

Data Protection Bill [HL]

FOURTH
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.**

Schedule 3

LORD STEVENSON OF BALMACARA
LORD KENNEDY OF SOUTHWARK

93A Page 140, line 16, leave out “or another individual”

LORD ASHTON OF HYDE

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

Schedule 3 - continuedLORD STEVENSON OF BALMACARA
LORD KENNEDY OF SOUTHWARK

- 94A** Page 141, line 1, leave out from “subject” to “and” and insert “lacks capacity as defined in the Mental Capacity Act 2005”
- 94B** Page 141, line 6, leave out paragraph (a)
- 94C** Page 142, line 18, leave out from “applies” to end of line 19
- 94D** Page 142, line 41, leave out paragraph (a)

LORD ASHTON OF HYDE

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

LORD STEVENSON OF BALMACARA
LORD KENNEDY OF SOUTHWARK

- 95A** Page 144, line 10, leave out from “Children” to “, and” in line 13
- 95B** Page 144, line 29, leave out from “1990” to end of line 31

LORD ASHTON OF HYDE

- 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;
(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”

Schedule 3 - continued

- 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 15LORD STEVENSON OF BALMACARA
LORD KENNEDY OF SOUTHWARK

- 106A** Page 8, line 44, leave out paragraph (b)

BARONESS NEVILLE-ROLFE
LORD ARBUTHNOT OF EDROM

- 106B** Page 9, line 13, leave out “affirmative” and insert “super-affirmative”

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”
- 108** [Re-tabled as Amendment 106B]

Clause 15 - continued

LORD STEVENSON OF BALMACARA
LORD KENNEDY OF SOUTHWARK
BARONESS FINLAY OF LLANDAFF

108A Page 9, line 14, at end insert –

“() Nothing in this section authorises the making of regulations which would enable a disclosure which contravenes the common law duty of medical confidentiality.”

LORD STEVENSON OF BALMACARA
LORD KENNEDY OF SOUTHWARK

108B Page 9, line 14, at end insert –

“() Regulations made under this section may not amend, repeal or revoke the GDPR after the United Kingdom leaves the EU.”

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 STEVENSON OF BALMACARA
LORD KENNEDY OF SOUTHWARK

108C Page 154, line 29, after “by” insert “any relevant”

108D Page 155, line 2, leave out “is dissatisfied with” and insert “wishes to make an appeal against”

108E Page 155, line 5, leave out “3 months” and insert “28 days”

108F Page 155, line 39, leave out sub-paragraph (7)

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)”

LORD STEVENSON OF BALMACARA
LORD KENNEDY OF SOUTHWARK

110A Page 156, line 6, after “Any” insert “relevant”

Clause 17

LORD STEVENSON OF BALMACARA
LORD KENNEDY OF SOUTHWARK

- 110B** Page 10, line 25, at beginning insert –
“() Regulations under section 17(1)(a) are subject to the affirmative resolution procedure. Other”

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.”

- 111A** [*Withdrawn*]

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.”

- 112A** [*Withdrawn*]

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

LORD STEVENSON OF BALMACARA
LORD KENNEDY OF SOUTHWARK

- 113A** Page 157, line 25, leave out paragraph 4

LORD ASHTON OF HYDE

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

LORD STEVENSON OF BALMACARA
LORD KENNEDY OF SOUTHWARK

- 114A** Page 158, line 9, leave out paragraph 8

LORD CLEMENT-JONES
LORD PADDICK

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

Schedule 6 - continued

LORD ASHTON OF HYDE

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

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 STEVENSON OF BALMACARA
LORD KENNEDY OF SOUTHWARK

118A Page 159, line 36, leave out paragraph (f)

LORD CLEMENT-JONES
LORD PADDICK

119 Page 160, line 38, at end insert –
“() in paragraph 3, after “point of view” insert “, to obtain an explanation of the decision reached after such assessment”.

LORD STEVENSON OF BALMACARA
LORD KENNEDY OF SOUTHWARK

119A Page 161, line 42, leave out paragraph 27

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”

LORD STEVENSON OF BALMACARA
LORD KENNEDY OF SOUTHWARK

121A Page 164, line 36, leave out paragraph (d)

LORD ASHTON OF HYDE

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”;

Schedule 6 - continued

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

Clause 21

LORD STEVENSON OF BALMACARA
LORD KENNEDY OF SOUTHWARK

The above-named Lords give notice of their intention to oppose the Question that Clause 21 stand part of the Bill.

Clause 24

LORD STEVENSON OF BALMACARA
LORD KENNEDY OF SOUTHWARK

- 124A** Page 14, line 40, at end insert “where the provision is likely to prejudice the combat effectiveness of the armed forces.”

- 124B** [*Withdrawn*]

LORD CLEMENT-JONES
LORD PADDICK

- 124C** Page 14, line 42, leave out paragraph (a)

- 124D** Page 15, line 4, leave out paragraph (c)

- 124E** Page 15, line 16, leave out paragraph (f)

- 124F** Page 15, line 21, leave out paragraph (g)

- 124G** [*Withdrawn*]

- 124H** [*Withdrawn*]

- 124J** [*Withdrawn*]

Clause 25

LORD STEVENSON OF BALMACARA
LORD KENNEDY OF SOUTHWARK

- 124K** Page 16, line 24, at end insert –
“(11) The Secretary of State must by regulations specify the grounds of appeal for proceedings under subsection (3).
(12) The regulations under subsection (11) are subject to the affirmative resolution procedure.”

Clause 25 - continued

LORD CLEMENT-JONES
LORD PADDICK

124L Leave out Clause 25 and insert the following new Clause –

“National security: certificate

- (1) A Minister of the Crown must apply to a Judicial Commissioner for a certificate if exemptions are sought under section 24(2) from the specified provisions in relation to any personal data for the purpose of safeguarding national security.
- (2) The decision to issue the certificate must be approved by a Judicial Commissioner.
- (3) In deciding whether to approve an application under subsection (1), a Judicial Commissioner must review the Minister’s conclusions as to the following matters –
 - (a) whether the certificate is necessary, and
 - (b) whether the conduct that would be authorised by the certificate is proportionate, and
 - (c) whether it is necessary and proportionate to exempt all of the provisions specified in the certificate.
- (4) An application for a certificate under subsection (1) –
 - (a) must identify the personal data to which it applies by means of a general description, and
 - (b) may be expressed to have prospective effect.
- (5) Where a Judicial Commissioner refuses to approve a Minister’s application for a certificate under this Chapter, the Judicial Commissioner must give the Minister reasons in writing for the refusal.
- (6) Where a Judicial Commissioner refuses to approve a Minister’s application for a certificate under this Chapter, the Minister may apply to the Commissioner for a review of the decision.
- (7) Any person who believes they are directly affected by a certificate under subsection (1) may appeal to the Tribunal against the certificate and may rely upon section 173 of this Act.
- (8) If, on an appeal under subsection (7), the Tribunal finds that it was not necessary or proportionate to issue the certificate, the Tribunal may –
 - (a) allow the appeal, and
 - (b) quash the certificate.
- (9) The power to apply for a certificate under subsection (1) is exercisable only by –
 - (a) a Minister who is a member of the Cabinet, or
 - (b) the Attorney General or the Advocate General for Scotland.”

Clause 26

LORD CLEMENT-JONES
LORD PADDICK

124M Page 16, line 30, leave out “or for defence purposes”

LORD STEVENSON OF BALMACARA
LORD KENNEDY OF SOUTHWARK

124N Page 16, line 31, after “purposes” insert “where the prohibition is likely to prejudice the combat effectiveness of the armed forces”

LORD CLEMENT-JONES
LORD PADDICK

124P Page 16, line 34, leave out subsections (2) to (4)

Clause 28

BARONESS HAMWEE
LORD PADDICK

124Q Page 17, line 27, after “Schedule 7” insert “to the extent that the person has functions for any of the law enforcement purposes”

124R Page 17, line 33, at end insert “to reflect the extent of a person’s functions for any of the law enforcement purposes”

Schedule 7

BARONESS HAMWEE
LORD PADDICK

124S Page 168, line 10, leave out paragraphs 1 to 3

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”

BARONESS HAMWEE
LORD PADDICK

127A Page 169, line 2, at end insert—
“ Police and crime commissioners.”

Schedule 7 - continued

LORD ASHTON OF HYDE

- 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.”

BARONESS HAMWEE

LORD PADDICK

- 129A** Page 169, line 22, leave out paragraphs 35 to 37

Clause 31

BARONESS HAMWEE

LORD PADDICK

- 129B** Page 18, line 42, leave out “certain”
- 129C** Page 18, line 42, at end insert “or attributes”
- 129D** Page 19, line 1, leave out “in particular” and insert “and”
- 129E** Page 19, line 1, leave out “aspects concerning”
- 129F** Page 19, line 2, leave out “individual’s” and insert “individual including his”

Clause 32

BARONESS HAMWEE

LORD PADDICK

- 129G** Page 19, line 17, leave out “and fair” and insert “, fair and transparent”

Clause 33

BARONESS HAMWEE

LORD PADDICK

- 129H** Page 19, line 37, leave out “and fair” and insert “, fair and transparent”
- 129J** Page 20, line 10, leave out “strictly”

Clause 33 - continued

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

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

BARONESS HAMWEE
LORD PADDICK

130A Page 20, line 14, leave out “adding, varying or”

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.”

LORD STEVENSON OF BALMACARA
LORD KENNEDY OF SOUTHWARK

133ZA Page 171, line 14, leave out paragraph 6

Clause 34

BARONESS HAMWEE
LORD PADDICK

133ZB Page 20, line 30, leave out “legitimate” and insert “authorised by law”

LORD STEVENSON OF BALMACARA
LORD KENNEDY OF SOUTHWARK

133ZC Page 20, line 36, after “purpose” insert “which has a statutory basis”

Clause 36

BARONESS HAMWEE
LORD PADDICK

133ZD Page 21, line 16, leave out “where relevant and”

133ZE Page 21, line 24, leave out “transmitted or made available” and insert “disclosed”

Clause 36 - continued

LORD STEVENSON OF BALMACARA
LORD KENNEDY OF SOUTHWARK

- 133ZF** Page 21, line 25, leave out “of the law enforcement”
- 133ZG** Page 21, line 25, at end insert –
“() Where inaccurate personal data is not rectified, the controller must erase it.”

Clause 37

LORD STEVENSON OF BALMACARA
LORD KENNEDY OF SOUTHWARK

- 133ZH** Page 21, line 42, at end insert –
“() The controller must have in place an appropriate policy document which explains the controller's procedures in relation to ensuring that the time limits under subsection (2) are observed.
() Such policy documents must be made available to the Commissioner.”

Clause 39

BARONESS HAMWEE
LORD PADDICK

- 133ZJ** Page 22, line 10, after “is” insert “strictly”

Clause 40

BARONESS HAMWEE
LORD PADDICK

- 133ZK** Page 22, line 38, leave out paragraph (c) and insert –
“(c) publish it.”

Clause 42

BARONESS HAMWEE
LORD PADDICK

- 133ZL** Page 24, line 12, at end insert –
“() The controller must without undue delay inform each data subject that he is (or, as the case may be, is again) a data subject.”
- 133ZM** Page 24, line 13, leave out “in specific cases”
- 133ZN** Page 24, line 30, after “rights” insert “under the Human Rights Act 1998 and the Charter of Fundamental Rights of the European Union”
- 133ZP** Page 24, line 32, leave out “an official or” and insert “a”

Clause 46

BARONESS HAMWEE
LORD PADDICK

133ZQ Page 27, line 45, leave out “(4)” and insert “(1)(b)(i)”

Clause 47

LORD CLEMENT-JONES
LORD PADDICK

133A Page 28, line 19, at end insert –

“() In subsection (1) the qualification “unless that decision is required or authorised by law” does not apply to a significant decision in respect of a child.”

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

BARONESS HAMWEE
LORD PADDICK

134A Page 28, line 28, leave out paragraph (b)

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.”

BARONESS HAMWEE
LORD PADDICK

135A Page 28, line 30, after “processing” insert “, including profiling”

135B Page 28, line 31, after “practicable” insert “within 72 hours of the decision”

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).”

Clause 48 - continued

BARONESS HAMWEE
LORD PADDICK

136A Page 29, line 12, at end insert –

- “(7) To support the exercise by the Commissioner of his or her functions under Schedule 13, the Commissioner must appoint an independent person –
- (a) to oversee the operation of automated decision-making and applicable safeguards,
 - (b) to advise the Commissioner with regard to the application to automated decision-making of the data protection principles provided by this Part, and
 - (c) periodically to report to the Commissioner.
- (8) The reports under subsection (7)(c) must be published.”

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 56

BARONESS HAMWEE
LORD PADDICK

137A Page 32, line 30, at end insert –

- “() Notwithstanding any determination under subsection (2), joint controllers are each liable for any failure to comply with the obligations of a controller under this Part.”

Clause 59

BARONESS HAMWEE
LORD PADDICK

137B Page 34, line 13, leave out “where applicable,”

Clause 62

BARONESS HAMWEE
LORD PADDICK

- 137C** Page 35, line 40, at end insert –
“() In subsection (4), reference to “nature” includes the use of new technologies, mechanisms and procedures in the processing of personal data.”

Clause 63

BARONESS HAMWEE
LORD PADDICK

- 137D** Page 36, line 7, at end insert –
“(2A) The Commissioner may, through regulations, specify other conditions under which the controller must consult the Commissioner.
(2B) The regulations under subsection (2A) are subject to the negative resolution procedure.”

- 137E** Page 36, line 20, at end insert –
“() The written advice must include advice on measures to mitigate the risks to the rights and freedoms of data subjects and the powers of the Commissioner in the event of non-compliance with this Part.”

After Clause 63

LORD KENNEDY OF SOUTHWARK
LORD STEVENSON OF BALMACARA

- 137EA★** Insert the following new Clause –
“Retention of data: automatic number plate recognition systems
 Personal data acquired by a controller or a processor from an automatic number plate recognition system must not be retained for more than 12 months, beginning with the day on which the number plate recognition is made.”

Clause 64

BARONESS HAMWEE
LORD PADDICK

- 137F** Page 36, line 32, after “must” insert “, taking into account the costs of implementation,”

Clause 66

BARONESS HAMWEE
LORD PADDICK

- 137G** Page 38, line 10, leave out “has” and insert “had”

Clause 66 - continued

- 137H** Page 38, line 40, at end insert—
 “but the controller must report any restriction to the Commissioner.”

Clause 69

BARONESS HAMWEE
 LORD PADDICK

- 137J** Page 40, line 4, at end insert “including updating controllers and processors on relevant developments in the data protection standards of third countries to which personal data might be transferred under this Part”

Clause 71

BARONESS HAMWEE
 LORD PADDICK

- 137K** Page 41, line 12, at end insert—
 “(c) the rights of data subjects under this Part are protected.”

- 137L** Page 41, line 33, leave out “or to the essential interests of a member State”

- 137M** Page 41, line 34, leave out paragraph (b)

Clause 74

BARONESS HAMWEE
 LORD PADDICK

- 137N** Page 42, line 40, at end insert—
 “() In coming to a decision under subsection (2), the controller must pay due regard to any relevant guidance issued by the Commissioner.”

Clause 77

BARONESS HAMWEE
 LORD PADDICK

- 137P** Page 45, line 9, at end insert “must be informed and”

- 137Q** [Withdrawn]

Clause 84

BARONESS HAMWEE
 LORD PADDICK

- 137R** Page 49, line 15, after “conditions” insert “, other than a condition which is also a condition in Schedule 9,”

Clause 84 - continued

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

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

BARONESS HAMWEE
LORD PADDICK

138A Page 49, line 18, leave out “, varying or omitting”

Schedule 9

LORD ASHTON OF HYDE

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

BARONESS HAMWEE
LORD PADDICK

139A Page 171, line 39, leave out paragraph 6

139B Page 172, line 3, leave out from “processing” to “the” in line 4 and insert “may prejudice”

Schedule 10

BARONESS HAMWEE
LORD PADDICK

139C Page 172, line 26, at end insert –

“(2) In any case under this paragraph, the processing and the reasons for the processing must be reported to the Commissioner.”

139D Page 172, line 31, at end insert –

“() is in connection with an offence or alleged offence, and”

LORD ASHTON OF HYDE

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

BARONESS HAMWEE
LORD PADDICK

140A Page 173, line 10, leave out paragraph 7

Clause 85

BARONESS HAMWEE
LORD PADDICK

140B Page 50, line 16, after “collected” insert “only”

Clause 90

LORD ASHTON OF HYDE

141 Page 51, line 9, leave out “to 96” and insert “and 95 ”**142** Page 51, line 9, at end insert—

“() section 96 deals with the right to information about decision-making;”

After Clause 90

LORD STEVENSON OF BALMACARA

LORD KENNEDY OF SOUTHWARK

142A Insert the following new Clause—**“The rights of data subjects in non-sensitive roles**

- (1) The rights of data subjects set out in Chapter 3 of this Part apply only to data subjects carrying out roles considered to be sensitive.
- (2) Data subjects carrying out non-sensitive roles have the same rights in respect of their personal data as data subjects covered by Part 2 of this Act.
- (3) The Secretary of State may by regulations made by statutory instrument determine the roles considered to be sensitive for the purposes of subsection (1).
- (4) Regulations under subsection (3) are subject to the affirmative resolution procedure.”

Clause 91

BARONESS HAMWEE

LORD PADDICK

142B Page 51, line 32, leave out “data subject already has” and insert “controller has previously provided to the data subject”**Clause 92**

LORD STEVENSON OF BALMACARA

LORD KENNEDY OF SOUTHWARK

142C Page 52, line 19, at end insert—

“() the existence of the right to object to automated-decision making.”

142D Page 52, line 20, leave out subsections (3) and (4)

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 92 - continued

BARONESS HAMWEE
LORD PADDICK

143A Page 53, line 24, leave out paragraph (b)

Clause 94

LORD STEVENSON OF BALMACARA
LORD KENNEDY OF SOUTHWARK

143B Page 54, line 24, at end insert –

“() The controller must inform the data subject of their right not to be subject to automated decision-making.”

LORD 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 95

LORD PADDICK
BARONESS HAMWEE

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

BARONESS HAMWEE
LORD PADDICK

146A Page 55, line 17, at end insert –

“() inform the Commissioner.”

Clause 97

BARONESS HAMWEE
LORD PADDICK

146B Page 55, line 41, after “relates” insert “if its location is known to the data subject”

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.”

Clause 101

BARONESS HAMWEE

LORD PADDICK

148A Page 57, line 27, at end insert “and dealt with in accordance with this Act.”**Clause 106**

BARONESS HAMWEE

LORD PADDICK

148B Page 59, line 19, leave out “seriously” and insert “significantly”**Clause 108**

BARONESS HAMWEE

LORD PADDICK

148C Page 59, line 37, leave out “required” and insert “necessary”**148D** Page 59, line 38, at end insert “and a certificate is given in accordance with section 109.”

LORD STEVENSON OF BALMACARA

LORD KENNEDY OF SOUTHWARK

148E Page 60, line 4, leave out paragraphs (c) to (e)**148F** [*Withdrawn*]**148G** [*Withdrawn*]**Clause 109**

BARONESS HAMWEE

LORD PADDICK

148H Page 60, line 30, after “certificate,” insert “or that the certificate did not comply with the provisions of this Act or infringes the rights and freedoms of the data subject,”

LORD STEVENSON OF BALMACARA

LORD KENNEDY OF SOUTHWARK

148J Page 61, line 10, at end insert—

“(11) The Secretary State must by regulations specify grounds of appeal for proceedings under subsection (3).”

Clause 109 - continued

- (12) The regulations under subsection (11) are subject to the affirmative resolution procedure.”

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 113BARONESS 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 114LORD 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.”

Schedule 13

LORD CLEMENT-JONES
LORD PADDICK

153A Page 180, line 23, at end insert –

- “(j) investigate, keep under review, and as may be appropriate produce and publish written guidance on –
- (i) the terms upon which enterprises may be entitled to seek consent to the disclosure of personal data of vulnerable adults from such adults or their carers as a pre-condition to providing online or other services;
 - (ii) the processing of personal data by automated or structured processing as the sole means of determining eligibility for health or social care;
 - (iii) the circumstances in which it may be appropriate to invite the giving of explicit consent to the processing and pooling of personal data for the purposes of health or social care;
 - (iv) steps that should be taken to discourage public bodies from selling or giving away collected personal data or associated software as opposed to licensing its use.

“Vulnerable adult” in sub-sub-paragraph (j)(i) means a person aged 18 or over whose ability to protect himself or herself from physical or psychological harm is significantly impaired through physical or mental disability or illness, through old age or otherwise.”

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.

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

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;
 - (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.”

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.
- (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”

Clause 127 - continued

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 143

LORD BLACK OF BRENTWOOD

163A Page 79, line 16, at end insert—

“() Prior to giving an enforcement notice under section 142(1) against an information society service in respect of material originating from a third party controller or processor processing personal data for one of the special purposes, the Commissioner must consult and take into account any representations made by the third party, save in circumstances where consulting the third party would result in substantial damage or substantial distress to an individual, in which case the Commissioner must take into account the special importance of the public interest in the freedom of expression and information.

() The Commissioner must publish a summary of any enforcement notice issued against an information society service in respect of material processed by a third party controller or processor for any of the special purposes.”

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,”

LORD BLACK OF BRENTWOOD

164A Page 82, line 33, at end insert—

“() any other financial penalties imposed by another regulator as a result of the failure.”

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 159

LORD HUNT OF WIRRAL

- 170A Page 89, line 16, leave out “, distress and other adverse effects” and insert “and distress”

Clause 161

LORD BLACK OF BRENTWOOD

- 170B** Page 90, line 20, at end insert –
 “() was for the special purposes and that the person acted in the reasonable belief that the obtaining, disclosing, procuring or retaining was in the public interest.”
- 170C** Page 90, line 36, at end insert –
 “() For the purposes of subsection (1), where processing is for the special purposes, the obtaining, procuring and retaining of personal data will not be deemed reckless as a result of it being received –
 (a) from an anonymous source, or
 (b) unsolicited.”

Clause 162

LORD BLACK OF BRENTWOOD

- 170D** Page 91, line 18, at end insert –
 “() was for the special purposes and that the person acted in the reasonable belief that the re-identification was in the public interest.”

LORD MCNALLY
 LORD CLEMENT-JONES
 BARONESS NEVILLE-ROLFE

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 .”

LORD BLACK OF BRENTWOOD
 VISCOUNT COLVILLE OF CULROSS

- 172A** Page 93, line 11, leave out “only”
- 172B** Page 93, line 12, leave out paragraph (b) and insert –
 “(b) the processing is not being undertaken with a view to the publication by any person of any journalistic, academic, artistic or literary material which has not previously been published by the controller;”
- 172C** Page 93, line 15, leave out paragraph (c)

Clause 165

LORD BLACK OF BRENTWOOD
VISCOUNT COLVILLE OF CULROSS

The above-named Lords give notice of their intention to oppose the Question that Clause 165 stand part of the Bill.

Clause 166

LORD ASHTON OF HYDE

173 Page 94, line 27, leave out “or tribunal”

174 Page 94, line 28, leave out “or tribunal”

LORD BLACK OF BRENTWOOD
VISCOUNT COLVILLE OF CULROSS

174A Page 94, line 30, leave out “only”

174B Page 94, line 31, at end insert “any”

LORD ASHTON OF HYDE

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 STEVENSON OF BALMACARA
LORD KENNEDY OF SOUTHWARK

180A Page 96, line 1, after “Commissioner” insert “, data subjects and persons who appear to the Commissioner to represent the interests of data subjects,”

180B Page 96, line 3, leave out paragraph (a)

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,
 - (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.

After Clause 169 - continued

- (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.
- (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.”

LORD WHITTY

*As an amendment to Amendment 182***182A** After subsection (2) insert—

- “() The Minister must consult the Commissioner, data subjects and organisations representing the interests of data subjects before making a draft order under the procedure set out in this section.”

*As an amendment to Amendment 182***182B** After subsection (3)(b)(i) insert—

“() data subjects,”

*As an amendment to Amendment 182***182C** After subsection (7)(c)(i) insert—

“() data subjects,”

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,

Before Clause 171 - continued

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.”

Clause 173 - continued

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

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]

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

13 November 2017
