection with, any legal proceedings (including prospective legal proceedings),
 (b) is necessary for the purpose of obtaining legal advice, or
 (c) is otherwise necessary for the purposes of establishing, exercising or defending legal rights.”

Schedule 1 - continued

- 66 Page 121, line 38, at end insert –
 “26A This condition is met if the processing is necessary when a court is acting in its judicial capacity.”

LORD STEVENSON OF BALMACARA
 LORD KENNEDY OF SOUTHWARK

- 67 Page 123, line 9, leave out “appropriate”

- 68 Page 123, line 24, at end insert –
 “() make it available to the data subject without charge.”

Clause 10

LORD ASHTON OF HYDE

- 69 Page 6, line 12, leave out “supervision” and insert “responsibility”

LORD STEVENSON OF BALMACARA
 LORD KENNEDY OF SOUTHWARK

- 70 Page 6, line 13, after “professional” insert “who owes a duty of confidentiality under an enactment or rule of law”

LORD ASHTON OF HYDE

- 71 Page 6, line 16, leave out “this section” and insert “section 9”

Clause 13

LORD ASHTON OF HYDE

- 72 Page 7, line 9, leave out “prohibition on taking” and insert “Article 22(1) of the GDPR for”

- 73 Page 7, line 10, leave out “for decisions”

LORD CLEMENT-JONES
 LORD PADDICK

- 74 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 CLEMENT-JONES
LORD PADDICK
BARONESS HAMWEE
BARONESS JONES OF MOULSECOOMB

75 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).”

LORD ASHTON OF HYDE

76 Page 7, line 15, at beginning insert “similarly”

LORD CLEMENT-JONES
LORD PADDICK

77★ Page 7, line 15, at end insert “or a group sharing a protected characteristic, within the meaning of the Equality Act 2010, to which the data subject belongs.”

After Clause 13

LORD CLEMENT-JONES
LORD PADDICK

78 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.”

Clause 14

LORD CLEMENT-JONES
LORD PADDICK

79★ Page 8, line 23, leave out “scientific or historical”

Schedule 2

LORD CLEMENT-JONES
LORD PADDICK
LORD KENNEDY OF SOUTHWARK
BARONESS JONES OF MOULSECOOMB

80 Page 125, line 41, leave out paragraph 4

Schedule 2 - continued

LORD ASHTON OF HYDE

- 81 Page 126, line 29, leave out “is necessary”
- 82 Page 126, line 30, at beginning insert “is necessary”
- 83 Page 126, line 31, leave out from “proceedings),” to “establishing” in line 32 and insert –
 “() is necessary for the purpose of obtaining legal advice, or
 () is otherwise necessary for the purposes of”
- 84 Page 127, line 33, leave out from “bankrupts” to end of line 38
- 85 Page 127, line 38, at end insert –

“1A. The function is designed to protect members of the public against – dishonesty, malpractice or other seriously improper conduct by persons who carry on any activity that brings them into contact with members of the public, or the unfitness or incompetence of persons who carry on any activity that brings them into contact with members of the public.

The function is of a public nature, or is exercised in the public interest.”

Schedule 2 - *continued*

86 Page 130, line 2, at end insert –

“A1. The Commissioner.

By or under – the data protection legislation; the Freedom of Information Act 2000; the Privacy and Electronic Communications (EC Directive) Regulations 2003 (S.I. 2003/2426); the Environmental Information Regulations 2004 (S.I. 2004/3391); the INSPIRE Regulations 2009 (S.I. 2009/3157); Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC; the Re-use of Public Sector Information Regulations 2015 (S.I. 2015/1415); the Electronic Identification and Trust Services for Electronic Transactions Regulations 2016 (S.I. 2016/696).

A2. The Pensions Ombudsman.

By or under Part 10 of the Pension Schemes Act 1993 or any corresponding legislation having equivalent effect in Northern Ireland.

A3. The Board of the Pension Protection Fund.

By or under sections 206 to 208 of the Pensions Act 2004 or any corresponding legislation having equivalent effect in Northern Ireland.

A4. The Ombudsman for the Board of the Pension Protection Fund.

By or under any of sections 209 to 218 or 286(1) of the Pensions Act 2004 or any corresponding legislation having equivalent effect in Northern Ireland.

A5. The Pensions Regulator.

By or under any enactment.”

87 Page 135, line 42, at end insert –

“() the placement (or prospective placement) of the data subject as a volunteer,”

Schedule 2 - continued

LORD CLEMENT-JONES
LORD MCNALLY

88 Page 137, line 14, leave out paragraph (c)

LORD SKIDELSKY

89★ Page 137, line 14, at end insert –
“() IMPRESS Standards Code.”

LORD ASHTON OF HYDE

90 Page 137, line 45, leave out sub-paragraph (9)

LORD MCNALLY
LORD CLEMENT-JONES

91★ Page 137, line 47, at end insert “(including in return for a fee); and
() in relation to journalistic material, includes making available to the public or a section of the public (including in return for a fee) material that was previously published by another body or organisation.
() It shall not be necessary for a body or association relying on this paragraph to demonstrate that its sole or primary function is one or more of the special purposes.”

LORD ASHTON OF HYDE

92 Page 138, line 10, at beginning insert “For the purposes of this paragraph,”

93 Page 138, line 30, at beginning insert “For the purposes of this paragraph,”

Schedule 3

LORD ASHTON OF HYDE

94 Page 140, line 35, at end insert –
“(ea) the Sheriff Court Adoption Rules 2009;”

95 Page 142, line 43, after “1970” insert “or the Social Services and Well-being (Wales) Act 2014”

96 Page 146, line 4, at end insert –
“(ea) the Sheriff Court Adoption Rules 2009;”

97 Page 147, line 19, leave out “governing body” and insert “proprietor”

98 Page 147, line 28, leave out paragraph (b) and insert –
“(b) an Academy school;
(c) an alternative provision Academy;

Schedule 3 - continued

- (d) an independent school that is not an Academy school or an alternative provision Academy;
- (e) a non-maintained special school.”

- 99 Page 147, line 35, leave out from “1998),” to end of line 36 and insert –
 “(ii) an Academy school,
 (iii) an alternative provision Academy,
 (iv) an independent school that is not an Academy school or an alternative provision Academy, or
 (v) a non-maintained special school,”
- 100 Page 147, line 38, leave out “governing body” and insert “proprietor”
- 101 Page 147, line 43, leave out from “paragraph” to end of line 44 and insert “ –
 “independent school” has the meaning given by section 463 of the Education Act 1996;
 “local authority” has the same meaning as in that Act (see sections 579(1) and 581 of that Act);
 “non-maintained special school” has the meaning given by section 337A of that Act;
 “proprietor” has the meaning given by section 579(1) of that Act.”
- 102 Page 149, line 43, at end insert –
 “(ea) the Sheriff Court Adoption Rules 2009;”

Schedule 4

LORD ASHTON OF HYDE

- 103 Page 152, line 6, leave out paragraph (d)
- 104 Page 153, line 31, leave out “, or rules with equivalent effect replacing those rules”
- 105 Page 153, line 44, leave out “, or rules with equivalent effect replacing those rules”
- 106 Page 153, line 47, leave out “, or rules with equivalent effect replacing those rules”

Clause 15

LORD CLEMENT-JONES
 LORD PADDICK
 BARONESS JONES OF MOULSECOOMB

- 107 Page 9, line 13, leave out “affirmative resolution procedure” and insert “super-affirmative resolution procedure under section 18 of the Legislative and Regulatory Reform Act 2006, with references in that section to section 14 to be read as references to this section of this Act”

Clause 15 - continued

BARONESS NEVILLE-ROLFE
LORD ARBUTHNOT OF EDROM

- 108★ Page 9, line 13, leave out “affirmative” and insert “super-affirmative”

BARONESS JONES OF MOULSECOOMB

Baroness Jones of Moulsecoomb gives notice of her intention to oppose the Question that Clause 15 stand part of the Bill.

Schedule 5

LORD ASHTON OF HYDE

- 109 Page 155, line 39, at end insert “appointed under sub-paragraph (3) or (4)”

- 110 Page 156, line 2, leave out “(7)” and insert “(8)”

Clause 18

LORD PATEL

- 111 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 ASHTON OF HYDE

- 112 Page 157, leave out lines 11 to 14 and insert –
“(2) But sub-paragraph (1) does not have effect –
(a) in the case of the references which are modified or inserted by paragraphs 9(f)(ii), 15(b), 16(a)(ii), 35, 36(a) and (e)(ii) and 38(a)(i);
(b) in relation to the references in points (a) and (b) of paragraph 2 of Article 61, as inserted by paragraph 49.”

- 113 Page 157, line 20, leave out from beginning to ““domestic” and insert “In this paragraph,”

- 114 Page 157, line 28, at end insert “(including paragraph 3(1))”

LORD CLEMENT-JONES
LORD PADDICK

- 115 Page 158, line 34, leave out paragraph (d)

LORD ASHTON OF HYDE

- 116 Page 158, line 38, at end insert –
“(ii) for “Article 51” substitute “Article 51 of the GDPR”;

Schedule 6 - continued

117 Page 159, line 3, at end insert –
“(28) “domestic law” has the meaning given in paragraph 3(3) of
Schedule 6 to the 2017 Act.””

118 Page 159, line 33, after “9” insert “of the 2017 Act”

LORD CLEMENT-JONES
LORD PADDICK

119 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”.”

LORD ASHTON OF HYDE

120 Page 163, line 13, at end insert –
“(d) in paragraph 9, for “of this Article” substitute “of Article 45 of
the GDPR”.”

121 Page 163, line 40, after “Act” insert “which makes certain provision about the public
interest”

122 Page 165, line 2, at end insert –
“(ba) in paragraph 3, in point (b), for “the Member State government”
substitute “the Secretary of State”;

123 Page 166, line 12, at end insert –
“(za) in paragraph 5, in point (d), for “pursuant to Member State law
adopted under Chapter IX” substitute “under Part 5 or 6 of
Schedule 2 to the 2017 Act or under regulations made under
section 15 of that Act”;

124 Page 166, line 14, at end insert –
“(ii) for “that Member State” substitute “the United
Kingdom”;

Schedule 7

LORD ASHTON OF HYDE

125 Page 168, line 13, leave out paragraph 3 and insert –
“3 Any Northern Ireland department.”

126 Page 168, line 13, at end insert –
“3A The Welsh Ministers.”

127 Page 168, line 36, after “The” insert “Director General of the”

Schedule 7 - continued

- 128** Page 169, line 4, at end insert –
 “20A The Welsh Revenue Authority.
 20B Revenue Scotland.”

- 129** Page 169, line 9, at end insert –
 “25A The Competition and Markets Authority.
 25B The Gas and Electricity Markets Authority.
 25C The Food Standards Agency.
 25D Food Standards Scotland.
 25E Her Majesty’s Land Registry.”

Clause 33

BARONESS JONES OF MOULSECOOMB

- 130★** Page 20, line 14, leave out subsection (6)

Schedule 8

LORD ASHTON OF HYDE

- 131** Page 170, line 20, at end insert “or rule of law”
- 132** Page 170, line 28, leave out from “processing” to end of line 30 and insert “ –
 (a) is necessary for the purpose of, or in connection with, any legal proceedings (including prospective legal proceedings),
 (b) is necessary for the purpose of obtaining legal advice, or
 (c) is otherwise necessary for the purposes of establishing, exercising or defending legal rights.”
- 133** Page 170, line 30, at end insert –
 “4A This condition is met if the processing is necessary when a court or other judicial authority is acting in its judicial capacity.”

Clause 47LORD CLEMENT-JONES
LORD PADDICK

- 134** 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 PADDICK
BARONESS HAMWEE

- 135★ Page 28, line 28, at end insert –
“() it does not engage the rights of the data subject under the Human Rights Act 1998.”

LORD CLEMENT-JONES
LORD PADDICK

- 136 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 48

LORD PADDICK
BARONESS HAMWEE

- 137★ Insert the following new Clause –
“Right to information about decision making
(1) Where –
 (a) the controller processes personal data relating to a data subject, and
 (b) the results produced by the processing are applied to the data subject,
the data subject is entitled to obtain from the controller, on request, knowledge of the reasoning underlying the processing.
(2) Where the data subject makes a request under subsection (1) , the controller must comply with the request without undue delay.”

Clause 84

BARONESS JONES OF MOULSECOOMB

- 138★ Page 49, line 17, leave out subsection (3)

Schedule 9

LORD ASHTON OF HYDE

- 139 Page 171, line 34, at end insert “or rule of law”

Schedule 10

LORD ASHTON OF HYDE

- 140 Page 173, line 6, after “enactment” insert “or rule of law”

Clause 90

LORD ASHTON OF HYDE

- 141 Page 51, line 9, leave out “to 96” and insert “and 95 ”

Clause 90 - continued

- 142 Page 51, line 9, at end insert—
 “() section 96 deals with the right to information about decision-making;”

Clause 92

LORD ASHTON OF HYDE

- 143 Page 53, line 18, at end insert—
 “() A court may make an order under subsection (11) in relation to a joint controller whose responsibilities are determined in an arrangement under section 102 only if the controller is responsible for compliance with the obligation to which the order relates.”

Clause 94LORD PADDICK
BARONESS HAMWEE

- 144★ Page 54, line 26, at end insert “unless the decision engages an individual’s rights under the Human Rights Act 1998”

- 145★ Page 54, line 29, leave out paragraph (c)

Clause 95LORD PADDICK
BARONESS HAMWEE

- 146★ Page 55, line 1, leave out paragraph (b)

Clause 97

LORD ASHTON OF HYDE

- 147 Page 56, line 14, at end insert—
 “() A court may make an order under subsection (5) in relation to a joint controller whose responsibilities are determined in an arrangement under section 102 only if the controller is responsible for compliance with the obligation to which the order relates.”

Clause 98

LORD ASHTON OF HYDE

- 148 Page 56, line 38, at end insert—
 “() A court may make an order under this section in relation to a joint controller whose responsibilities are determined in an arrangement under section 102 only if the controller is responsible for carrying out the rectification, erasure or restriction of processing that the court proposes to order.”

Schedule 11

LORD ASHTON OF HYDE

- 149 Page 174, line 18, leave out “is necessary”
- 150 Page 174, line 19, at beginning insert “is necessary”
- 151 Page 174, line 20, leave out from “proceedings),” to “establishing” in line 21 and insert—
- “() is necessary for the purpose of obtaining legal advice, or
() is otherwise necessary for the purposes of”

Clause 111

BARONESS JONES OF MOULSECOOMB

Baroness Jones of Moulsecoomb gives notice of her intention to oppose the Question that Clause 111 stand part of the Bill.

Clause 113

BARONESS NEVILLE-ROLFE
LORD ARBUTHNOT OF EDROM

- 152 Page 62, line 6, at end insert—
- “() a duty to advise Parliament, the government and other institutions and bodies on the likely consequences, economic and otherwise, to—
- (i) industry,
(ii) charities, and
(iii) public authorities,
- of measures relating to the protection of individuals’ rights and freedoms with regard to the processing of personal data.”

After Clause 114

LORD CLEMENT-JONES
LORD PADDICK

- 153 Insert the following new Clause—
- “Function of the Commissioner to maintain a register of data controllers**
- (1) The Commissioner must maintain a register of all data controllers.
- (2) Subject to subsection (3), personal data must not be processed unless an entry in respect of the data controller is included in the register maintained by the Commissioner under subsection (1).
- (3) Subsections (1) and (2) do not apply in relation to any processing whose sole purpose is the maintenance of a public register.”

After Clause 120

LORD STEVENSON OF BALMACARA
LORD KENNEDY OF SOUTHWARK
LORD PATEL

154 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.
- (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

155 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;

After Clause 124 - continued

- (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;
 - (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.”

156

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.

After Clause 124 - continued

- (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.”

157 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.”

Clause 127

LORD ASHTON OF HYDE

158 Page 68, line 31, leave out “It is an offence for”

159 Page 68, line 32, leave out “knowingly or recklessly to” and insert “must not”

160 Page 68, line 37, leave out “living”

161 Page 69, line 17, at end insert –

- “() It is an offence for a person knowingly or recklessly to disclose information in contravention of subsection (1).”

Clause 133

LORD ASHTON OF HYDE

162 Page 72, line 33, leave out from beginning to “regulations” in line 34

Clause 139

LORD ASHTON OF HYDE

163 Page 76, line 2, leave out subsections (1) and (2)

Clause 148

LORD ASHTON OF HYDE

164 Page 81, line 38, leave out paragraphs (b) and (c) and insert “or

- () has failed to comply with an information notice, an assessment notice or an enforcement notice,”

Schedule 16

LORD ASHTON OF HYDE

- 165 Page 189, line 9, after first “notice” insert “to a person”
- 166 Page 189, line 11, at end insert “, subject to sub-paragraph (3).
 (3) The period for giving a penalty notice to a person may be extended by agreement between the Commissioner and the person.”
- 167 Page 189, line 21, leave out paragraph (d)

Clause 150

LORD ASHTON OF HYDE

- 168 Page 83, line 40, after “with” insert “an information notice, an assessment notice or”

After Clause 153

BARONESS NEVILLE-ROLFE
 LORD ARBUTHNOT OF EDROM

- 169 Insert the following new Clause –
“The role of the Secretary of State and the Commissioner in informing data controllers of their duties
- (1) The Secretary of State must ensure, either directly or by imposing a duty on the Commissioner, that sufficient information about the duties imposed on businesses by this Act is made publicly available not less than six months before the sections of this Act covered by section 191(1) come into force.
 - (2) In exercising the duty in subsection (1) the Secretary of State must –
 - (a) ensure that information setting out the additional duties created by this Act and the GDPR over and above the Data Protection Act 1998 is available online, and
 - (b) have regard to the creation of online training and testing about meeting the requirements of the regime created by this Act.
 - (3) Before making regulations under section 191(1), the Secretary of State must lay a report before both Houses of Parliament outlining the steps taken to comply with this section.”

LORD CLEMENT-JONES

LORD PADDICK

As an amendment to Amendment 169

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

Clause 162

LORD MCNALLY
 LORD CLEMENT-JONES

The above-named Lords give notice of their intention to oppose the Question that Clause 162 stand part of the Bill.

Clause 164

LORD ASHTON OF HYDE

- 171 Page 93, line 6, leave out from “processor” to “which” in line 7
- 172 Page 93, line 8, at end insert “and which are –
 (a) proceedings under section 158 (including proceedings on an application under Article 79 of the GDPR), or
 (b) proceedings under Article 82 of the GDPR or section 160 .”

Clause 166

LORD ASHTON OF HYDE

- 173 Page 94, line 27, leave out “or tribunal”
- 174 Page 94, line 28, leave out “or tribunal”
- 175 Page 94, line 34, leave out “or tribunal”
- 176 Page 94, line 34, after “stay” insert “or, in Scotland, sist”
- 177 Page 94, line 38, leave out “or tribunal”
- 178 Page 94, line 38, after “stay” insert “or sist”
- 179 Page 94, line 42, after “stayed” insert “or sisted”

Clause 168

LORD ASHTON OF HYDE

- 180 Page 95, leave out lines 23 to 26

Clause 169

LORD ASHTON OF HYDE

- 181 Page 96, line 8, leave out “or 24”

After Clause 169

BARONESS NEVILLE-ROLFE
 LORD ARBUTHNOT OF EDROM

- 182★ Insert the following new Clause –
“Super-affirmative resolution procedure
 (1) For the purposes of this Act the “super-affirmative resolution procedure” is as follows.
 (2) The Minister must have regard to –
 (a) any representations,

After Clause 169 - continued

- (b) any resolution of either House of Parliament, and
 - (c) any recommendations of a committee of either House of Parliament charged with reporting on the draft order,
- made during the 60-day period with regard to the draft order.
- (3) If, after the expiry of the 60-day period, the Minister wishes to make an order in the terms of the draft, he must lay before Parliament—
- (a) a statement—
 - (i) stating whether any representations were made under subsection (2)(a), and
 - (ii) if any representations were so made, giving details of them; and
 - (b) an assessment of the likely impact of the order on—
 - (i) industry,
 - (ii) charities, and
 - (iii) public authorities.
- (4) The Minister may after the laying of such a statement make an order in the terms of the draft if it is approved by a resolution of each House of Parliament.
- (5) However, a committee of either House charged with reporting on the draft order may, at any time after the laying of a statement under subsection (3) and before the draft order is approved by that House under subsection (4), recommend under this subsection that no further proceedings be taken in relation to the draft order.
- (6) Where a recommendation is made by a committee of either House under subsection (5) in relation to a draft order, no proceedings may be taken in relation to the draft order in that House under subsection (4) unless the recommendation is, in the same session, rejected by resolution of that House.
- (7) If, after the expiry of the 60-day period, the Minister wishes to make an order consisting of a version of the draft order with material changes, he must lay before Parliament—
- (a) a revised draft order;
 - (b) a statement giving details of—
 - (i) any representations made under subsection (2)(a); and
 - (ii) the revisions proposed; and
 - (c) an assessment of the likely impact of the revised order on—
 - (i) industry;
 - (ii) charities; and
 - (iii) public authorities.
- (8) The Minister may after laying a revised draft order and statement under subsection (7) make an order in the terms of the revised draft if it is approved by a resolution of each House of Parliament.
- (9) However, a committee of either House charged with reporting on the revised draft order may, at any time after the revised draft order is laid under subsection (7) and before it is approved by that House under subsection (8), recommend under this subsection that no further proceedings be taken in relation to the revised draft order.

After Clause 169 - continued

- (10) Where a recommendation is made by a committee of either House under subsection (9) in relation to a revised draft order, no proceedings may be taken in relation to the revised draft order in that House under subsection (8) unless the recommendation is, in the same session, rejected by resolution of that House.
- (11) For the purposes of subsections (4) and (8) an order is made in the terms of a draft order if it contains no material changes to the provisions of the draft order.
- (12) In this section the “60-day period” means the period of 60 days beginning with the day on which the draft order was laid before Parliament.”

Before Clause 171

LORD CLEMENT-JONES
LORD PADDICK

183★ Insert the following new Clause—

“Right to information about individual decisions by public bodies based on algorithmic profiling

- (1) Where—
 - (a) a public authority profiles a data subject (within the meaning of Article 4(4) of the applied GDPR), and
 - (b) the results produced by this profile are applied to a data subject, including informing a decision about them,
 the relevant data subject is entitled to request from the public authority meaningful information relating to the profiling.
- (2) Information provided on the basis of a request made under subsection (1) must include, at least—
 - (a) the degree and the mode of contribution of the profiling to the decision made;
 - (b) the provenance of the data that forms the basis of the profile applied;
 - (c) the data of the relevant data subject used to generate the profile in accordance with Article 15(1) of the applied GDPR;
 - (d) the weightings, or, where appropriate, the output of a comparable explanation facility, of the profiling system, applied to the situation of the person concerned; and
 - (e) where applicable, information on activities undertaken to ensure the compliance of the profiling system with the public sector equality duty (within the meaning of section 150(1) of the Equality Act 2010).
- (3) For the purposes of this paragraph a “public authority” means a public authority within the meaning of the Freedom of Information Act 2000 or a person who is engaged by a public authority to exercise a public function.
- (4) A public function is a function that is a function of a public nature for the purposes of the Human Rights Act 1998.
- (5) Where a data subject makes a request under subsection (1), the controller must comply with the request without undue delay.”

Clause 173

LORD STEVENSON OF BALMACARA
LORD KENNEDY OF SOUTHWARK
BARONESS JONES OF MOULSECOOMB

184 Page 98, line 20, at end insert –

“() In relation to the processing of personal data to which the GDPR applies, Article 80(2) of the GDPR (representation of data subjects) permits and this Act provides that a body or other organisation which meets the conditions set out in that Article has the right to lodge a complaint, or exercise the rights, independently of a data subject’s mandate, under –

- (a) Article 77 (right to lodge a complaint with a supervisory body);
- (b) Article 78 (right to an effective judicial remedy against a supervisory authority); and
- (c) Article 79 (right to an effective judicial remedy against a controller or processor),

of the GDPR if it considers that the rights of a data subject under the GDPR have been infringed as a result of the processing.”

LORD CLEMENT-JONES
LORD PADDICK

185 Page 98, line 30, at end insert –

“() A body or other organisation which meets the conditions in subsections (3) and (4) may also exercise some or all of the rights under subsection (2) independently of the data subject's authorisation.”

Clause 184

LORD ASHTON OF HYDE

186 Page 105, line 21, at end insert “(and related expressions are to be read accordingly)”

Clause 185

LORD ASHTON OF HYDE

187 Page 106, leave out lines 8 and 9

Clause 187

LORD ARBUTHNOT OF EDROM

188★ Page 109, line 14, leave out “12” and insert “13”

In the Title

LORD ASHTON OF HYDE

189 Line 4, leave out “conduct” and insert “practice”

Data Protection Bill [HL]

MARSHALLED
LIST OF AMENDMENTS
TO BE MOVED
IN COMMITTEE OF THE WHOLE HOUSE

26 October 2017
