

Data Protection Bill [HL]

SECOND
MARSHALLED
LIST OF AMENDMENTS
TO BE MOVED
ON REPORT

The amendments have been marshalled in accordance with the Order of 4th December 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 194
Schedules 9 and 10	Schedule 18
Clauses 85 to 110	Clauses 195 to 198
Schedule 11	Title.

[Amendments marked ★ are new or have been altered]

**Amendment
No.**

Schedule 1

LORD MOYNIHAN

31 Page 124, line 14, at end insert –

- “() The references in sub-paragraph (1) to a body or association that is responsible for eliminating doping in sport are to be read as references to UK Anti-Doping (UKAD), its successor bodies or a body designated by the Secretary of State.
- () The Secretary of State must by regulations made by the affirmative resolution procedure specify –
- (a) the relationship between UKAD and other sporting bodies and associations, and
 - (b) the powers and responsibilities of UKAD,

Schedule 1 - continued

under this paragraph.”

LORD ASHTON OF HYDE

32 Page 125, line 21, after “court” insert “or tribunal”

LORD STEVENSON OF BALMACARA
LORD KENNEDY OF SOUTHWARK

33 Page 126, line 21, at end insert –

“Safeguarding of children and vulnerable adults

32A(1) This condition is met if the processing –

- (a) is necessary for the exercise of a safeguarding activity,
- (b) is carried out without the consent of the data subject so as not to prejudice the exercise of that activity, and
- (c) is carried out in compliance with any guidance issued under statute by a Minister of the Crown or a Scottish Minister or Welsh Minister as the case may be.

(2) In this paragraph, “safeguarding activity” means an activity designed to –

- (a) protect children and vulnerable or protected adults from maltreatment,
- (b) prevent the impairment of children’s, or vulnerable or protected adults’, health or development,
- (c) ensure that children grow up in circumstances consistent with the provision of safe and effective care, or
- (d) enable children and vulnerable or protected adults to have the best outcomes.

(3) This paragraph applies to a safeguarding activity carried out whether as part of a statutory function or otherwise by any holder of a public office, institution, authority, church or religious congregation, company, organisation, body, or association, whether or not having corporate status.

(4) This paragraph does not apply to the activities of individuals acting in a private capacity.

(5) In this paragraph –

“child” means a person who has not attained the age of 18;

“vulnerable adult” has the same meaning as in paragraph 7 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006;

“protected adult” has the same meaning as in the Protection of Vulnerable Groups (Scotland) Act 2007.”

Clause 13

LORD CLEMENT-JONES

LORD PADDICK

34 Page 7, line 20, at end insert “or a group sharing a protected characteristic, within the meaning of the Equality Act 2010, to which the data subject belongs”

Clause 13 - *continued*

BARONESS JONES OF MOULSECOOMB

35 Page 7, line 20, 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 CLEMENT-JONES

LORD PADDICK

36 Page 7, line 26, at end insert –

“() A decision is “based solely on automated processing” for the purposes of this Act if, in relation to a data subject, there is no meaningful input by a natural person in the decision-making process.”

LORD STEVENSON OF BALMACARA

LORD KENNEDY OF SOUTHWARK

37 Page 7, line 31, at end insert –

“() the controller must provide meaningful information to the data subject which will be sufficient to enable the data subject to assess whether the profiling will be beneficial or harmful to their interests,”

LORD CLEMENT-JONES

LORD PADDICK

38 Page 7, line 36, at end insert –

“() provide an explanation of the decision reached.”

39 Page 7, line 36, at end insert –

“() If a request is made to a controller for an explanation of a qualifying significant decision under subsection (4), the information the controller must provide must include, at least –

- (a) the degree and the mode of contribution of the automated system’s output, or outputs, to the decision made;
- (b) the provenance of the data that forms the basis of the automated system applied;
- (c) the data of the relevant natural person processed by the automated system, in accordance with Article 15 of the GDPR;
- (d) the model weightings or logic of the automated system, or, where appropriate, the output of a comparable explanation facility, applied to the situation of the person concerned.”

Clause 13 - continued

40 Page 7, line 44, at end insert—

- “() Where a controller takes or expects to take a qualifying significant decision in relation to a data subject based solely or partially on automated processing, the controller must ensure that the following information is made available to the public via electronic means—
- (a) information on activities undertaken to ensure the automated system’s compliance with the public sector equality duty (within the meaning of section 149(1) of the Equality Act 2010);
 - (b) the appropriate metadata, including monitoring and evaluation of its effectiveness, concerning the model applied.
- () Where a controller takes or expects to take a qualifying significant decision in relation to a data subject based partially on automated processing, the controller must additionally publish and deposit with the Commissioner regularly updated information on the nature of meaningful human input involved, including at least—
- (a) a description of employed safeguards to prevent over-reliance on the automated system, and
 - (b) an analysis concerning the frequency with which decisions by the data controller disagree with decisions of the automated system concerned.”

After Clause 13

LORD CLEMENT-JONES
LORD PADDICK

41 Insert the following new Clause—

“Automated decision-making concerning a child

- (1) Where a data controller expects to take a significant decision based solely on automated processing which may concern a child, the controller must, before such processing is undertaken—
 - (a) deposit a data protection impact assessment with the Commissioner, and
 - (b) consult the Commissioner (within the meaning of Article 36 of the GDPR), regardless of measures taken by the controller to mitigate any risk.
- (2) Where, following prior consultation, the Commissioner does not choose to prevent processing on the basis of Article 58(2)(f) of the GDPR, the Commissioner must publish the part or parts of the data protection impact assessment provided under subsection (1), relevant to the reaching of that decision.
- (3) The Commissioner must produce and publish a list of safeguards to be applied by data controllers where any significant decision based solely on automated processing may concern a child.
- (4) For the purposes of this section, the meaning of “child” is determined by the age of lawful processing under Article 8 of the GDPR and section 8 of this Act.”

After Clause 13 - continued

LORD STEVENSON OF BALMACARA
LORD KENNEDY OF SOUTHWARK

41A★ Insert the following new Clause –

“Use of private personal data accounts

- (1) Within the period of 12 months beginning with the day on which this Act is passed, the Commissioner must carry out a public consultation on the use of private personal data accounts by data subjects.
- (2) The consultation must include, but is not limited to –
 - (a) how the rights accorded to data subjects under the GDPR and this Act, including the rights to rectification and to be forgotten, may be affected by having a private personal data account;
 - (b) the conditions under which a data subject may make their personal data available to data controllers via a private personal data account; and
 - (c) the remuneration arrangements which may arise between a data subject and a data controller through the use of a private personal data account.
- (3) In this section, “private personal data account” means a single account through which a data subject can store and share their personal data with data controllers.”

Schedule 2

BARONESS HAMWEE
LORD PADDICK

42 Page 129, line 18, leave out paragraph 4

LORD ASHTON OF HYDE

43 Page 129, line 18, leave out “listed GDPR provisions” and insert “GDPR provisions listed in sub-paragraph (1A)”

44 Page 129, line 24, at end insert –

- “(1A) The GDPR provisions referred to in sub-paragraph (1) are –
- (a) the following provisions of the GDPR (the rights and obligations in which may be restricted by virtue of Article 23(1) of the GDPR) –
 - (i) Article 13(1) to (3) (personal data collected from data subject: information to be provided);
 - (ii) Article 14(1) to (4) (personal data collected other than from data subject: information to be provided);
 - (iii) Article 15(1) to (3) (confirmation of processing, access to data and safeguards for third country transfers);
 - (iv) Article 17(1) and (2) (right to erasure);
 - (v) Article 18(1) (restriction of processing);
 - (vi) Article 21(1) (objections to processing);

Schedule 2 - continued

- (vii) Article 5 (general principles) so far as its provisions correspond to the rights and obligations provided for in the provisions mentioned in sub-paragraphs (i) to (vi); and
- (b) the following provisions of the GDPR (the application of which may be adapted by virtue of Article 6(3) of the GDPR) –
- (i) Article 5(1)(a) (lawful, fair and transparent processing), other than the lawfulness requirements set out in Article 6;
- (ii) Article 5(1)(b) (purpose limitation).
- (That is, the listed GDPR provisions other than Article 16 (right to rectification) and Article 20(1) and (2) (right to data portability).)”

45 Page 130, line 2, at end insert “or tribunal”

46 Page 132, line 23, column 2, at end insert –

	“() the Prison Ombudsman for Northern Ireland, or”
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LORD BROWN OF EATON-UNDER-HEYWOOD

47 Page 136, line 2, after “provisions” insert “and Article 34 of the GDPR”

LORD PANNICK
LORD WALKER OF GESTINGTHORPE

48 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
- (c) upon which such deliberations or reasons were or might have been based.”

LORD ASHTON OF HYDE

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

50 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 –

Schedule 2 - continued

- (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.”

BARONESS HOLLINS
LORD MCNALLY
LORD STEVENSON OF BALMACARA

51 Page 142, line 3, leave out from the beginning to “publication” and insert “the processing of the personal data is necessary for the future or continuing”

52 Page 142, line 9, at end insert –
“() the likely interference with privacy resulting from the processing of the data is outweighed by the public interest in publication.”

BARONESS HOLLINS
LORD MCNALLY

53 Page 142, line 10, leave out sub-paragraph (3)

54 Page 142, line 14, leave out “must” and insert “may”

LORD STEVENSON OF BALMACARA
LORD KENNEDY OF SOUTHWARK

55 Page 142, line 14, leave out from “any” to end of line 20 and insert “appropriate codes of practice and guidance as determined by the Commissioner”

BARONESS HOLLINS
LORD MCNALLY

56 Page 142, line 15, leave out “relevant” and insert “appropriate”

LORD ASHTON OF HYDE

57 Page 142, line 20, leave out “IPSO”

BARONESS O'NEILL OF BENGARVE
LORD LOW OF DALSTON
LORD LIPSEY
LORD MCNALLY

58 Page 142, line 20, at end insert –
“() any code which is adopted by an approved regulator as defined by section 42(2) of the Crime and Courts Act 2013.”

Schedule 2 - continued

BARONESS HOLLINS
LORD MCNALLY

59 Page 142, line 25, after “paragraph,” insert “in relation to all controllers save for those referred to in sub-paragraph (9) (the listed GDPR provisions in relation to which are set out in sub-paragraph (10)),”

60 Page 142, line 45, at end insert –
“() Article 19 (notification obligation regarding rectification or erasure of personal data or restriction of processing);”

LORD ASHTON OF HYDE

61 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);”

BARONESS HOLLINS
LORD MCNALLY

62 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);”

63 Page 143, line 3, at end insert –
“() in Chapter IX of the GDPR (specific processing situations), Article 89(1) (safeguards and derogations relating to processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes).”

64 Page 143, line 3, at end insert –
“(9) If personal data is being processed for journalistic purposes by a controller which is –
(a) a “relevant publisher” as defined by section 41 of the Crime and Courts Act 2013; and
(b) is not a member of an approved regulator as defined by section 42 of the Crime and Courts Act 2013;
the GDPR provisions set out in sub-paragraph (10) apply.
(10) The listed GDPR provisions in relation to those controllers referred to in sub-paragraph (9) are the following provisions of the GDPR (which may be exempted or derogated from by virtue of Article 85(2) of the GDPR) –
(a) in Chapter II of the GDPR (principles) –

Schedule 2 - continued

- (i) Article 5(1)(a), (c) and (e) (principles relating to processing) save for the requirement in Article 5(1)(a) that data be processed fairly;
- (ii) Article 6 (lawfulness);
- (iii) Article 7 (conditions for consent);
- (iv) Article 8(1) and (2) (child’s consent);
- (v) Article 9 (processing of special categories of data);
- (vi) Article 10 (data relating to criminal convictions etc);
- (vii) Article 11(2) (processing not requiring identification);
- (b) in Chapter III of the GDPR (rights of the data subject) –
 - (i) Article 14(2)(f) where compliance with the Article might identify a confidential journalistic source;
 - (ii) Article 18(1)(a), (b) and (d) (restriction of processing);
 - (iii) Article 20(1) and (2) (right to data portability);
 - (iv) Article 21(1) (objections to processing);
- (c) in Chapter VII of the GDPR (co-operation and consistency) –
 - (i) Articles 60 to 62 (co-operation);
 - (ii) Articles 63 to 67 (consistency).”

Schedule 3

LORD ASHTON OF HYDE

- 65 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.)),”
- 66 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

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

LORD ASHTON OF HYDE
BARONESS NEVILLE-ROLFE

- 68 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
 - (b) consequentially amend section 14.”

LORD CLEMENT-JONES
LORD PADDICK

- 69 Page 9, line 20, 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 16

LORD ASHTON OF HYDE

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

Clause 17LORD ASHTON OF HYDE
BARONESS NEVILLE-ROLFE

71 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

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

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

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

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

76 Page 11, line 3, leave out “an individual” and insert “a data subject”

77 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;

(ii) a relevant NHS body;

Clause 18 - continued

- (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

78 Insert the following new Clause –

“Minor definition

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.”

LORD KENNEDY OF SOUTHWARK
LORD STEVENSON OF BALMACARA

78A★ Insert the following new Clause –

“Duty to notify of data protection breaches due to ransomware attacks

- (1) In addition to notifying the Commissioner of a personal data breach under Article 33 of the GDPR, a data controller must also notify the relevant police force if the data breach was the result of a ransomware attack.
- (2) In this section,
 - “ransomware attack” means an attack of a form of malware which holds the information on a user's computer hostage until a ransom fee is paid; and
 - “police force” has the same meaning as in section 3 of the Prosecution of Offences Act 1985.”

Clause 19

LORD ASHTON OF HYDE

- 79 Page 11, line 22, leave out “carried on”
- 80 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 KENNEDY OF SOUTHWARK
LORD CLEMENT-JONES

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

Schedule 6

LORD CLEMENT-JONES
LORD PADDICK

- 82 Page 166, line 17, at end insert –
 “(a) in paragraph 1 –
 (i) for “decision” substitute “significant decision for the purposes of section 13 of the 2017 Act”;
 (ii) omit “which produces legal effects concerning him or her or similarly significantly affects him or her”;
 (b) ”
- 83 Page 166, line 20, at end insert –
 “() in paragraph 3, after “point of view” insert “, to obtain an explanation of the decision reached after such assessment”.”

Clause 24

BARONESS HAMWEE
LORD PADDICK

- 84 Page 15, line 6, leave out paragraph (b)

After Clause 25

BARONESS HAMWEE
LORD PADDICK

- 85 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.

After Clause 25 - continued

- (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

BARONESS HAMWEE
LORD PADDICK

86 Page 16, line 40, leave out "or for defence purposes"

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

After Clause 26

LORD CLEMENT-JONES
LORD STOREY

87A Insert the following new Clause—

“Data protection officer: schools

Where a school maintained by a local authority is unable to designate a data protection officer, the relevant local authority must designate a data protection officer for that school or any group of schools maintained by that local authority.”

Clause 28

BARONESS HAMWEE
LORD PADDICK

88 Page 17, line 39, after “Schedule 7” insert “to the extent the person has functions for any of the law enforcement purposes”

Clause 33

BARONESS HAMWEE
LORD PADDICK

89 Page 20, line 20, leave out “strictly”

LORD ASHTON OF HYDE
BARONESS NEVILLE-ROLFE

90 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 43

LORD CLEMENT-JONES
LORD PADDICK

91 Page 25, line 43, at end insert—

“() the existence of automated decision-making, including profiling, and meaningful information about the logic involved, including explanation of the output of the system applied in relation to the data subject, as well as the significance and the envisaged consequences of such processing for the data subject.”

Clause 47

LORD CLEMENT-JONES
LORD PADDICK

92 Page 28, line 34, leave out paragraph (b) and insert—

“(b) similarly significantly affects the data subject or a group sharing a protected characteristic, within the meaning of the Equality Act 2010, to which the data subject belongs.”

Clause 48

BARONESS JONES OF MOULSECOOMB

93 Page 28, line 39, at end insert –

“() it does not engage the rights of the data subject under the Human Rights Act 1998.”

LORD CLEMENT-JONES
LORD PADDICK

94 Page 29, line 8, at end insert –

“(c) the data subject may request the controller to provide an explanation of the decision reached.

- () If a request is made to a controller for an explanation of a qualifying significant decision under subsection (2)(c), the information the controller must provide must include, at least –
- (a) the degree and the mode of contribution of the automated system’s output, or outputs, to the decision made;
 - (b) the provenance of the data that forms the basis of the automated system applied;
 - (c) the data of the relevant natural person processed by the automated system, in accordance, where applicable, with section 43;
 - (d) the model weightings or logic of the automated system, or, where appropriate, the output of a comparable explanation facility, applied to the situation of the person concerned.
- () Where a controller takes or expects to take a qualifying significant decision in relation to a data subject based solely or partially on automated processing, the controller must ensure that the following information is made available to the public via electronic means –
- (a) information on activities undertaken to ensure the automated system’s compliance with the public sector equality duty (within the meaning of section 149(1) of the Equality Act 2010);
 - (b) the appropriate metadata, including monitoring and evaluation of its effectiveness, concerning the model applied.
- () Where a controller takes or expects to take a qualifying significant decision in relation to a data subject based only partially on automated processing, the controller must additionally publish and deposit with the Commissioner regularly updated information on the nature of meaningful human input involved, including at least –
- (a) a description of employed safeguards to prevent over-reliance on the automated system, and
 - (b) analysis concerning the frequency with which decisions by the data controller disagree with decisions of the automated system concerned.”

95

[Withdrawn]

Clause 75

BARONESS HAMWEE
LORD PADDICK

96 Page 43, line 24, leave out “strictly”

Clause 79

LORD ASHTON OF HYDE

97 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 80

BARONESS HAMWEE
LORD PADDICK

98 Page 47, line 24, at end insert –

“() This Part does not apply to the processing of personal data for defence purposes.”

Clause 84

LORD ASHTON OF HYDE
BARONESS NEVILLE-ROLFE

99 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 94

BARONESS JONES OF MOULSECOOMB

100 Page 54, line 31, at end insert “unless the decision engages an individual’s rights under the Human Rights Act 1998”

101 Page 54, line 34, leave out paragraph (c)

Clause 95

BARONESS JONES OF MOULSECOOMB

102 Page 55, line 5, leave out paragraph (b)

Clause 111

LORD ASHTON OF HYDE
BARONESS NEVILLE-ROLFE

- 103 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).”

Clause 113

LORD ASHTON OF HYDE

- 104 Page 62, line 3, at end insert –
 “(and see also the Commissioner’s duty under section (*Protection of personal data*))”

Clause 114

LORD ASHTON OF HYDE

- 105 Page 63, line 2, at end insert “(and see also the Commissioner’s duty under section (*Protection of personal data*))”

After Clause 114

BARONESS NEVILLE-ROLFE
LORD ARBUTHNOT OF EDROM
LORD STEVENSON OF BALMACARA

- 106 Insert the following new Clause –
“Duty to support small organisations
 (1) The Commissioner is to provide additional support to –
 (a) small businesses,
 (b) small charities, and
 (c) parish councils,
 in meeting their obligations under the GDPR and this Act.
 (2) The additional support in subsection (1) may include, but is not limited to –
 (a) advice on how to comply with the provisions of the GDPR and this Act;
 (b) access to pro formas to demonstrate compliance with the GDPR and this Act; and
 (c) in relation to fees to be paid to the Commissioner, discounted charges or no charges.
 (3) In this Act, “small businesses” has the same meaning as in section 2 of the Enterprise Act 2016.”

- 107 [*Withdrawn*]

After Clause 114 - continued

LORD CLEMENT-JONES
LORD PADDICK

107A Insert the following new Clause –

“Registration by data controllers

- (1) The Commissioner must –
 - (a) maintain a register of data controllers who have given registrable particulars,
 - (b) make an entry in the register in pursuance of each notification of registrable particulars received from each data controller,
 - (c) update the register on each working day, and
 - (d) ensure that a record of the register on each occasion it is updated is permanently maintained.
- (2) All data controllers are required to register their registrable particulars with the Commissioner before processing personal data under this Act.
- (3) Registration by a data controller is to be treated for the purposes of subsection (2) as having been made in the register on the date that the registrable particulars and payment of such registration fee or fees as apply have been deemed to be received by the Commissioner as follows –
 - (a) by personal delivery to the office of the Commissioner, on the date of delivery,
 - (b) by first class post, document exchange or other service which provides for delivery on the next business day, on the date of posting, or leaving with, delivering to or collection by the relevant service provider,
 - (c) by fax, on the date of completion of the transmission, or
 - (d) by other electronic method, on the date of the sending of the e-mail or other electronic transmission.
- (4) No entry is to be retained in the register for more than the relevant time except on payment of such fee as may be prescribed by fees regulations.
- (5) In subsection (4) “the relevant time” means twelve months.
- (6) The Commissioner –
 - (a) must provide facilities for making the information contained in the entries in the register available for inspection (in visible and legible form) by members of the public at all reasonable hours and free of charge, and
 - (b) may provide other facilities for making the information contained in those entries available to the public free of charge.
- (7) The Secretary of State may by regulations made by the affirmative resolution procedure (“registration regulations”) make provision imposing on every person in respect of whom an entry as a data controller is for the time being included in the register maintained by the Commissioner a duty to notify the Commissioner of any changes to the registrable particulars as soon as reasonably practicable and in any event within 21 days of such changes occurring.

After Clause 114 - continued

- (8) Any person who as a data controller fails to comply with the duties imposed by this section is guilty of an offence.
- (9) A person guilty of an offence under subsection (8) is liable—
- (a) on summary conviction in England and Wales, to a fine;
 - (b) on summary conviction in Scotland or Northern Ireland, to a fine not exceeding level 5 on the standard scale.
- (10) The Secretary of State may by regulations made by the affirmative resolution procedure make provision imposing fees on data controllers registering their registrable particulars with the Commissioner.
- (11) In this section “the registrable particulars”, in relation to a data controller, means—
- (a) his or her name and address,
 - (b) if he or she has nominated a representative for the purposes of this Act, the name and address of the representative, and
 - (c) the principal activity or activities undertaken by him or her as set out by the registration regulations.
- (12) For the purposes of this section, so far as it relates to the addresses of data controllers—
- (a) the address of a registered company is that of its registered office, and
 - (b) the address of a person (other than a registered company) carrying on a business is that of his or her principal place of business in the United Kingdom.”

Schedule 13

LORD MITCHELL
LORD CLEMENT-JONES

107B

Page 186, line 23, at end insert—

- “(j) maintain a register of publicly controlled personal data of national significance;
- (k) prepare a code of practice which contains practical guidance in relation to personal data of national significance.
- (2) For the purposes of sub-sub-paragraphs (j) and (k) of paragraph (1), personal data controlled by public bodies is data of national significance if, in the opinion of the Commissioner, —
- (a) the data furthers collective economic, social or environmental well-being,
 - (b) the data has the potential to further collective economic, social or environmental well-being in future, and
 - (c) financial benefit may be derived from processing the data or the development of associated software.”

Before Clause 119

LORD MITCHELL
LORD CLEMENT-JONES

108 Insert the following new Clause—

“Code on personal data of national significance

The Commissioner must prepare a code of practice which contains—

- (a) best practice guidance in relation to information sharing agreements between publicly funded data controllers and third parties;
- (b) guidance in relation to the calculation of value for money where publicly funded data controllers enter into information sharing agreements with third parties;
- (c) guidance about securing financial benefits from the sharing of such personal data with third parties for the purposes of processing or developing associated software, and
- (d) such other guidance as the Commissioner considers appropriate to promote best practice in the sharing and processing of personal data of national significance.”

After Clause 120

BARONESS KIDRON
LORD ASHTON OF HYDE
LORD STEVENSON OF BALMACARA
BARONESS HARDING OF WINSCOMBE

109 Insert the following new Clause—

“Age-appropriate design code

- (1) The Commissioner must prepare a code of practice which contains such guidance as the Commissioner considers appropriate on standards of age-appropriate design of relevant information society services which are likely to be accessed by children.
- (2) Where a code under this section is in force, the Commissioner may prepare amendments of the code or a replacement code.
- (3) Before preparing a code or amendments under this section, the Commissioner must consult the Secretary of State and such other persons as the Commissioner considers appropriate, including—
 - (a) children,
 - (b) parents,
 - (c) persons who appear to the Commissioner to represent the interests of children,
 - (d) child development experts, and
 - (e) trade associations.
- (4) In preparing a code or amendments under this section, the Commissioner must have regard—
 - (a) to the fact that children have different needs at different ages, and
 - (b) to the United Kingdom’s obligations under the United Nations Convention on the Rights of the Child.

After Clause 120 - continued

- (5) A code under this section may include transitional provision or savings.
- (6) Any transitional provision included in the first code under this section must cease to have effect before the end of the period of 12 months beginning with the day on which the code comes into force.
- (7) In this section—
- “age-appropriate design” means the design of services so that they are appropriate for use by, and meet the development needs of, children;
- “information society services” has the same meaning as in the GDPR, but does not include preventive or counselling services;
- “relevant information society services” means information society services which involve the processing of personal data to which the GDPR applies;
- “standards of age-appropriate design of relevant information society services” means such standards of age-appropriate design of such services as appear to the Commissioner to be desirable having regard to the best interests of children;
- “trade association” includes a body representing controllers or processors;
- “the United Nations Convention on the Rights of the Child” means the Convention on the Rights of the Child adopted by the General Assembly of the United Nations on 20 November 1989 (including any Protocols to that Convention which are in force in relation to the United Kingdom), subject to any reservations, objections or interpretative declarations by the United Kingdom for the time being in force.”

Clause 121

LORD ASHTON OF HYDE

- 110** Page 66, line 13, leave out “or 120” and insert “, 120 or (*Age-appropriate design code*)”

BARONESS KIDRON
LORD ASHTON OF HYDE
LORD STEVENSON OF BALMACARA
BARONESS HARDING OF WINSCOMBE

- 111** Page 66, line 16, at end insert—
- “(1A) In relation to the first code under section (*Age-appropriate design code*)—
- (a) the Commissioner must prepare the code as soon as reasonably practicable and must submit it to the Secretary of State before the end of the period of 18 months beginning with the day on which this Act is passed, and
- (b) the Secretary of State must lay it before Parliament as soon as reasonably practicable.”

- 112** Page 66, line 18, leave out first “the code” and insert “a code prepared under section 119, 120 or (*Age-appropriate design code*)”

Clause 121 - continued

LORD ASHTON OF HYDE

113 Page 66, line 23, leave out “or 120” and insert “, 120 or (*Age-appropriate design code*)”

BARONESS KIDRON
LORD ASHTON OF HYDE
LORD STEVENSON OF BALMACARA
BARONESS HARDING OF WINSCOMBE

114 Page 66, line 35, leave out “subsection (4)” and insert “subsections (1A) and (4)”

LORD ASHTON OF HYDE

115 Page 66, line 36, leave out “and 120” and insert “, 120 and (*Age-appropriate design code*)”

Clause 122

LORD ASHTON OF HYDE

116 Page 67, line 5, leave out “or 120(2)” and insert “, 120(2) or (*Age-appropriate design code*) (2)”

After Clause 124

THE EARL OF CLANCARTY

117 Insert the following new Clause –

“Code on processing personal data in education where it concerns a child or pupil

- (1) The Commissioner must consult on, prepare and publish a code of practice on standards to be followed in relation to the collection, processing, publication and other dissemination of personal data concerning children and pupils in connection with the provision of education services in England, within the meaning of the Education Act 1996, which relates to the rights of data subjects, appropriate to their capacity and stage of education.
- (2) For the purposes of subsection (1), “the rights of data subjects” must include –
 - (a) measures related to Articles 24(3) (responsibility of the controller), 25 (data protection by design and by default) and 32(3) (security of processing) of the GDPR;
 - (b) safeguards and suitable measures with regard to Articles 22(2)(b) (automated individual decision-making, including profiling) and 23 (restrictions) of the GDPR;
 - (c) the rights of data subjects to object to or restrict the processing of their personal data collected during their education, under Articles 21 (right to object to automated individual decision making, including profiling) and 18(2) (right to restriction of processing) of the GDPR; and
 - (d) matters related to the understanding and exercising of rights relating to personal data and the provision of education services.”

After Clause 125

LORD ASHTON OF HYDE

118 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.
- (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.”

BARONESS HAMWEE

LORD PADDICK

As an amendment to Amendment 118

118A★ In subsection (4), after “if” insert “and for so long as”

As an amendment to Amendment 118

118B★ In subsection (4), leave out sub-paragraph (i)

Clause 126

LORD ASHTON OF HYDE

119 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

- 120** 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”
- 121** Page 69, line 13, leave out “provided” and insert “obtained or provided as described in subsection (1)(a)”
- 122** Page 69, line 14, leave out from “manner)” to end of line 16
- 123** Page 69, line 18, leave out from “of” to end of line 19 and insert “one or more of the Commissioner’s functions”
- 124** Page 69, line 28, leave out subsection (4)

Clause 132

BARONESS NEVILLE-ROLFE
LORD ARBUTHNOT OF EDROM
LORD STEVENSON OF BALMACARA

- 125** Page 71, line 16, at end insert –
“() In making regulations under this section, the Secretary of State must consider making provision under subsection (3) for a discounted charge or no charge to be payable by small businesses, small charities and parish councils.”

Clause 133

LORD ASHTON OF HYDE

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

Clause 134

BARONESS NEVILLE-ROLFE
LORD ARBUTHNOT OF EDROM

- 127** Page 73, line 9, at end insert –
“() The report must include an assessment of the economic consequences of the measures the Commissioner has taken for –
(a) industry and commerce, in particular small businesses;
(b) charities; and
(c) public authorities, in particular parish councils.”

Clause 138

LORD BROWN OF EATON-UNDER-HEYWOOD

128 Page 75, line 10, at end insert –

“() The Commissioner may not give an information notice with respect to the processing of personal data for the purposes of proceedings in either House of Parliament.”

Clause 141

LORD BROWN OF EATON-UNDER-HEYWOOD

129 Page 77, line 40, at end insert –

“() The Commissioner may not give an assessment notice with respect to the processing of personal data for the purposes of proceedings in either House of Parliament.”

Clause 142

LORD ASHTON OF HYDE

130 Page 79, line 2, at end insert “to comply with the data protection legislation”**131** Page 79, line 3, leave out subsection (9)**Clause 145**

LORD BROWN OF EATON-UNDER-HEYWOOD

132 Page 81, line 19, at end insert –

“() The Commissioner may not give an enforcement notice with respect to the processing of personal data for the purposes of proceedings in either House of Parliament.”

Clause 148

LORD ASHTON OF HYDE

133 Page 82, line 40, after “failures” insert “to comply with the data protection legislation”**134** 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.”

135 Page 82, line 42, leave out subsection (6)**136** 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 149

LORD BROWN OF EATON-UNDER-HEYWOOD

137 Page 83, line 17, at end insert –

“() The Commissioner may not give a penalty notice with respect to the processing of personal data for the purposes of proceedings in either House of Parliament.”

Clause 152

LORD ASHTON OF HYDE

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

Clause 153

LORD ASHTON OF HYDE

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

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

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

142 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).”

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

After Clause 153

LORD ASHTON OF HYDE

144 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

After Clause 153 - continued

- (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

- 145 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

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

After Clause 160

EARL ATTLEE

- 147 Insert the following new Clause—

“Publishers of news-related material: damages and costs

- (1) This section applies where—
 - (a) a relevant claim for breach of the data protection legislation is made against a person (“the defendant”),
 - (b) the defendant was a relevant publisher at the material time, and
 - (c) the claim is related to the publication of news-related material.
- (2) If the defendant was a member of an approved regulator at the time when the claim was commenced (or was unable to be a member at that time for reasons beyond the defendant’s control or it would have been unreasonable in the circumstances for the defendant to have been a member at that time), the court must not award costs against the defendant unless satisfied that—
 - (a) the issues raised by the claim could not have been resolved by using an arbitration scheme of the approved regulator, or
 - (b) it is just and equitable in all the circumstances of the case to award costs against the defendant.

After Clause 160 - continued

- (3) If the defendant was not a member of an approved regulator at the time when the claim was commenced (but would have been able to be a member at that time and it would have been reasonable in the circumstances for the defendant to have been a member at that time), the court must award costs against the defendant unless satisfied that –
 - (a) the issues raised by the claim could not have been resolved by using an arbitration scheme of the approved regulator (had the defendant been a member), or
 - (b) it is just and equitable in all the circumstances of the case to make a different award of costs or make no award of costs.
- (5) This section is not to be read as limiting any power to make rules of court.
- (6) This section does not apply until such time as a body is first recognised as an approved regulator.”

148

Insert the following new Clause –

“Publishers of news-related material: interpretive provisions

- (1) This section applies for the purposes of section (*Publishers of news-related material: damages and costs*).
- (2) “Approved regulator” means a body recognised as a regulator of relevant publishers.
- (3) For the purposes of subsection (2), a body is “recognised” as a regulator of relevant publishers if it is so recognised by any body established by Royal Charter (whether established before or after the coming into force of this section) with the purpose of carrying on activities relating to the recognition of independent regulators of relevant publishers.
- (4) “Relevant claim” means a civil claim made in respect of data protection under the data protection legislation.
- (5) The “material time”, in relation to a relevant claim, is the time of the events giving rise to the claim.
- (6) “News-related material” means –
 - (a) news or information about current affairs,
 - (b) opinion about matters relating to the news or current affairs, or
 - (c) gossip about celebrities, other public figures or other persons in the news.
- (7) A relevant claim is related to the publication of news-related material if the claim results from –
 - (a) the publication of news-related material, or
 - (b) activities carried on in connection with the publication of such material (whether or not the material is in fact published).
- (8) A reference to the “publication” of material is a reference to publication –
 - (a) on a website,
 - (b) in hard copy, or
 - (c) by any other means;

After Clause 160 - continued

and references to a person who “publishes” material are to be read accordingly.

- (9) A reference to “conduct” includes a reference to omissions; and a reference to a person’s conduct includes a reference to a person’s conduct after the events giving rise to the claim concerned.
- (10) “Relevant publisher” has the same meaning as in section 41 of the Crime and Courts Act 2013.”

Clause 161

LORD ASHTON OF HYDE

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

150 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 STEVENSON OF BALMACARA
LORD KENNEDY OF SOUTHWARK

151 Page 91, line 3, leave out “de-identified” and insert “anonymised”

LORD ASHTON OF HYDE

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

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

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

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

156 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.”

Clause 162 - continued

- 157 Page 91, line 42, after “court” insert “or tribunal”
- 158 Page 91, line 46, leave out “the person acted in the reasonable belief that”
- 159 Page 91, line 47, at beginning insert “the person acted in the reasonable belief that”
- 160 Page 92, line 1, at beginning insert “the person acted in the reasonable belief that”
- 161 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
 (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

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

Clause 165

LORD ASHTON OF HYDE

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

Clause 166

LORD ASHTON OF HYDE

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

After Clause 167

BARONESS HOLLINS
 LORD STEVENSON OF BALMACARA
 LORD MCNALLY
 LORD LIPSEY

- 165 Insert the following new Clause –
“Inquiry into issues arising from data protection breaches committed by or on behalf of news publishers
 (1) The Secretary of State must, within the period of three months beginning on the day on which this Act is passed, establish an inquiry under the Inquiries Act 2005 into allegations of data protection breaches committed by, or on behalf of, news publishers.

After Clause 167 - continued

- (2) The inquiry's terms of reference must include, but are not limited to,—
- (a) to inquire, in respect of personal data processing, into the extent of unlawful or improper conduct within news publishers and, as appropriate, other organisations within the media, and by those responsible for holding personal data;
 - (b) to inquire, in respect of personal data processing, into the extent of corporate governance and management failures at news publishers;
 - (c) in the light of these inquiries, to consider the implications for personal data protection in relation to freedom of speech; and
 - (d) to make recommendations on what action, if any, should be taken in the public interest."

Clause 169

LORD ASHTON OF HYDE
BARONESS NEVILLE-ROLFE

- 166** 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"
- 167** 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."
- 168** 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—
- (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

Clause 169 - continued

(b) prevent the making of new regulations.”

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

170 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

171 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.”

172 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

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

Clause 173

LORD STEVENSON OF BALMACARA

LORD KENNEDY OF SOUTHWARK

LORD CLEMENT-JONES

174 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);

Clause 173 - continued

- (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.”

LORD CLEMENT-JONES
LORD PADDICK

175 Page 98, line 26, 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 authority.”

Clause 175

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

176 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.
- (7) In this section, “Northern Ireland Minister” includes the First Minister and deputy First Minister in Northern Ireland.”

Clause 176

LORD CLEMENT-JONES
LORD PADDICK

177 Page 100, line 5, leave out subsection (4)

Clause 177

LORD CLEMENT-JONES
LORD PADDICK

178 Page 100, line 25, leave out subsection (4)

Clause 178

LORD CLEMENT-JONES
LORD PADDICK

179 Page 100, line 30, leave out subsections (1) and (2) and insert –

“() A failure to act in accordance with a document issued under section 176(3) does not of itself make a person liable to legal proceedings in a court or tribunal.”

180 Page 100, line 35, leave out subsections (3) to (5)

After Clause 178

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

181 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.

After Clause 178 - continued

- (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;
 - (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.”

Clause 184

LORD ASHTON OF HYDE

182

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 CLEMENT-JONES
LORD PADDICK

183 Page 107, line 27, at end insert –

“based solely on automated processing	sections 13 and 48”
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LORD ASHTON OF HYDE

184 Page 108, line 20, at end insert –

“the made affirmative resolution procedure	section 169”
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Clause 193

LORD BROWN OF EATON-UNDER-HEYWOOD

185 Page 111, line 41, leave out subsection (5)

186 Page 112, line 3, leave out “Subject to subsection (5),”

Schedule 18

LORD ASHTON OF HYDE

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

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

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

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

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

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

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

Schedule 18 - continued

- 194 Page 204, line 42, leave out “offences of disclosing information and” and insert “offence of”
- 195 Page 208, line 42, leave out “Commissioner or”
- 196 Page 208, line 44, leave out “the Commissioner,”
- 197 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.”
- 198 Page 209, leave out lines 4 to 45
- 199 Page 211, line 18, leave out sub-paragraph (3)
- 200 Page 211, line 21, leave out “127(1)” and insert “127(3)”
- 201 Page 213, line 4, leave out “sections 76C or” and insert “section”
- 202 Page 213, line 5, leave out “offences of disclosing information and” and insert “offence of”
- 203 Page 216, line 27, leave out “sections 76C or” and insert “section”
- 204 Page 216, line 28, leave out “offences of disclosing information and” and insert “offence of”
- 205 Page 217, line 23, leave out “sections 76C or” and insert “section”
- 206 Page 217, line 24, leave out “offences of disclosing information and” and insert “offence of”
- 207 Page 224, line 27, leave out “sections 76C or” and insert “section”
- 208 Page 224, line 28, leave out “offences of disclosing information and” and insert “offence of”
- 209 Page 224, line 36, leave out “76C neu”

Schedule 18 - continued

- 210** Page 224, line 37, leave out “troseddau o ddatgelu gwybodaeth ac” and insert “trosedd o”
- 211** Page 231, line 30, leave out “sections 76C or” and insert “section”
- 212** Page 231, line 31, leave out “offences of disclosing information and” and insert “offence of”
- 213** Page 232, line 28, leave out “sections 76C or” and insert “section”
- 214** Page 232, line 29, leave out “offences of disclosing information and” and insert “offence of”

Clause 195

EARL ATTLEE

- 215** Page 112, line 28, at end insert “within the period of two years beginning with the day on which this Act is passed.
- () The Secretary of State may by regulations made by the affirmative resolution procedure extend the period under subsection (1) by six months.
- () The Secretary of State may extend the period under subsection (1) by six months on only two separate occasions, and those two separate occasions may not be within one month of each other.”
- 216★** Page 112, line 31, at end insert—
- “() sections (*Publishers of news-related material: damages and costs*) and (*Publishers of news-related material: interpretive provisions*);

BARONESS HOLLINS

- 217★** Page 112, line 35, at end insert—
- “() paragraph 24 of Schedule 2;”

Data Protection Bill [HL]

SECOND
MARSHALLED
LIST OF AMENDMENTS
TO BE MOVED
ON REPORT

11 December 2017
