

DELEGATED POWERS AND REGULATORY REFORM COMMITTEE

DATA PROTECTION BILL

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

Introduction

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

PART 5: THE INFORMATION COMMISSIONER

NEW CLAUSE: Duty to prepare an age-appropriate design Code of Practice

Power conferred on: The Information Commissioner

Power exercisable by: Statutory Code of Practice

Parliamentary procedure: Negative procedure.

Context and Purpose

4. The GDPR distinguishes children as a special category of person requiring specific protection as regards their personal data (see for example recitals 38, 58 and 75). The Government believes that in order to afford children the level of protection envisaged by the GDPR, a code of practice on age appropriate design for online services would provide clarity for those online

services who process children's data. A code would also make it easier for the Information Commissioner to ensure online services properly protect children's data and also make enforcement of the GDPR simpler.

5. This clause requires the Information Commissioner to prepare a code of practice on standards of age-appropriate design of information society services, having regard to the best interests of children. In preparing this code, the Commissioner must have regard to the fact that children have different needs at different ages, and must also have regard to the UN Convention on the Rights of the Child.
6. As with the duties under clauses 119(1) and 120(1) (see paragraphs 86 to 96 of the Delegated Powers Memorandum), the Commissioner may either amend or replace the code of practice and is required to keep them under review (clause 122(3)). Before preparing a code or amendments the Commissioner must consult with the Secretary of State and such others as she considers appropriate – including children, parents, persons representing the best interests of children, child development experts and trade associations.

Justification for taking the power

7. The clause is intended to provide reassurance to children and the holders of parental responsibility for them as to how online services will process children's data in accordance with the data protection legislation. It will also provide greater certainty and transparency for online service providers who process children's data when they rely on consent as the legal basis for processing and will ensure that children are recognised as a special category of person for the purposes of the GDPR.
8. A code of practice is appropriate because a statutory code, unlike primary legislation, can be updated from time to time and provides a flexible means of ensuring that controllers who offer information society services to children have access to accurate, up-to-date guidance, on age-appropriate design that accurately reflects the current law. It is important that the code is able to keep up to date as technology develops and so the Commissioner is able to amend

the code. A code can also provide a level of detail and explanation that is not possible in legislation.

Justification for procedure selected

9. Clause 121 sets out the procedure applicable to the approval of the code of practice. The procedure requires the Commissioner to submit the final version of the code to the Secretary of State and for the Secretary of State to lay the code before Parliament. The first version of the code must be submitted to the Secretary of State within 18 months from Royal Assent, and the Secretary of State must lay that version before Parliament as soon as reasonably practicable.
10. The Commissioner is unable to issue the code if within a 40 day period (as defined in clause 121(6)) either House of Parliament resolves not to approve the code of practice.
11. In the absence of a resolution within the 40 day period not to approve the code of practice, the Commissioner must issue the code which will come into force at the end of the period of 21 days beginning with the day on which the code of practice is issued. The Commissioner is then required by clause 122 to publish the code of practice or in the case of an amendment, the amendment or the amended code.
12. As set out above, the purpose of the code of practice is to ensure that children are recognised as a special category of person in keeping with the purpose of the GDPR and to provide greater transparency and clarity as to how online services will process children's data in accordance with the data protection legislation; it does not alter any legislative requirements and does not create or modify any government powers.

Department for Digital, Culture, Media and Sport

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