AMENDMENTS
TO BE MOVED
ON REPORT

Clause 6

LORD ASHTON OF HYDE

Page 4, leave out line 34

Page 4, line 36, leave out “, subject to subsection (2)”

Page 4, line 37, at end insert—
“subject to subsections (1A) and (2).

(1A) An authority or body that falls within subsection (1) is only a “public authority” or “public body” when performing a task carried out in the public interest or in the exercise of official authority vested in it.”

Clause 7

LORD ASHTON OF HYDE

Page 5, line 11, after “enactment” insert “or rule of law”

Clause 9

LORD ASHTON OF HYDE

Page 6, line 5, leave out paragraphs (a) and (b) and insert—
“(a) amend Schedule 1 —
   (i) by adding or varying conditions or safeguards, and
   (ii) by omitting conditions or safeguards added by regulations under this section, and
(b) consequentially amend this section.”
Schedule 1

LORD ASHTON OF HYDE

Page 114, line 9, leave out from “rights” to “, and” in line 11 and insert “which are imposed or conferred by law on the controller or the data subject in connection with employment, social security or social protection”

Page 114, line 17, leave out “social security law” includes the law relating to” and insert “social security” includes”

Page 115, line 32, at end insert “or rule of law”

Page 124, line 1, at end insert “ortribunal”

Page 125, line 21, after “court” insert “ortribunal”

After Clause 13

LORD STEVENSON OF BALMACARA
LORD KENNEDY OF SOUTHWARK
LORD PATEL

Insert the following new Clause—

“Personal data ethics advisory board and ethics code of practice

(1) The Secretary of State must appoint an independent Personal Data Ethics Advisory Board (“the board”) as soon as reasonably practicable after the passing of this Act.

(2) The board's functions, in relation to the processing of personal data to which the GDPR and this Act applies, are—

(a) to monitor further technical advances in the use and management of personal data and their implications for the rights of data subjects;

(b) to protect the individual and collective rights and interests of data subjects in relation to their personal data;

(c) to ensure that trade-offs between the rights of data subjects and the use and management of personal data are made transparently, inclusively, and with accountability;

(d) to seek out good practices and learn from successes and failures in the use and management of personal data;

(e) to enhance the skills of data subjects and controllers in the use and management of personal data.

(3) The board must work with the Commissioner to prepare a data ethics code of practice for data controllers, which must—

(a) include a duty of care on the data controller and the processor to the data subject;

(b) provide best practice for data controllers and processors on measures which, in relation to the processing of personal data—

(i) reduce vulnerabilities and inequalities;

(ii) protect human rights;
After Clause 13 - continued

(iii) increase the security of personal data; and
(iv) ensure that the access, use and sharing of personal data is transparent, and the purposes of personal data processing are communicated clearly and accessibly to data subjects.

(4) The code must also include guidance in relation to the processing of personal data in the public interest and the substantial public interest.

(5) Where a data controller or processor does not follow the code under this section, the data controller or processor is subject to a fine to be determined by the Commissioner.

(6) The board must report annually to the Secretary of State.

(7) The report in subsection (6) may contain recommendations to the Secretary of State and the Commissioner relating to how they can improve the processing of personal data and the protection of data subjects’ rights by improving methods of—
   (a) monitoring and evaluating the use and management of personal data;
   (b) sharing best practice and setting standards for data controllers; and
   (c) clarifying and enforcing data protection rules.

(8) The Secretary of State must lay the report made under subsection (6) before both Houses of Parliament.”

Schedule 2

LORD ASHTON OF HYDE
Page 130, line 2, at end insert “or tribunal”

Page 132, line 23, column 2, at end insert—

| “() the Prison Ombudsman for Northern Ireland, or” |

LORD PANNICK
LORD WALKER OF GESTINGTHORPE
Page 138, line 44, at end insert—

“Confidential trust information

The listed GDPR provisions do not apply to personal data in respect of which the controller is (or acts as agent or confidential adviser to) a trustee or other officer of a private trust to the extent that the data consists of information—

(a) which records any person’s deliberations about the manner of exercise of a power or discretion under that trust,

(b) which discloses any person’s reasons for any particular exercise of such power or discretion, or
Schedule 2 - continued

(c) upon which such deliberations or reasons were or might have been based.”

LORD ASHTON OF HYDE

Page 140, line 43, leave out “by the controller”

Page 142, line 1, leave out sub-paragraph (2) and insert—

“(2) Sub-paragraph (2A) applies to the processing of personal data carried out for the special purposes if—

(a) the processing is being carried out with a view to the publication by a person of journalistic, academic, artistic or literary material, and

(b) the controller reasonably believes that the publication of the material would be in the public interest.

(2A) The listed GDPR provisions do not apply to the extent that the controller reasonably believes that the application of those provisions would be incompatible with the special purposes.”

Page 142, line 20, leave out “IPSO”

Page 142, line 47, at end insert—

“( ) in Chapter IV of the GDPR (controller and processor), Article 36 (requirement for controller to consult Commissioner prior to high risk processing);

( ) in Chapter V of the GDPR (transfers of data to third countries etc), Article 44 (general principles for transfers);”

Schedule 3

LORD ASHTON OF HYDE

Page 148, line 17, leave out from “of” to “or” in line 18 and insert “section 2(5) of the Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1 (N.I.)),”

Page 148, line 24, leave out from “of” to “on” in line 25 and insert “section 2(5) of the Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1 (N.I.))”

Clause 15

LORD ASHTON OF HYDE

Page 9, line 14, leave out paragraph (d)

Page 9, line 18, leave out from “may” to end of line 19 and insert “—

(a) amend Schedules 2 to 4 —

(i) by adding or varying provisions, and

(ii) by omitting provisions added by regulations under this section, and
**Clause 15 - continued**

(b) consequentially amend section 14.”

**Clause 16**

LORD ASHTON OF HYDE

Page 9, line 38, leave out subsection (4)

**Clause 17**

LORD ASHTON OF HYDE

Page 10, line 31, leave out subsection (3) and insert—

“(3) Regulations under this section—

(a) are subject to the made affirmative resolution procedure where the Secretary of State has made an urgency statement in respect of them;

(b) are otherwise subject to the affirmative resolution procedure.

(4) For the purposes of this section, an urgency statement is a reasoned statement that the Secretary of State considers it desirable for the regulations to come into force without delay.”

**Clause 18**

LORD ASHTON OF HYDE

Page 10, line 35, after “processing” insert “of personal data”

Page 10, line 37, after “processing” insert “of personal data”

Page 10, line 39, after “processing” insert “of personal data”

Page 11, line 1, leave out paragraph (a)

Page 11, line 4, at end insert—

“(3) Such processing does not satisfy that requirement if the processing is carried out for the purposes of measures or decisions with respect to a particular data subject, unless the purposes for which the processing is necessary include the purposes of approved medical research.

(4) In this section—

“approved medical research” means medical research carried out by a person who has approval to carry out that research from—

(a) a research ethics committee recognised or established by the Health Research Authority under Chapter 2 of Part 3 of the Care Act 2014, or

(b) a body appointed by any of the following for the purpose of assessing the ethics of research involving individuals—

(i) the Secretary of State, the Scottish Ministers, the Welsh Ministers, or a Northern Ireland department;
Clause 18 - continued

(ii) a relevant NHS body;
(iii) United Kingdom Research and Innovation or a body that is a Research Council for the purposes of the Science and Technology Act 1965;
(iv) an institution that is a research institution for the purposes of Chapter 4A of Part 7 of the Income Tax (Earnings and Pensions) Act 2003 (see section 457 of that Act);

“relevant NHS body” means—
(a) an NHS trust or NHS foundation trust in England,
(b) an NHS trust or Local Health Board in Wales,
(c) a Health Board or Special Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978,
(d) the Common Services Agency for the Scottish Health Service, or
(e) any of the health and social care bodies in Northern Ireland falling within paragraphs (a) to (d) of section 1(5) of the Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1 (N.I.)).

(5) The Secretary of State may by regulations change the meaning of “approved medical research” for the purposes of this section, including by amending subsection (4).

(6) Regulations under subsection (5) are subject to the affirmative resolution procedure.”

After Clause 18

LORD ASHTON OF HYDE

Insert the following new Clause—

“Meaning of “court”

Section 4(1) (terms used in this Chapter to have the same meaning as in the GDPR) does not apply to references in this Chapter to a court and, accordingly, such references do not include a tribunal.”

Clause 19

LORD ASHTON OF HYDE

Page 11, line 22, leave out “carried on”

Page 11, line 24, leave out “of personal data that” and insert “otherwise than by automated means of personal data which”
Clause 20

LORD STEVENSON OF BALMACARA
LORD KENNEHY OF SOUTHWARK

Page 12, line 19, after “GDPR” insert “, having regard to any relevant Recital of the GDPR,”

Clause 33

LORD ASHTON OF HYDE

Page 20, line 24, leave out “by adding, varying or omitting conditions” and insert “— (a) by adding conditions; (b) by omitting conditions added by regulations under paragraph (a).”

Clause 79

LORD ASHTON OF HYDE

Page 47, line 12, at end insert—

“( ) Until the repeal of Part 1 of the Regulation of Investigatory Powers Act 2000 by paragraphs 45 and 54 of Schedule 10 to the Investigatory Powers Act 2016 is fully in force, subsection (5) has effect as if it included a reference to that Part.”

Clause 84

LORD ASHTON OF HYDE

Page 49, line 17, leave out “by adding, varying or omitting conditions” and insert “— (a) by adding conditions; (b) by omitting conditions added by regulations under paragraph (a).”

Clause 111

LORD ASHTON OF HYDE

Page 61, line 21, leave out subsections (1) and (2) and insert—

“(1) The Secretary of State may by regulations amend Schedule 11 — (a) by adding exemptions from any provision of this Part; (b) by omitting exemptions added by regulations under paragraph (a).”

After Clause 125

LORD ASHTON OF HYDE

Insert the following new Clause—

“Records of national security certificates

Records of national security certificates

(1) A Minister of the Crown who issues a certificate under section 25, 77 or 109 must send a copy of the certificate to the Commissioner.

(2) If the Commissioner receives a copy of a certificate under subsection (1), the Commissioner must publish a record of the certificate.”
After Clause 125 - continued

(3) The record must contain—
   (a) the name of the Minister who issued the certificate,
   (b) the date on which the certificate was issued, and
   (c) subject to subsection (4), the text of the certificate.

(4) The Commissioner must not publish the text, or a part of the text, of the certificate if—
   (a) the Minister determines that publishing the text or that part of the text—
      (i) would be against the interests of national security,
      (ii) would be contrary to the public interest, or
      (iii) might jeopardise the safety of any person, and
   (b) the Minister has notified the Commissioner of that determination.

(5) The Commissioner must keep the record of the certificate available to the public while the certificate is in force.

(6) If a Minister of the Crown revokes a certificate issued under section 25, 77 or 109, the Minister must notify the Commissioner.”

Clause 126

LORD ASHTON OF HYDE

Page 68, leave out lines 26 to 35 and insert—

“(2) But this section does not authorise the making of a disclosure which is prohibited by any of Parts 1 to 7 or Chapter 1 of Part 9 of the Investigatory Powers Act 2016.

(3) Until the repeal of Part 1 of the Regulation of Investigatory Powers Act 2000 by paragraphs 45 and 54 of Schedule 10 to the Investigatory Powers Act 2016 is fully in force, subsection (2) has effect as if it included a reference to that Part.”

Clause 127

LORD ASHTON OF HYDE

Page 69, line 1, leave out from “Commissioner” to end of line 3 and insert “in the course of, or for the purposes of, the discharging of the Commissioner’s functions”

Page 69, line 13, leave out “provided” and insert “obtained or provided as described in subsection (1)(a)”

Page 69, line 14, leave out from “manner)” to end of line 16

Page 69, line 18, leave out from “of” to end of line 19 and insert “one or more of the Commissioner’s functions”

Page 69, line 28, leave out subsection (4)
Clause 133

LORD ASHTON OF HYDE

Page 72, line 12, leave out from “appropriate” to end of line 13

Clause 142

LORD ASHTON OF HYDE

Page 79, line 2, at end insert “to comply with the data protection legislation”

Page 79, line 3, leave out subsection (9)

Clause 148

LORD ASHTON OF HYDE

Page 82, line 40, after “failures” insert “to comply with the data protection legislation”

Page 82, line 41, leave out paragraph (b) and insert—

“(b) provide for the maximum penalty that may be imposed in relation to such failures to be either the standard maximum amount or the higher maximum amount.”

Page 82, line 42, leave out subsection (6)

Page 82, line 48, at end insert—

“( ) In this section, “higher maximum amount” and “standard maximum amount” have the same meaning as in section 150.”

Clause 152

LORD ASHTON OF HYDE

Page 84, line 40, leave out subsection (3)

Clause 153

LORD ASHTON OF HYDE

Page 85, line 27, leave out “prepared” and insert “produced”

Page 85, line 42, leave out “the guidance” and insert “guidance produced under this section”

Page 85, line 44, leave out “publishing” and insert “producing”

Page 86, line 1, at end insert—

“(7A) Section (Approval of first guidance about regulatory action) applies in relation to the first guidance under subsection (1).”
Clause 153 - continued

Page 86, line 2, after “for” insert “other”

After Clause 153

LORD ASHTON OF HYDE

Insert the following new Clause—

“Approval of first guidance about regulatory action

(1) When the first guidance is produced under section 153(1)—
   (a) the Commissioner must submit the final version to the Secretary of State, and
   (b) the Secretary of State must lay the guidance before Parliament.

(2) If, within the 40-day period, either House of Parliament resolves not to approve the guidance—
   (a) the Commissioner must not issue the guidance, and
   (b) the Commissioner must produce another version of the guidance (and this section applies to that version).

(3) If, within the 40-day period, no such resolution is made—
   (a) the Commissioner must issue the guidance, and
   (b) the guidance comes into force at the end of the period of 21 days beginning with the day on which it is issued.

(4) Nothing in subsection (2)(a) prevents another version of the guidance being laid before Parliament.

(5) In this section, “the 40-day period” means—
   (a) if the guidance is laid before both Houses of Parliament on the same day, the period of 40 days beginning with that day, or
   (b) if the guidance is laid before the Houses of Parliament on different days, the period of 40 days beginning with the later of those days.

(6) In calculating the 40-day period, no account is to be taken of any period during which Parliament is dissolved or prorogued or during which both Houses of Parliament are adjourned for more than 4 days.”

Clause 159

LORD ASHTON OF HYDE

Page 89, line 15, leave out from “compensation” to end of line 16 and insert “for material or non-material damage), “non-material damage” includes distress”

Clause 160

LORD ASHTON OF HYDE

Page 90, line 3, leave out from “loss” to end of line 4 and insert “and damage not involving financial loss, such as distress”
Clause 161

LORD ASHTON OF HYDE

Page 90, line 18, after “court” insert “or tribunal”

Page 90, line 28, at end insert “, or

( ) the person acted—

(i) for the special purposes,
(ii) with a view to the publication by a person of any journalistic, academic, artistic or literary material, and
(iii) in the reasonable belief that in the particular circumstances the obtaining, disclosing, procuring or retaining was justified as being in the public interest.”

Clause 162

LORD ASHTON OF HYDE

Page 91, line 16, after “court” insert “or tribunal”

Page 91, line 20, leave out “the person acted in the reasonable belief that”

Page 91, line 21, at beginning insert “the person acted in the reasonable belief that”

Page 91, line 26, at beginning insert “the person acted in the reasonable belief that”

Page 91, line 31, at end insert “, or

( ) the person acted—

(i) for the special purposes,
(ii) with a view to the publication by a person of any journalistic, academic, artistic or literary material, and
(iii) in the reasonable belief that in the particular circumstances the re-identification was justified as being in the public interest.”

Page 91, line 42, after “court” insert “or tribunal”

Page 91, line 46, leave out “the person acted in the reasonable belief that”

Page 91, line 47, at beginning insert “the person acted in the reasonable belief that”

Page 92, line 1, at beginning insert “the person acted in the reasonable belief that”

Page 92, line 5, at end insert “, or

( ) the person acted—

(i) for the special purposes,
(ii) with a view to the publication by a person of any journalistic, academic, artistic or literary material, and
Clause 162 - continued

(iii) in the reasonable belief that in the particular circumstances the processing was justified as being in the public interest.”

Clause 164

LORD ASHTON OF HYDE

Page 93, line 17, leave out paragraph (c)

Clause 165

LORD ASHTON OF HYDE

Page 93, line 37, after second “as” insert “reasonably”

Clause 166

LORD ASHTON OF HYDE

Page 94, line 34, leave out “literary or artistic” and insert “artistic or literary”

Clause 169

LORD ASHTON OF HYDE

Page 95, line 36, leave out from beginning to second “regulations” in line 37 and insert—

“(2) Before making regulations under this Act, the Secretary of State must consult—

(a) the Commissioner, and

(b) such other persons as the Secretary of State considers appropriate.

(2A) Subsection (2) does not apply to”

Page 96, line 4, at end insert—

“( ) Subsection (2) does not apply to regulations made under section 17 where the Secretary of State has made an urgency statement in respect of them.”

Page 96, line 15, at end insert—

“(5A) Where regulations under this Act are subject to “the made affirmative resolution procedure”—

(a) the statutory instrument containing the regulations must be laid before Parliament after being made, together with the urgency statement in respect of them, and

(b) the regulations cease to have effect at the end of the period of 120 days beginning with the day on which the instrument is made, unless within that period the instrument is approved by a resolution of each House of Parliament.

(5B) In calculating the period of 120 days, no account is to be taken of any time during which—
Clause 169 - continued

(a) Parliament is dissolved or prorogued, or
(b) both Houses of Parliament are adjourned for more than 4 days.

(5C) Where regulations cease to have effect as a result of subsection (5A), that does not—
(a) affect anything previously done under the regulations, or
(b) prevent the making of new regulations.”

Page 96, line 18, at end insert “or the made affirmative resolution procedure”

Page 96, line 21, at end insert—
“( ) In this section, “urgency statement” has the meaning given in section 17(4).”

Clause 170

LORD ASHTON OF HYDE

Page 96, line 29, leave out paragraphs (a) and (b) and insert—
“(a) to amend or replace the definition of “the Data Protection Convention” in section 2;
(b) to amend Chapter 3 of Part 2 of this Act;
(c) to amend Part 4 of this Act;
(d) to make provision about the functions of the Commissioner, courts or tribunals in connection with processing of personal data to which Chapter 3 of Part 2 or Part 4 of this Act applies, including provision amending Parts 5 to 7 of this Act;
(e) to make provision about the functions of the Commissioner in connection with the Data Protection Convention or an instrument replacing that Convention, including provision amending Parts 5 to 7 of this Act;
(f) to consequentially amend this Act.”

Page 96, line 32, at end insert—
“( ) Regulations under this section may not be made after the end of the period of 3 years beginning with the day on which this Act is passed.”

Clause 171

LORD ASHTON OF HYDE

Page 97, line 8, after “court” insert “or tribunal”
Clause 173

LORD STEVENSON OF BALMACARA
LORD KENNEDY OF SOUTHWARK

Page 98, line 16, 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 Article 80(1) 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 any processing.”

Clause 175

LORD STEVENSON OF BALMACARA
LORD KENNEDY OF SOUTHWARK

Leave out Clause 175 and insert—

“Framework for Data Processing by Government

(1) The Commissioner must prepare a document, called the Framework for Data Processing by Government, which contains guidance about the processing of personal data in connection with the exercise of functions of—

(a) the Crown, a Minister of the Crown or a United Kingdom government department, and

(b) a person with functions of a public nature who the Commissioner recommends is specified or described in regulations made by the Secretary of State.

(2) The document may make provision relating to all of those functions or only to particular functions or persons.

(3) The document may not make provision relating to, or to the functions of, a part of the Scottish Administration, the Welsh Government, a Northern Ireland Minister or a Northern Ireland department.

(4) The Commissioner may from time to time prepare amendments of the document or a replacement document.

(5) Before preparing a document or amendments under this section, the Commissioner must consult—

(a) the Secretary of State, and

(b) any other person the Commissioner considers it appropriate to consult.

(6) Regulations under subsection (1)(b) are subject to the affirmative resolution procedure.
Clause 175 - continued

(7) In this section, “Northern Ireland Minister” includes the First Minister and deputy First Minister in Northern Ireland.”

Clause 184

LORD ASHTON OF HYDE

Page 103, line 24, leave out from “of” to end of line 29 and insert “—
(a) its functions under the data protection legislation, or
(b) its other functions relating to the Commissioner’s acts and omissions.

(2) But this section does not authorise the making of a disclosure which is prohibited by any of Parts 1 to 7 or Chapter 1 of Part 9 of the Investigatory Powers Act 2016.

(3) Until the repeal of Part 1 of the Regulation of Investigatory Powers Act 2000 by paragraphs 45 and 54 of Schedule 10 to the Investigatory Powers Act 2016 is fully in force, subsection (2) has effect as if it included a reference to that Part.”

Clause 189

LORD ASHTON OF HYDE

Page 108, line 20, at end insert—

| “the made affirmative resolution procedure” | section 169 |

Schedule 18

LORD ASHTON OF HYDE

Page 200, line 23, leave out “sections 76C or” and insert “section”

Page 200, line 24, leave out “offences of disclosing information and” and insert “offence of”

Page 201, line 1, leave out “sections 76C or” and insert “section”

Page 201, line 2, leave out “offences of disclosing information and” and insert “offence of”

Page 201, line 17, leave out “sections 76C or” and insert “section”

Page 201, line 18, leave out “offences of disclosing information and” and insert “offence of”
Schedule 18 - continued

Page 204, line 41, leave out “sections 76C or” and insert “section”

Page 204, line 42, leave out “offences of disclosing information and” and insert “offence of”

Page 208, line 42, leave out “Commissioner or”

Page 208, line 44, leave out “the Commissioner,”

Page 209, line 2, leave out “under this Act” and insert “in connection with appeals under section 60 of this Act.

(2) But this section does not authorise the making of a disclosure which is prohibited by any of Parts 1 to 7 or Chapter 1 of Part 9 of the Investigatory Powers Act 2016.

(3) Until the repeal of Part 1 of the Regulation of Investigatory Powers Act 2000 by paragraphs 45 and 54 of Schedule 10 to the Investigatory Powers Act 2016 is fully in force, subsection (2) has effect as if it included a reference to that Part.”

Page 209, leave out lines 4 to 45

Page 211, line 18, leave out sub-paragraph (3)

Page 211, line 21, leave out “127(1)” and insert “127(3)”

Page 213, line 4, leave out “sections 76C or” and insert “section”

Page 213, line 5, leave out “offences of disclosing information and” and insert “offence of”

Page 216, line 27, leave out “sections 76C or” and insert “section”

Page 216, line 28, leave out “offences of disclosing information and” and insert “offence of”

Page 217, line 23, leave out “sections 76C or” and insert “section”

Page 217, line 24, leave out “offences of disclosing information and” and insert “offence of”

Page 224, line 27, leave out “sections 76C or” and insert “section”
Schedule 18 - continued

Page 224, line 28, leave out “offences of disclosing information and” and insert “offence of”

Page 224, line 36, leave out “76C neu”

Page 224, line 37, leave out “troseddu o ddatgelu gwybodaeth ac” and insert “trosedd o”

Page 231, line 30, leave out “sections 76C or” and insert “section”

Page 231, line 31, leave out “offences of disclosing information and” and insert “offence of”

Page 232, line 28, leave out “sections 76C or” and insert “section”

Page 232, line 29, leave out “offences of disclosing information and” and insert “offence of”
AMENDMENTS
TO BE MOVED
ON REPORT

4 December 2017