

DATA PROTECTION BILL [HL]

EXPLANATORY NOTES ON COMMONS AMENDMENTS

What these notes do

- 1 These Explanatory Notes relate to the Commons Amendments to the Data Protection Bill [HL] as brought from the House of Commons on 9 May 2018.
- 2 These Explanatory Notes have been prepared by the Department for Digital, Culture, Media and Sport in order to assist the reader of the Bill and the Commons Amendments, and to help inform debate on the Commons Amendments. They do not form part of the Bill and have not been endorsed by Parliament.
- 3 These Explanatory Notes, like the Commons Amendments themselves, refer to Bill 153, the Bill as brought from the Lords and first printed for the Commons.
- 4 These Explanatory Notes need to be read in conjunction with the Commons Amendments and the text of the Bill. They are not, and are not meant to be, a comprehensive description of the Commons Amendments.

Commentary on Commons Amendments

Part 1: Preliminary

Commons Amendments 1 to 6, 124 and 131

- 5 These amendments make a series of technical changes to Clause 3 of the Bill, which covers terms relating to the use of personal data. They are designed to improve clarity.
- 6 **Commons Amendments 1 and 2** would amend the definition of "processing" in Clause 3(4) by replacing the term "personal data" with "information". This does not have any material impact on the use of "processing" in Parts 2 to 4 of the Bill, where the meaning of "processing" is to be understood within the context of the applicable regime; and in Parts 5 to 7 the terms are limited to their meaning within the applicable regime, unless provided otherwise (see Clause 3(14)(c)). These amendments simply ensure consistency with terminology with other legislation on the statute book.
- 7 **Commons Amendment 3** is a consequential amendment as a result of Commons Amendment 6.
- 8 **Commons Amendment 4** would make clear that references to Chapter 2 of Part 2 in Parts 5 to 7 of the Bill include that Chapter as applied by Chapter 3 of Part 2.
- 9 **Commons Amendment 5** is a consequential amendment as a result of Commons Amendment 1.

- 10 **Commons Amendment 6** would add a new subsection (c) to Clause 3(14) confirming that the terms "controller" and "processor" have the same meaning in Parts 5 to 7 of the Bill as they do in Parts 2 to 4 respectively, unless otherwise stated.
- 11 **Commons Amendments 124 and 131** are consequential amendment as a result of Commons Amendment 4.

Part 2: General processing

Chapter 2: The GDPR

Commons Amendments 7, 11, 22, 23 and 114

- 12 The Bill adopts the definition of "public authorities" in the Freedom of Information Act 2000 and the Freedom of Information (Scotland) Act 2002.
- 13 In addition to "specifying" bodies, Schedule 1 to the Freedom of Information Act includes descriptions of persons, e.g. a government department, different types of authority (e.g. a local authority, a fire and rescue authority, an NHS foundation trust), a body corporate established pursuant to a particular provision of legislation, and a person providing particular services (e.g. local pharmaceutical services).
- 14 Notwithstanding the lists provided in freedom of information legislation, the Bill allows the Secretary of State, by regulations, to "specify" certain bodies that are, or are not, "public authorities" for the purposes of data protection, but it does not allow the Secretary of State to "describe" such bodies. These technical amendments would address this omission.
- 15 **Commons Amendments 7 and 11** would make clear that regulations under Clause 7 may identify an authority or body by "describing" a type of authority or body, as well as by "specifying" an authority or body.
- 16 **Commons Amendment 22** would change a reference to persons "specified" in Schedule 7 (which lists competent authorities for the purpose of Part 3 of the Bill) into a reference to persons "specified or described" there.
- 17 **Commons Amendment 23** is for consistency and would make clear that regulations under Clause 30 (adding or removing a person from the list of competent authorities in Schedule 7) may identify a person by "describing" a type of person, as well as by "specifying" a person.
- 18 It is possible that the power in Clause 7 that allows persons to be added to the list of bodies may adversely affect a particular member or members of a class but not the whole of the class. In such cases, **Commons Amendment 114** would disapply the procedure for hybrid instruments in the House of Lords (and any similar procedure that may be introduced in the House of Commons) in relation to regulations under Clause 7. All regulations under Clause 7 would in any event be subject to the affirmative procedure, and the general duty to consult in Clause 175.

Commons Amendments 8, 9 and 10

- 19 These amendments remove parish councils, parish meetings, community councils, community meetings and charter trustees from the definition of "public authority" solely for the purposes of the GDPR. This means, among other things, that these bodies will not be required to appoint a data protection officer.

These Explanatory Notes relate to the Commons Amendments to the Data Protection Bill [HL] as brought from the House of Commons on 9 May 2018 (HL Bill 104)

- 20 **Commons Amendments 8 and 10** would provide that the authorities listed in new subsection (2A) of Clause 7 are not “public authorities” for the purposes of the GDPR, even though they are (or may in future be) public authorities for the purposes of the Freedom of Information Act 2000 or the Freedom of Information (Scotland) Act 2002.
- 21 **Commons Amendment 9** clarifies the effect of the definition of a “public authority” or a “public body”. Subsection (2) of Clause 7 provides that an authority or body is only a “public authority” or a “public body” if it meets the conditions in that subsection. This amendment makes it clear that subsection (2) only affects a body or authority’s status for the purposes of the GDPR, not more generally.

Commons Amendment 12

- 22 **Commons Amendment 12** would clarify that processing necessary for the purposes of promoting or supporting democratic engagement is considered to be in the public interest, which is one of the bases for personal data to be processed under Article 6 of the GDPR. Democratic engagement is intended to cover a wide range of political activities inside and outside election periods, including but not limited to: democratic representation, communicating with electors and interested parties, surveying and opinion gathering, campaigning activities, activities to increase voter turnout, supporting the work of elected representatives, prospective candidates and official candidates and fundraising to support any of these activities.

Commons Amendments 13 to 15, 27, 28, 45 and 46

- 23 Clause 14 gives data subjects 21 days to request that a controller reconsider an automated decision or take a new decision that is not based solely on automated processing, and the controller 21 days to respond. This is less than the minimum time limit set by GDPR. Article 12(3) of the GDPR allows up to a month, extendable by two further months where necessary. These amendments would bring the Bill into line with the GDPR. To maintain consistency, other amendments would make similar provision for Parts 3 and 4 of the Bill.
- 24 **Commons Amendment 13** would provide that where a controller notifies a data subject under Clause 14(4)(a) that the controller has taken a "qualifying significant decision" in relation to the data subject based solely on automated processing, the data subject has one month (rather than 21 days) to request the controller to reconsider that decision or take a new decision not based solely on automated processing.
- 25 **Commons Amendment 14** would remove provision from Clause 14(5) dealing with the time by which a controller has to respond to a data subject’s request under Clause 14(4)(b) and replaces it with a requirement for the controller to respond within the time periods set out in Article 12(3) of the GDPR (namely, a month, extendable where necessary).
- 26 **Commons Amendment 15** would insert a signpost to Article 12 of the GDPR which confers powers and places obligations on controllers to whom Clause 14 applies.
- 27 **Commons Amendments 27 and 28** make the parallel change to Commons Amendments 13 and 14 in respect of Clause 50, which covers automated decisions in respect of Part 3 of the Bill (processing for the purpose of law enforcement).
- 28 **Commons Amendments 45 and 46** would make the parallel change to Commons Amendments 13 and 14 in respect of Clause 97, which covers automated decisions in respect of Part 4 of the Bill (processing by the intelligence services).

These Explanatory Notes relate to the Commons Amendments to the Data Protection Bill [HL] as brought from the House of Commons on 9 May 2018 (HL Bill 104)

Commons Amendments 16, 17, 173 and 192

- 29 Article 34 of the GDPR requires data controllers to communicate a personal data breach to a data subject if it is likely to result in a high risk to the rights and freedoms of natural persons. Where a person is the subject of an ongoing criminal or media investigation, this requirement could alert that person about the investigation. To avoid this, these amendments would add Article 34 to the list of GDPR provisions that may be disapplied by paragraph 2(1) (crime and taxation) and paragraph 24(9) (journalistic, academic, artistic and literary purposes) of Schedule 2. Data controllers will still be required to notify the Information Commissioner of breaches under Article 33 and could be liable to enforcement action if they fail to adequately protect personal data.
- 30 **Commons Amendment 16** is a consequential amendment as a result of Commons Amendment 173.
- 31 **Commons Amendment 17** is a consequential as a result of an amendment made in the Lords, which added Article 34 of the GDPR (communication of personal data breach to the data subject) to the list of GDPR provisions that are disapplied by paragraph 11 of Schedule 2 to the Bill (parliamentary privilege).
- 32 **Commons Amendment 173** would add Article 34 of the GDPR (communication of personal data breach to the data subject) to the list of GDPR provisions that are disapplied by paragraph 2(1) of Schedule 2 to the Bill (crime and taxation).
- 33 **Commons Amendment 192** would add Article 34 of the GDPR (communication of personal data breach to the data subject) to the list of GDPR provisions that are disapplied by paragraph 24 of Schedule 2 to the Bill (journalistic, academic, artistic and literary purposes).

Commons Amendment 18

- 34 **Commons Amendment 18** is a technical amendment that would correct the reference to the "national accreditation authority" in Clause 17(7) by amending it to refer to the "national accreditation body", which is defined in Clause 17(8).

Commons Amendment 19

- 35 Article 89 of the GDPR creates certain requirements for data controllers to satisfy when conducting research. Clause 19 imposes additional conditions with an exception for processing for approved medical research. This technical amendment would ensure that the exception applies for research approved by a special health and social care agency established under Article 3 of the Health and Personal Social Services (Special Agencies) (Northern Ireland) Order 1990.
- 36 **Commons Amendment 19** would amend the definition of "relevant NHS body" in this Clause by adding special health and social care agencies established under Article 3 of the Health and Personal Social Services (Special Agencies) (Northern Ireland) Order 1990 (which fall within paragraph (e) of section 1(5) of the Health and Social Care (Reform) Act (Northern Ireland) 2009).

Chapter 3: Other general processing

Commons Amendment 20

- 37 **Commons Amendment 20** would clarify the description of the types of processing excluded from Chapter 3 of Part 2 (other general processing).

These Explanatory Notes relate to the Commons Amendments to the Data Protection Bill [HL] as brought from the House of Commons on 9 May 2018 (HL Bill 104)

Commons Amendments 21 and 24

- 38 **Commons Amendments 21 and 24** would substitute references to an "individual" with references to a "data subject" in Clauses 25 and 41. These are technical amendments for consistency with references elsewhere in the Bill.

Commons Amendments 25, 33 to 44, 47 to 50, 54, 57, 68, 78, 88, 105, 130, 171, 189, 190, 193, 195, 196, 202 to 205 and 218 to 220

- 39 These are a series of technical amendments which would allow for consistency of approach between the GDPR and the Bill in relation to time periods.
- 40 **Commons Amendments 25, 33 to 44, 47 to 50, 54, 57, 68, 78, 88, 105, 171, 189, 190, 193, 195, 202 to 205 and 218 to 220** are consequential amendments as a result of Commons Amendment 130.
- 41 **Commons Amendment 130** would provide that periods of time referred to in the Bill are generally to be interpreted in accordance with Article 3 of EC Regulation 1182/71, which makes provision about the calculation of periods of hours, days, weeks, months and years in EU instruments. References to such time periods in the GDPR would be read in light of EC Regulation 1182/71 as a matter of EU law.
- 42 **Commons Amendment 196** would apply the definition of "working day" for the purposes of the whole of Schedule 5. There are references to "working days" in paragraphs 5(2) and 6(3) of that Schedule.

Commons Amendment 26

- 43 **Commons Amendment 26** would make a minor drafting change to reflect the approach elsewhere in the Bill where the term "controller" rather than "data controller" is used.

Part 3: Law Enforcement Processing

Chapter 3: Rights of the Data Subject

Commons Amendments 29 and 30

- 44 Data subjects may exercise their data rights through the Information Commissioner. As Part 3 of the Bill stands, a data subject could complain to the Information Commissioner that their access rights have been restricted, following which the Information Commissioner would investigate and inform the data subject whether or not the processing of their personal data was lawful. By confirming whether or not the processing of personal data behind the restriction is lawful, the Bill would effectively nullify any 'neither confirm nor deny' response that was provided to the data subject, for example by the police, when their rights were restricted. There is a risk this could be used by data subjects to determine whether or not a law enforcement agency is processing their data thereby tipping them off that they are the subject of an investigation.
- 45 **Commons Amendment 29** would change the nature of the request that a data subject may make to the Commissioner in cases where rights to information are restricted under Clause 44(4) or 45(4). The effect is that a data subject would be able to request the Commissioner to check that the restriction was lawful.

These Explanatory Notes relate to the Commons Amendments to the Data Protection Bill [HL] as brought from the House of Commons on 9 May 2018 (HL Bill 104)

- 46 **Commons Amendment 30** is a consequential amendment as a result of Commons Amendment 29.

Commons Amendments 31 and 32

- 47 Data controllers may only charge for requests from data subjects under the GDPR or Part 3 of the Bill if the request is manifestly unfounded or excessive. Clause 53 of the Bill allows data controllers to charge for manifestly unfounded or excessive requests to exercise data rights and these amendments ensure that they can also charge for unfounded and excessive requests in relation to automated processing.
- 48 **Commons Amendment 31** would modify Clause 53(1). It would provide that where a request from a data subject under Clause 45, 46 or 47 is manifestly unfounded or excessive, the controller may charge a reasonable fee for dealing with the request or refuse to act on the request. This amendment would apply Clause 53(1) to requests under Clause 50 (automated decision making).
- 49 **Commons Amendment 32** would modify Clause 53(3). It would provide that where there is an issue as to whether a request under Clause 45, 46 or 47 is manifestly unfounded or excessive, it is for the controller to show that it is. This is already the case for requests under the GDPR. This amendment applies Clause 53(3) to requests under Clause 50 (automated decision making authorised by law: safeguards).

Part 5: The Information Commissioner

Commons Amendments 51, 52 and 207

- 50 The terms "personal data", "processing", "controller" and "processor" are defined in Clause 3(2), (4) and (6) of the Bill. These broad definitions are limited in application in Chapter 2 and 3 of Part 2, and Part 3 and 4 of the Bill by the scope of the regimes in those Chapters and Parts. Clause 3(14)(c) for "personal data" and "processing" and (d) for "controller" and "processor" limits the meaning of these terms in Parts 5 to 7 to the application of such terms in Chapter 2 and 3 of Part 2, and Part 3 and 4 of the Bill, unless otherwise provided. So, for example, whilst such definitions in Clause 3 would include the processing of personal data in unstructured manual records by controllers who are not public authorities, such terms in Parts 5 to 7 would not generally include such processing, because such processing is not subject to any of the regimes in Parts 2 to 4 of the Bill.
- 51 **Commons Amendment 51** would clarify that the references to personal data, the processing of personal data, a controller or a processor in Clause 119 includes all types of personal data etc. by disapplying Clause 3(14)(c) and (d).
- 52 **Commons Amendment 52** would confirm that the reference to personal data and the processing of personal data in Clause 120 includes all types of personal data and the processing of personal data by disapplying Clause 3(14)(c).
- 53 **Commons Amendment 208** would clarify that the reference to personal data in paragraph 1(1)(h) of Schedule 13 includes all types personal data by disapplying Clause 3(14)(c).

Commons Amendments 53 and 208

- 54 Clause 121 and paragraph 1(1)(j) and (k) of Schedule 13 were inserted by amendments made in the Lords that were not supported by the government. They require the Information

These Explanatory Notes relate to the Commons Amendments to the Data Protection Bill [HL] as brought from the House of Commons on 9 May 2018 (HL Bill 104)

Commissioner to produce a code of practice on "personal data of national significance" which sets out best practice on information sharing between publicly funded data controllers and third parties and guidance in relation to calculating the value for money of any such information sharing agreements and on how to secure the financial benefits from such sharing.

- 55 **Commons Amendments 53 and 207** would remove the requirements inserted by the Lords amendments.

Commons Amendments 55, 56, 58 to 61, 108 and 109

- 56 These amendments relate to the processing of personal data for the purposes of journalism.
- 57 **Commons Amendments 55, 56 and 58 to 61** would require the Information Commissioner to prepare a code of practice giving guidance about the processing of personal data for the purposes of journalism.
- 58 **Commons Amendment 108** would require the Commissioner to produce guidance about how individuals can seek redress where a media organisation (defined in subsection (2) of the new clause) fails to comply with the data protection legislation, including guidance about making complaints and bringing claims before a court.
- 59 **Commons Amendment 109** would require the Commissioner to carry out a review of, and report on, the extent to which the processing of personal data for the purposes of journalism complied with the data protection legislation during the first 4 years of its operation.

Part 6: Enforcement

Commons Amendments 62, 106, 107 and 141

- 60 Clauses 142, 168 and 169 were inserted by amendments made in the Lords that were not supported by the government. They concern data processing by news publishers. The government has since published the *Government response to the consultation on the Leveson Inquiry and its implementation, Section 40 of the Crime and Courts Act 2013 and Part 2 of the Leveson Inquiry* setting out its position.
- 61 **Commons Amendments 62, 106, 107 and 141** would remove the requirements inserted by the Lords amendments.

Commons Amendments 63 to 67, 69, 71 to 77, 79, 80, 82 to 87, 93 to 99, 101 to 104, 112, 221, 231 to 233, 243, 248, 252, 253, 259, 260, 262, 263 and 281

- 62 Clause 143 of the Bill allows the Commissioner to serve an information notice on a controller or processor for the purpose of collecting information in respect of the Commissioner's functions under the data protection legislation. Clause 146 concerns assessment notices and Clause 148 concerns enforcement notices. Schedule 15 provides the Commissioner with powers of entry and inspection. These represent the enforcement activity that the Commissioner may undertake, short of issuing penalties or prosecuting. With recent high profile investigations by the Information Commissioner, the government considers it appropriate to make further amendments.
- 63 The GDPR and applied GDPR do not apply to the processing of personal data in the course of a purely personal or household activity. **Commons Amendments 63 to 65, 69 and 221** would

These Explanatory Notes relate to the Commons Amendments to the Data Protection Bill [HL] as brought from the House of Commons on 9 May 2018 (HL Bill 104)

also enable the Information Commissioner to obtain information in order to work out whether processing is carried out in the course of purely personal or household activities (for example to inspect whether a household CCTV system is directed at private property, the public highway or other private property beyond the controller's property boundary). Such processing is not subject to the GDPR or the applied GDPR (see Article 2(2)(c) of the GDPR and Clause 21(3)). They would also enable the Information Commissioner to obtain information from any person, rather than just a data controller or processor, for the purposes of investigating suspected failures to comply with the data protection legislation that are listed in Clause 148(2) or suspected offences under the Bill.

- 64 **Commons Amendment 66** would add a requirement for information notices to include information about the consequences of failure to comply and the rights of the person concerned to challenge the notice by way of an appeal to the Tribunal or (where relevant) an application to a court. **Commons Amendment 76** would add an equivalent requirement for assessment notices and **Commons Amendment 86** would add an equivalent requirement for enforcement notices.
- 65 In urgent cases the Bill allows the Commissioner to require compliance with information notices and enforcement notices within 7 days. **Commons Amendment 67** would provide that, in urgent cases, the Information Commissioner must allow a minimum of 24 hours, rather than 7 days, for a person to provide information requested in an information notice. **Commons Amendment 87** would provide that, in urgent cases, the Information Commissioner must allow a minimum of 24 hours, rather than 7 days, for a person to comply with an enforcement notice. **Commons Amendments 75, 77, 79 and 80** would provide that, in certain circumstances, the Commissioner may require a person to comply with an assessment notice in less than 7 days, including with immediate effect.
- 66 **Commons Amendments 71 to 73** would tidy up Clause 146(2)(d) and make clear that the Commissioner may, through an assessment notice, require that a controller or processor comply with a request for copies of documents, as well as information viewed, to be provided in a particular form.
- 67 **Commons Amendment 74** would enable an assessment notice given by the Information Commissioner to require a controller or processor to provide an explanation of documents, information, equipment or material.
- 68 **Commons Amendment 82** would modify Clause 148(1) and (2) enable the Information Commissioner to serve an enforcement notice on a controller or processor where they have failed, or are failing, to comply with specified provisions of the GDPR or the Bill. Such an enforcement notice may impose such requirements on a controller or processor that the Commissioner considers appropriate for the purpose of remedying the failure in question. This amendment would add a failure to comply with the provisions of Clause 64 or 65 to the list of failures in respect of which the Commissioner may serve an enforcement notice. Those Clauses impose certain obligation on controllers under Part 3 of the Bill (law enforcement processing) to undertake a data protection impact assessment and to consult with the Commissioner prior to processing if such an impact assessment indicates that the processing would result in a high risk to the rights and freedoms of individuals.
- 69 **Commons Amendments 83 to 85** would enable the Secretary of State, when making regulations enabling the Information Commissioner to give enforcement notices in respect of further failures, to make provision about the exercise of the Information Commissioner's other enforcement powers in connection with the failure.

These Explanatory Notes relate to the Commons Amendments to the Data Protection Bill [HL] as brought from the House of Commons on 9 May 2018 (HL Bill 104)

- 70 **Commons Amendments 93 to 99** would require the guidance produced under Clause 159 to include guidance about how the Information Commissioner proposes to exercise her functions in connection with information notices, assessment notices and enforcement notices.
- 71 **Commons Amendments 101 to 103, 231 to 233, 243, 248, 252, 253, 259, 260, 262, 263 and 281** are consequential on Commons Amendment 104.
- 72 **Commons Amendment 104** would insert a new Clause after Clause 162. It would enable a person who is given an information notice, assessment notice or enforcement that requires the person to comply with it urgently to apply to the court for variation of the timetable for compliance. It replaces the provision in Clauses 161(2) and 162(5) for appeals to the Tribunal.
- 73 **Commons Amendment 112** would make clear that the jurisdiction referred to in Clause 173(3) is the jurisdiction conferred on a court by the provisions listed in subsection (2) of that Clause.

Commons Amendments 70, 81, 110, 111, 113, 127, 128, 269 and 278

- 74 The Bill and the GDPR provide the Information Commissioner with a range of enhanced powers, including the ability to levy penalties of up to 4% of global turnover or approximately £17 million, whichever is greater. In light of recent high-profile investigations by the Information Commissioner, the government considers it appropriate to make further amendments.
- 75 **Commons Amendment 70** would introduce powers for the Commissioner to ask a court to order a person to comply with an information notice. By inserting a new Clause after Clause 145, it would provide that, where a person has failed to comply with an information notice (given under Clause 143), the Information Commissioner may seek a court order requiring the person to provide the information referred to in the notice or other information which the Commissioner requires for a reason specified in the notice.
- 76 **Commons Amendment 81** would insert a new Clause after Clause 147. It would provide that, where the Information Commissioner has given an information notice (see Clause 143) or an assessment notice (see Clause 146) requiring access to information, a document, equipment or other material, it is an offence to destroy or otherwise dispose of, conceal, block or (where relevant) falsify it, with the intention of preventing the Commissioner from viewing or being provided with or directed to it. The new Clause also provides that it is a defence for a person charged with this offence to prove that the destruction, disposal, concealment, blocking or falsification would have taken place in the absence of the notice being given to the person.
- 77 **Commons Amendments 110, 111 and 113** would provide that information orders under Commons Amendment 70 can normally be made by the High Court or county court or, in Scotland, by the Court of Session or the sheriff. There is an exception for cases in which the information notice contains an urgency statement, when only the High Court or, in Scotland, the Court of Session can make an information order. Commons Amendment 113 also provides that applications under the new Clause inserted by Commons Amendment 104 are to be dealt with by the High Court or, in Scotland, by the Court of Session.
- 78 **Commons Amendment 127** would provide that a person who commits an offence under the Clause inserted by Commons Amendment 81 is liable to a fine, on summary conviction or on conviction on indictment.

These Explanatory Notes relate to the Commons Amendments to the Data Protection Bill [HL] as brought from the House of Commons on 9 May 2018 (HL Bill 104)

- 79 **Commons Amendment 128** would provide that convictions for the offence under the Clause inserted by Commons Amendment 81 are to be recorded on the Police National Computer. Additionally people who are arrested for a recordable offence may have their fingerprints and DNA samples taken and recorded for a period of time.
- 80 **Commons Amendment 269** would make a consequential amendment to the Estate Agents (Specified Offences) (No.2) Order 1991 to include a reference to the offence in Commons Amendment 81.
- 81 **Commons Amendment 278** would make the consequential provision to other legislation necessary as a result of Commons Amendment 81. It would also revoke two Orders made under paragraph 10 of Schedule 3 to the Data Protection Act 1998.
- 82 **Commons Amendment 281**, listed above, would make additional consequential provision.

Commons Amendments 89 and 91

- 83 Clause 154(2) does not require the Commissioner to have regard to the matters listed in Article 83(1) and 83(2) or in Clause 154(4) where the Commissioner is satisfied that there has been a failure to comply with an information notice, an assessment notice or an enforcement notice.
- 84 **Commons Amendments 89 and 91** would correct the position for consistency so that the Commissioner is required to have regard to those matters in all cases (except in relation to a failure to comply with regulations made under Clause 137).

Commons Amendment 90

- 85 Clause 154 applies where the Commissioner is satisfied that there has been a failure described in Clause 148(2), (3), (4) or (5) or where there has been a failure to comply with an information notice, an assessment notice or an enforcement notice. When deciding to issue a penalty notice the Commissioner must have regard to the matters listed in Article 83(1) and (2) of the GDPR (for matters to which the GDPR applies) or to the matters listed in Clause 154(3) (for matters to which the GDPR does not apply). As a result of the amendment, the Commissioner must have regard not only to whether the controller or processor has taken any action to mitigate damage suffered by data subjects but also whether any action has been taken by the controller or processor to mitigate distress.
- 86 **Commons Amendment 90** would amend Clause 154 to require the Commissioner to have regard to action taken to mitigate distress caused to data subjects in addition to mitigation measures relating to damage suffered as a consequence of a failure on the part of the controller or processor. The amendment would make clear that regard must be had to mitigation in relation to damage or distress caused and simply in relation to any damage at all. The addition of the words "or distress" after damage means that regard must be had to mitigation in relation to both material loss (commonly termed "damage" in UK legislation) and non-material loss (distress) and reflects the intent of the GDPR.

Commons Amendments 92 and 100

- 87 In addition to the requirement for the Commissioner to consult with the Secretary of State before publishing a document specifying the amount of a penalty for a failure to comply with regulations made under Clause 137, Clause 157 as drafted requires the Commissioner to consult with "such other persons as the Secretary of State" considers appropriate. These

These Explanatory Notes relate to the Commons Amendments to the Data Protection Bill [HL] as brought from the House of Commons on 9 May 2018 (HL Bill 104)

amendments would ensure that the duty to identify other relevant persons to consult rests with the Information Commissioner.

- 88 **Commons Amendment 92** would therefore provide that the persons to be consulted before the Commissioner produces a document specifying the penalties for non-compliance with charges regulations are the persons that the Commissioner, rather than the Secretary of State, considers appropriate. It is a parallel change to Commons Amendment 100.
- 89 **Commons Amendment 100** would provide that the persons to be consulted before the Commissioner produces guidance about regulatory action are the persons that the Commissioner, rather than the Secretary of State, considers appropriate.

Part 7: Supplementary and Final Provision

Commons Amendments 115 to 123, 125, 146, 148 and 198

- 90 Clause 183 of the Bill and Article 80(1) of the GDPR allow not for profit bodies to represent data subjects, provided that the individual has given their authorisation. These amendments would require a review to be held to establish if this should be extended so that such bodies can represent data subjects without requiring their authorisation, and would give the Secretary of State the power to implement such a change. These amendments also would make it clear that the particular interests of children must be fully considered by the review, and would give the Secretary of State the power to allow children to be represented by children's rights organisations.
- 91 **Commons Amendments 115 and 117 to 120** are technical amendments that would tidy up the language in Clause 183(2).
- 92 **Commons Amendment 116** would add additional signposting information about the rights of data subjects that may be exercised by representative bodies under Article 80(1) of the GDPR to Clause 183.
- 93 **Commons Amendment 121** would confer power on the Secretary of State to make regulations enabling representative bodies to bring collective proceedings on behalf of data subjects in England and Wales or Northern Ireland by combining two or more claims in respect of data subjects' rights.
- 94 **Commons Amendment 122** would impose a duty on the Secretary of State to review the operation of the provisions which enable a representative body to exercise data subjects' rights. The review would also consider the merits of enabling a representative body to exercise data subjects' rights under the GDPR to complain to the Information Commissioner, to seek judicial remedies, or to seek compensation, without being authorised to do so by data subjects, as well as the merits of enabling children's rights organisations to represent children. In carrying out the review the Secretary of State would be required to consider and analyse specified matters relating to children, and would be required to consult certain persons before preparing the report. The Secretary of State would be required to lay a report of the review before Parliament within 30 months of the commencement of the Bill.
- 95 **Commons Amendment 123** would give the Secretary of State the power to enable representative bodies to exercise certain rights of data subjects under the GDPR on their behalf, without their authorisation, following the review provided for by Commons

These Explanatory Notes relate to the Commons Amendments to the Data Protection Bill [HL] as brought from the House of Commons on 9 May 2018 (HL Bill 104)

Amendment 122. The amendments would also give the Secretary of State the power to allow children's rights organisations (as defined in Commons Amendment 122) to act on behalf of children in respect of their rights under the GDPR.

- 96 **Commons Amendment 125** would rearrange the relevant Clauses so that the Clauses referred to above are sequential.
- 97 **Commons Amendments 146 and 148** are consequential on Commons Amendments 121, 122 and 123. They would provide that the new Clauses inserted by those amendments extend to England and Wales and Northern Ireland only.
- 98 **Commons Amendment 198** would allow the Secretary of State to make provision to implement Article 80(2) of the GDPR in relation to the applied GDPR if the power in Commons Amendment 123 is exercised.

Commons Amendment 126

- 99 **Commons Amendment 126** would insert a new Clause after Clause 188. It would provide for HMRC to supply the Secretary of State with the contact details of members of the ex-regular reserve force and former members of the armed forces so that they may be contacted regarding their liability to be called out or recalled for service under the Reserved Forces Act 1996. The details supplied may also be used for defence purposes connected with their service in the forces (whether past, present or future). It is an offence for the details supplied to be disclosed without the consent of the Commissioners for Revenue and Customs.

Commons Amendment 129

- 100 This amendment clarifies the definition of a "UK government department" and "government department". Clause 185 (framework for data processing by government) and Schedule 7 (competent authorities) include a reference to a "UK government department", whilst Clause 198 includes an overarching definition of "government department" for the purposes of the Bill.
- 101 **Commons Amendment 129** would make clear that the definition of "government department" does not operate in relation to references to a "United Kingdom government department" (as found in Clause 185 and paragraph 1 of Schedule 7).

Commons Amendments 132 to 139 and 197

- 102 These amendments would address some anomalies created by the territorial scope provisions, particularly where they currently apply the Bill to processors outside of the UK in circumstances where they are not subject to the GDPR itself.
- 103 **Commons Amendment 132** would replace the existing provision on territorial application in Clause 200(1) to (4) to align it more closely with the scope of the GDPR. In the amendment, subsection (2) provides that the Bill applies to processing in the context of the activities of an establishment of a controller or processor in the UK. Subsection (3) provides that, in certain circumstances, the Bill also applies to processing to which the GDPR applies and which is carried out in the context of activities of an establishment of a controller or processor in a country or territory that is not part of the EU.
- 104 **Commons Amendments 133, 135, 136, 137, 138 and 139** are consequential amendments as a result of Commons Amendment 132.

These Explanatory Notes relate to the Commons Amendments to the Data Protection Bill [HL] as brought from the House of Commons on 9 May 2018 (HL Bill 104)

105 **Commons Amendment 134** would amend subsection (4) of Clause 200 (territorial application) of the Bill which provides that subsections (1) to (3) have effect subject to provision made “under” Clause 120. This amendment would amend subsection (4) so that it also refers to provision made “in” Clause 120 (see Clause 120(4)).

106 **Commons Amendment 197** would amend paragraph 8 of Schedule 6 and is consequential on Commons Amendment 132.

Commons Amendment 140

107 **Commons Amendment 140** would add additional signposting to Clause 204 in relation to the content of Schedule 18.

Commons Amendments 142, 144, 145, 272, 273, 279, 280 and 282

108 The GDPR takes effect on 25 May 2018 at which point it is expected that the majority of this Bill will come into force. The Bill repeals the Data Protection Act 1998 which provides a different set of data protection requirements and enforcement mechanisms. Transitional provision explains when the previous law should continue to apply, and when the new law should apply.

109 **Commons Amendments 142 and 144** are consequential on Commons Amendment 282.

110 **Commons Amendment 145** would enable the Secretary of State, by regulations, to make transitional, transitory or saving provision in connection with the GDPR beginning to apply. It also enables the Secretary of State to make regulations, subject to the negative resolution procedure, to amend the Schedule inserted by Commons Amendment 282.

111 **Commons Amendment 272, 279 and 280** would revoke a number of Orders and regulations made under Parts 1, 2 and 4 of the Data Protection Act 1998. Commons Amendment 272 also makes consequential amendments taken from the Privacy and Electronic Communications (EC Directive) Regulations 2003.

112 **Commons Amendment 273** would amend provision about the appropriate limit for the purposes of section 9A of the Data Protection Act 1998 and section 12 of the Freedom of Information Act 2000 in consequence of the repeal of the Data Protection Act 1998.

113 **Commons Amendment 282** would insert a Schedule making transitional, transitory and saving provision in connection with the coming into force of the Bill, including provision about subject access requests (see Part 2) and about the Information Commissioner’s enforcement powers (see Parts 7 and 8). Commons Amendment 281, listed above, would make additional consequential provision.

Commons Amendment 143

114 **Commons Amendment 143** would ensure that regulations under Clause 205 bringing provisions of the Bill into force could make different provision for different areas.

Commons Amendments 147 and 149 to 151

115 **Commons Amendments 147 and 149 to 151** would clarify that amendments of enactments made by the Bill have the same extent in the United Kingdom as the enactment amended and that certain amendments also extend to the Isle of Man.

These Explanatory Notes relate to the Commons Amendments to the Data Protection Bill [HL] as brought from the House of Commons on 9 May 2018 (HL Bill 104)

Commons Amendment 152

116 Following second reading in the House of Commons on 5 March 2018 a financial resolution was agreed.

117 **Commons Amendment 152** would remove the privilege amendment inserted by the Lords.

Schedule 1: Special categories of personal data and criminal convictions etc data

Part 2: Substantial public interest conditions

Commons Amendments 153, 156, 157, 159 and 169

118 Where data controllers process special categories of personal data in reliance on Article 9(2)(g) of the GDPR (processing necessary for reasons of substantial public interest), the Bill requires them to record their procedures and related information in an "appropriate policy document".

119 **Commons Amendment 153** is consequential on Commons Amendments 156, 159 and 169.

120 **Commons Amendment 156** would provide that where processing falling within paragraph 9 of Part 2 of Schedule 1 (preventing or detecting unlawful acts) consists of, or is carried out in preparation for, the disclosure of personal data to a competent authority, the condition in that paragraph is met even if the controller does not have an appropriate policy document in place when the processing is carried out. **Commons Amendment 157** provides that "competent authority" has the same meaning as in Part 3 of the Bill.

121 **Commons Amendment 159** would provide that the condition in paragraph 11 of Part 2 of Schedule 1 (journalism etc in connection with unlawful acts and dishonesty etc) is met even if the controller does not have an appropriate policy document in place when the processing is carried out.

122 **Commons Amendment 169** would provide that when processing consists of the disclosure of personal data to a body or association that is responsible for eliminating doping in sport, or is carried out in preparation for such disclosure, the condition in paragraph 22 of Part 2 of Schedule 1 (anti-doping in sport) is met even if the controller does not have an appropriate policy document in place when the processing is carried out.

Commons Amendment 154

123 **Commons Amendment 154** would modify paragraph 8 of Schedule 1, sub-paragraph (3) of which contains an exception from the condition in subparagraph (1). This amendment would remove from the exception the requirement that the processing is carried out without the data subject's consent.

Commons Amendment 155

124 Data revealing racial or ethnic origin is not permitted under the GDPR without the data subject's explicit consent unless a derogation applies.

125 **Commons Amendment 155** would modify Part 2 of Schedule 1 which describes types of processing of special categories of personal data that meet the requirement in Article 9(2)(g) of the GDPR (processing necessary for reasons of substantial public interest) for a basis in UK

These Explanatory Notes relate to the Commons Amendments to the Data Protection Bill [HL] as brought from the House of Commons on 9 May 2018 (HL Bill 104)

law (see Clause 10(3)). This amendment would add to Part 2 of Schedule 1 certain processing of personal data for the purposes of promoting or maintaining diversity in the racial and ethnic origins of individuals who hold senior positions in organisations.

Commons Amendment 158

126 This amendment relates to data processing conditions applicable to the financial services industry. The Bill allows private companies (in particular in the financial services sector) to process special categories of personal data where necessary to screen against UK laws such as the Proceeds of Crime Act 2002 to help financial institutions identify customers suspected of money laundering etc., but, as currently drafted, they are not permitted to screen against other regulatory requirements including widely-recognised sectoral guidelines such as those promulgated by the Financial Action Task Force (FATF).

127 **Commons Amendment 158** would modify Part 2 of Schedule 1 which describes types of processing of special categories of personal data that meet the requirement in Article 9(2)(g) of the GDPR (processing necessary for reasons of substantial public interest). This amendment would add to Part 2 of Schedule 1 certain processing of personal data for the purposes of complying with, or assisting others to comply with, a regulatory requirement relating to unlawful acts, dishonesty etc.

Commons Amendments 160, 164 and 166

128 **Commons Amendment 160** would modify Part 2 of Schedule 1 which describes types of processing of special categories of personal data which meet the requirement in Article 9(2)(g) of the GDPR (processing necessary for reasons of substantial public interest). This amendment would add to Part 2 of Schedule 1 certain processing of personal data by not-for-profit bodies, such as patient support groups, involved in supporting individuals with a particular disability or medical condition.

129 **Commons Amendments 164 and 166** would clarify paragraphs 15 and 16 of Schedule 1 to create consistency with Commons Amendment 160 and clarify that the intended effect of paragraph 15(4)(b) and 16(2)(b) is that the reference to a data subject "withholding" consent does not include a data subject merely failing to respond to a request for consent.

Commons Amendment 161

130 **Commons Amendment 161** would amend paragraph 14(1)(b) of Schedule 1 for consistency of language with paragraphs 18(2) and 19(2) of that Schedule.

Commons Amendments 162, 163, 199 and 200

131 These amendments relate to the processing of personal data for safeguarding purposes in Schedules 1, 8 and 10 to the Bill. These amendments would provide that special categories of personal data can be lawfully processed where necessary for the purpose of safeguarding children and specified vulnerable adults, for example by retaining records or sharing information with statutory agencies such as the police.

132 **Commons Amendment 162** would modify Part 2 of Schedule 1 which describes types of processing of special categories of personal data that meet the requirement in Article 9(2)(g) of the GDPR (processing necessary for reasons of substantial public interest). This amendment would add to Part 2 of Schedule 1 certain processing of personal data which is necessary for the protection of children or of adults at risk.

These Explanatory Notes relate to the Commons Amendments to the Data Protection Bill [HL] as brought from the House of Commons on 9 May 2018 (HL Bill 104)

133 **Commons Amendment 163** would modify Part 2 of Schedule 1 which describes types of processing of special categories of personal data that meet the requirement in Article 9(2)(g) of the GDPR (processing necessary for reasons of substantial public interest). This amendment would add to Part 2 of Schedule 1 certain processing of personal data which is necessary to protect the economic well-being of adults who are less able to protect their economic well-being by reason of a physical or mental injury, illness or disability.

134 **Commons Amendments 199 and 200** would modify Schedules 8 and 10 which make provision about the circumstances in which the processing of special categories of personal data is permitted. This amendment would add to that Schedule certain processing of personal data which is necessary for the protection of children or of adults at risk.

Commons Amendment 165

135 **Commons Amendment 165** would provide that the condition for processing special categories of personal data in paragraph 16 of Schedule 1 (occupational pension schemes) can only be relied on in connection with the processing of data concerning health relating to certain relatives of a member of the scheme.

Commons Amendments 167 and 168

136 **Commons Amendments 167 and 168** would add mayors of combined authorities in England and Police and Crime Commissioners in England and Wales to the list of elected representatives for the purposes of paragraphs 18 and 19 of Schedule 1, which authorise certain processing of special categories of personal data by such representatives.

Commons Amendment 170

137 **Commons Amendment 170** would remove provisions from paragraph 31 of Schedule 1 (extension of conditions in Part 2 of Schedule 1 referring to substantial public interest) which are unnecessary because they impose requirements which are already imposed by paragraph 5 of Schedule 1.

Schedule 2: Exemptions etc from the GDPR

Part 1: Adaptations and restrictions based on Articles 6(3) and 23(1)

Commons Amendments 172, 176 and 191

138 These Commons amendments would provide additional exemptions from compliance with data subject rights. Article 19 of the GDPR requires data controllers to give notice to third parties when responding to a request for rectification, erasure or restriction. It was originally considered unnecessary to additionally exempt controllers from this requirement, if they were already exempted from the underlying rights to rectification, erasure and restriction. The government has since been provided examples of where it may be necessary to prevent notification separately from the underlying right, for example in a scenario where a bank has passed information about one of its customers to a law enforcement agency, such as the National Crime Agency, due to suspected fraud.

139 **Commons Amendment 172** would add Article 19 of the GDPR (notification obligation regarding rectification or erasure of personal data or restriction of processing) to the list of GDPR provisions that can be disapplied by provisions in Part 1 of Schedule 2 to the Bill.

These Explanatory Notes relate to the Commons Amendments to the Data Protection Bill [HL] as brought from the House of Commons on 9 May 2018 (HL Bill 104)

140 **Commons Amendment 176** would add Article 19 of the GDPR (notification obligation regarding rectification or erasure of personal data or restriction of processing) to the list of GDPR provisions that can be disapplied by provisions in Part 2 of Schedule 2 to the Bill.

141 **Commons Amendment 191** would add Article 19 of the GDPR (notification obligation regarding rectification or erasure of personal data or restriction of processing) to the list of GDPR provisions that can be disapplied by paragraph 24 of Schedule 2 to the Bill (journalistic, academic, artistic and literary purposes).

Commons Amendments 174 and 175

142 Paragraph 4(2) of Schedule 2 lists provisions of the GDPR which do not apply to the extent that their application would be likely to prejudice certain matters relating to immigration.

143 **Commons Amendments 174 and 175** would remove Articles 5(1)(a) and (b) from that list (except so far as they correspond to rights and obligations provided for in provisions mentioned in paragraph 4(2)(i) to (vi), see paragraph 4(2)(vii)).

Commons Amendment 177

144 **Commons Amendment 177** would extend the exemption provided for in paragraph 7 of Schedule 2. It would amend the second entry in the table (functions designed to protect members of the public against dishonesty etc.) by removing the requirement that the function must relate to people who carry on activities which "bring them into contact with members of the public", so that it also covers 'back office' staff. It would also amend column 2 of the table to bring the second entry into line with the first and third entries.

Commons Amendments 178 to 186

145 These Commons amendments would provide additional exemptions from compliance with data subject rights where compliance would prejudice the proper discharge of certain regulatory functions undertaken by public bodies.

146 **Commons Amendment 178** would insert a new paragraph into Part 2 of Schedule 2 to provide for an exemption from "the listed GDPR provisions" (defined in paragraph 6 of Schedule 2) where personal data is processed for the purposes of discharging statutory audit functions.

147 **Commons Amendment 179** would insert a new paragraph into Part 2 of Schedule 2 to provide for an exemption from "the listed GDPR provisions" (defined in paragraph 6 of Schedule 2) where personal data is processed for the purposes of discharging specified functions of the Bank of England.

148 **Commons Amendments 180 and 181** would amend paragraph 9 of Schedule 2 to replace the reference to a "body" with a "person" for consistency with the table at paragraph 9, which includes functions that are conferred on individuals.

149 **Commons Amendment 182** would amend column 2 of the table at paragraph 9 of Schedule 2 so that functions conferred on the Commissioner by section 244 of the Investigatory Powers Act 2016 would be included within the scope of the exemption provided for by paragraph 9.

150 **Commons Amendment 183** would amend the table at paragraph 9 of Schedule 2 so that functions conferred on the Scottish Information Commissioner by the legislation listed in column 2 of the table will be included within the scope of the exemption provided for by paragraph 9.

These Explanatory Notes relate to the Commons Amendments to the Data Protection Bill [HL] as brought from the House of Commons on 9 May 2018 (HL Bill 104)

151 **Commons Amendment 184** would amend the reference to functions conferred by or under any enactment in entry 5 of the table at paragraph 9. The words "or under" are not necessary because the definition of "enactment" in Clause 198 includes subordinate legislation.

152 **Commons Amendment 185** would amend the table at paragraph 9 of Schedule 2 so that functions conferred on the Financial Conduct Authority by the legislation listed in column 2 of the table will be included within the scope of the exemption provided for by paragraph 9.

153 **Commons Amendment 186** would amend the table at paragraph 9 of Schedule 2 so that functions conferred on the Charity Commission by the legislation listed in column 2 of the table will be included within the scope of the exemption provided for by paragraph 9.

Commons Amendments 188 and 201

154 These amendments relate to legally privileged material.

155 **Commons Amendment 188** would extend the legal professional privilege exemption in Part 4 of Schedule 2 to include information in respect of which a duty of confidentiality is owed by a professional legal adviser to a client of the adviser.

156 **Commons Amendment 201** would make the parallel change in respect of the exemption in Schedule 11.

Schedule 3: Exemptions etc from the GDPR: health, social work, education and child abuse data

Commons Amendments 194 and 187

157 These Commons Amendments amend Part 4 of Schedule 3 (exemptions from data subject rights in respect of education data).

158 **Commons Amendment 187** is a consequential amendment as a result of Commons Amendment 194.

159 **Commons Amendment 194** would expand the types of records that are "educational records" for the purposes of Part 4 of Schedule 3 to include records processed by or on behalf of the proprietor or trustees of an independent school in Northern Ireland.

Schedule 12: The Information Commissioner

Commons Amendment 206

160 Schedule 12 seeks to replicate Schedule 5 to the 1998 Act and includes details about the Commissioner's term of office, etc.

161 **Commons Amendment 206** would make clear that the sums that the Commissioner is required to pay to the Secretary of State include charges and penalties.

These Explanatory Notes relate to the Commons Amendments to the Data Protection Bill [HL] as brought from the House of Commons on 9 May 2018 (HL Bill 104)

Schedule 15: Powers of entry and inspection

Commons Amendments 209 to 217

- 162 Schedule 15 to the Bill provides the Commissioner, as part of her enforcement powers, with the ability to apply to a court for a warrant to enter premises and to search and seize relevant material.
- 163 **Commons Amendments 209, 211 and 217** would enable a judge of the High Court or, in Scotland, a judge of the Court of Session to deal with an application for a warrant made by the Information Commissioner under Schedule 15.
- 164 **Commons Amendment 210** would enable a warrant to be granted in respect of premises where there are grounds for suspecting that evidence of a failure or of the commission of an offence can be viewed using equipment on the premises, not just where such evidence is to be found on the premises.
- 165 **Commons Amendments 212, 214 and 216** would require a warrant in respect of premises to authorise the Commissioner to require any person on the premises to provide a copy of information capable of being viewed using equipment on the premises.
- 166 **Commons Amendments 213 and 215** would require a warrant in respect of premises to authorise the Commissioner to require any person on the premises to provide an explanation of information capable of being viewed using equipment on the premises.

Schedule 17: Relevant records

Commons Amendments 222 and 223

- 167 Clause 181 (prohibition of requirement to produce relevant records) makes it an offence to require a person to use their data rights to obtain and hand over health and criminal records data in connection with employment or the provision of services. The offence only applies in respect of "relevant records" as defined in Schedule 17.
- 168 **Commons Amendments 222 and 223** would limit the types of health records (defined in Clause 198) which count as "relevant records" for the purposes of Clause 181 to those obtained by a data subject in the exercise of a data subject access right (defined in paragraph 4 of Schedule 17). This mirrors provision made in respect of other kinds of record.

Commons Amendments 224 and 226 to 229

- 169 The following amendments add references to Part 5 of the Police Act 1997 into Schedule 17. The 1997 Act creates a statutory scheme for the disclosure of criminal records and requires the Disclosure and Barring Service (DBS) to issue certificates under that scheme. As already exists under the Data Protection Act 1998, employers cannot require employees to make a "subject access request" to the DBS, and instead the employer should make a DBS application. These technical amendments would ensure that that position is maintained.
- 170 **Commons Amendments 224 and 227** would make the Department of Justice in Northern Ireland's functions under Part 5 of the Police Act 1997 "relevant functions" for the purposes of paragraph 4 of Schedule 17 (relevant records relating to statutory functions).

These Explanatory Notes relate to the Commons Amendments to the Data Protection Bill [HL] as brought from the House of Commons on 9 May 2018 (HL Bill 104)

171 **Commons Amendment 226** would make the Secretary of State's functions under Part 5 of the Police Act 1997 "relevant functions" for the purposes of paragraph 4 of Schedule 17 (relevant records relating to statutory functions).

172 **Commons Amendment 228** would make the Scottish Ministers' functions under Part 5 of the Police Act 1997 "relevant functions" for the purposes of paragraph 4 of Schedule 17 (relevant records relating to statutory functions).

173 **Commons Amendment 229** would make the Disclosure and Barring Service's functions under Part 5 of the Police Act 1997 "relevant functions" for the purposes of paragraph 4 of Schedule 17 (relevant records relating to statutory functions).

Commons Amendment 225

174 **Commons Amendment 225** would remove a reference in Schedule 17 to section 73 of the Children and Young Persons Act 1968 (which has been repealed) and insert a reference to Article 45 of the Criminal Justice (Children) (Northern Ireland) Order 1998 (which replaced it).

Schedule 18: Minor and consequential amendments

Commons Amendments 234 to 242, 245 to 247, 249 to 251, 254 to 256, 258, 261, 268, 270, 271 and 274 to 277

175 The Data Protection Act 1998 was widely referred to across the statute book. This Bill is, in general, intended to replace it.

176 **Commons Amendments 234 to 242, 245 to 247, 249 to 251, 254 to 256, 258, 261, 268, 270, 271 and 274 to 277** would make the necessary changes to that effect to other primary and secondary legislation.

Commons Amendments 230, 244, 257 and 264 to 267

177 **Commons Amendment 230** would replace a consequential amendment of section 19AC of the Registration Services Act 1953. The new wording makes clear that the code referred to is the data-sharing code prepared under Clause 121 and issued under Clause 124(4).

178 **Commons Amendment 244** would provide that certain provisions in Schedule 15 to the Data Protection Act 1998, all of which amend other enactments, are not to be repealed.

179 **Commons Amendment 257** would replace a consequential amendment of section 45E of the Statistics and Registration Service Act 2007. The new wording makes clear that the code referred to is the data-sharing code prepared under Clause 121 and issued under Clause 124(4).

180 **Commons Amendments 264 to 267** would replace a consequential amendment to the Digital Economy Act 2017. In each case, the new wording makes clear that the code referred to is the data-sharing code prepared under Clause 121 and issued under Clause 124(4).

These Explanatory Notes relate to the Commons Amendments to the Data Protection Bill [HL] as brought from the House of Commons on 9 May 2018 (HL Bill 104)

DATA PROTECTION BILL [HL]

EXPLANATORY NOTES ON COMMONS AMENDMENTS

These Explanatory Notes relate to the Commons Amendments to the Data Protection Bill as brought from the House of Commons on 9 May 2018.

Ordered by the House of Lords to be printed, 9 May 2018

© Parliamentary copyright 2018

This publication may be reproduced under the terms of the Open Parliament Licence which is published at www.parliament.uk/site-information/copyright

PUBLISHED BY AUTHORITY OF THE HOUSE OF LORDS