

Data Protection Bill [HL]

MARSHALLED LIST OF MOTIONS TO BE MOVED ON CONSIDERATION OF COMMONS DISAGREEMENT TO AND AMENDMENTS IN LIEU OF A LORDS AMENDMENT

[Unless otherwise indicated, the page and line references are to Bill 153, the Bill as first printed for the Commons]

*[Amendments marked * are new or have been altered]*

MOTION A

COMMONS AMENDMENT 62

Clause 142

62 Leave out Clause 142

LORDS AGREEMENT AND AMENDMENT INSTEAD OF WORDS LEFT OUT OF THE BILL

The Lords agree with the Commons in their Amendment 62, and propose Amendment 62B instead of the words so left out of the Bill –

After Clause 141

62B Insert the following new Clause –

“Data protection breaches by national news publishers

- (1) The Secretary of State must, within the period of three months beginning with 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 national news publishers and other media organisations.
- (2) Before setting the terms of reference of and other arrangements for the inquiry the Secretary of State must –
 - (a) consult the Scottish Ministers with a view to ensuring, in particular, that the inquiry will consider the separate legal context and other circumstances of Scotland;

- (b) consult Northern Ireland Ministers and members of the Northern Ireland Assembly with a view to ensuring, in particular, that the inquiry will consider the separate legal context and other circumstances of Northern Ireland;
 - (c) consult persons appearing to the Secretary of State to represent the interests of victims of data protection breaches committed by, on behalf of or in relation to, national news publishers and other media organisations; and
 - (d) consult persons appearing to the Secretary of State to represent the interests of national news publishers and other media organisations (having regard in particular to organisations representing journalists).
- (3) The terms of reference for the inquiry must include requirements –
- (a) to inquire into the extent of unlawful or improper conduct by or on behalf of national news publishers and other media organisations in respect of personal data;
 - (b) to inquire into the extent of corporate governance and management failures and the role, if any, of politicians, public servants and others in relation to failures to investigate wrongdoing at media organisations within the scope of the inquiry;
 - (c) to review the protections and provisions around media coverage of individuals subject to police inquiries, including the policy and practice of naming suspects of crime prior to any relevant charge or conviction;
 - (d) to investigate the dissemination of information and news, including false news stories, by social media organisations using personal data;
 - (e) to consider the adequacy of the current regulatory arrangements and the resources, powers and approach of the Information Commissioner and any other relevant authorities in relation to –
 - (i) the news publishing industry (except in relation to entities regulated by Ofcom) across all platforms and in the light of experience since 2012;
 - (ii) social media companies;
 - (f) to make such recommendations as appear to the inquiry to be appropriate for the purpose of ensuring that the privacy rights of individuals are balanced with the right to freedom of expression, while supporting the integrity and freedom of the press, and its independence (including independence from Government), and encouraging the highest ethical and professional standards.
- (4) In setting the terms of reference for the inquiry the Secretary of State must –
- (a) have regard to the current context of the news, publishing and general media industry;
 - (b) set appropriate parameters for determining which allegations are to be considered;
 - (c) determine the meaning and scope of references to “national news publishers” and “other media organisations” for the purposes of the inquiry under this section; and
 - (d) include exemptions or limitations designed to exclude local and regional publishers from the scope of the inquiry.

- (5) Before complying with subsection (4) the Secretary of State must consult the judge or other person whom they intend to invite to chair the inquiry.
- (6) The inquiry –
- (a) may, so far as it considers appropriate, consider evidence given to previous public inquiries;
 - (b) may, so far as it considers appropriate, take account of the findings of and evidence given to previous public inquiries (and the inquiry must consider using this power for the purpose of avoiding the waste of public resources); and
 - (c) must, in particular, consider to what extent previous public inquiries have investigated, and made findings in relation to, events in connection with Northern Ireland within the inquiry's terms of reference, and must take such further evidence and make such further recommendations in respect of those matters as the inquiry considers appropriate.
- (7) This section comes into force on the passing of this Act.”

COMMONS DISAGREEMENT AND AMENDMENTS IN LIEU

The Commons disagree to Lords Amendment 62B proposed instead of the words left out of the Bill by Commons Amendment 62 but propose amendments 62BZA to 62BA to Clause (Review of processing of personal data for the purposes of journalism) inserted by Commons Amendment 109 and amendments 62BC to 62BF to the Bill in lieu of the Lords Amendment –

COMMONS AMENDMENT 109

109 Insert the following new Clause –

“Review of processing of personal data for the purposes of journalism

- (1) The Commissioner must –
- 4 (a) review the extent to which the processing of personal data for the purposes of journalism complied with the data protection legislation during the review period,
 - (b) prepare a report of the review, and
 - (c) submit the report to the Secretary of State.
- 9 (2) “The review period” means the period of 4 years beginning with the day on
10 which Chapter 2 of Part 2 of this Act comes into force.
- 11 (3) The Commissioner must –
- (a) start the review within the period of 6 months beginning when the review period ends, and
 - (b) submit the report to the Secretary of State before the end of the period of 18 months beginning when the Commissioner started the review.
- (4) The report must include consideration of the extent of compliance (as described in subsection (1)(a)) in each part of the United Kingdom.
- (5) The Secretary of State must –
- (a) lay the report before Parliament, and
 - (b) send a copy of the report to –
 - (i) the Scottish Ministers,

- 24 (ii) the Welsh Ministers, and
 (iii) the Executive Office in Northern Ireland.”

AMENDMENTS TO COMMONS AMENDMENT 109

- 62BZA** Line 4, leave out paragraph (a) and insert—
 2 “(a) review the extent to which, during each review period, the processing of personal data for the purposes of journalism complied with—
 (i) the data protection legislation, and
 (ii) good practice in the processing of personal data for the purposes of journalism,”
- 62BZB** Line 9, leave out ““The review period” means” and insert “In this section—
 “review period” means—
 (a) ”
- 62BZC** Line 10, at end insert “and
 (b) each subsequent period of 5 years beginning with the day after the day on which the previous review period ended;
 “good practice in the processing of personal data for the purposes of journalism” has the same meaning as in section (*Data protection and journalism code*).”
- 62BZD** Line 11, leave out subsection (3) and insert—
 “(3) The Commissioner must start a review under this section, in respect of a review period, within the period of 6 months beginning when the review period ends.
 (3A) The Commissioner must submit the report of a review under this section to the Secretary of State—
 (a) in the case of the first review, before the end of the period of 18 months beginning when the Commissioner started the review, and
 (b) in the case of each subsequent review, before the end of the period of 12 months beginning when the Commissioner started the review.”
- 62BA** Line 24, at end insert—
 “() Schedule (*Review of processing of personal data for the purposes of journalism*) makes further provision for the purposes of the review under this section.”

AMENDMENTS TO THE BILL

After Clause 176

62BC Insert the following new Clause—

“Effectiveness of the media’s dispute resolution procedures

- (1) The Secretary of State must, before the end of each review period, lay before Parliament a report produced by the Secretary of State or an appropriate person on—
- (a) the use of relevant alternative dispute resolution procedures, during that period, in cases involving a failure, or alleged failure, by a relevant media organisation to comply with the data protection legislation, and
 - (b) the effectiveness of those procedures in such cases.
- (2) In this section—
- “appropriate person” means a person who the Secretary of State considers has appropriate experience and skills to produce a report described in subsection (1);
- “relevant alternative dispute resolution procedures” means alternative dispute resolution procedures provided by persons who produce or enforce codes of practice for relevant media organisations;
- “relevant media organisation” means a body or other organisation whose activities consist of or include journalism, other than a broadcaster;
- “review period” means—
- (a) the period of 3 years beginning when this Act is passed, and
 - (b) each subsequent period of 3 years.
- (3) The Secretary of State must send a copy of the report to—
- (a) the Scottish Ministers,
 - (b) the Welsh Ministers, and
 - (c) the Executive Office in Northern Ireland.”

Clause 205

62BD Page 120, line 32, leave out “subsection (2)” and insert “subsections (2) and (2A)”

62BE Page 121, line 4, at end insert—

- “(2A) The following provisions come into force at the end of the period of 2 months beginning when this Act is passed—
- (a) section (*Data protection and journalism code*);
 - (b) sections 125, 126 and 127, so far as they relate to a code prepared under section (*Data protection and journalism code*);
 - (c) section (*Guidance about how to seek redress against media organisations*);
 - (d) section (*Review of processing of personal data for the purposes of journalism*) and Schedule (*Review of processing of personal data for the purposes of journalism*);
 - (e) section (*Effectiveness of the media’s dispute resolution procedures*).”

After Schedule 16

62BF Insert the following new Schedule –

“REVIEW OF PROCESSING OF PERSONAL DATA FOR THE PURPOSES OF JOURNALISM

Interpretation

1 In this Schedule –

“relevant period” means –

- (a) the period of 18 months beginning when the Commissioner starts the first review under section (*Review of processing of personal data for the purposes of journalism*), and
- (b) the period of 12 months beginning when the Commissioner starts a subsequent review under that section;

“the relevant review”, in relation to a relevant period, means the review under section (*Review of processing of personal data for the purposes of journalism*) which the Commissioner must produce a report about by the end of that period.

Information notices

2 (1) This paragraph applies where the Commissioner gives an information notice during a relevant period.

(2) If the information notice –

(a) states that, in the Commissioner’s opinion, the information is required for the purposes of the relevant review, and

(b) gives the Commissioner’s reasons for reaching that opinion, subsections (5) and (6) of section 143 do not apply but the notice must not require the information to be provided before the end of the period of 24 hours beginning when the notice is given.

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Assessment notices

3 (1) Sub-paragraph (2) applies where the Commissioner gives an assessment notice to a person during a relevant period.

(2) If the assessment notice –

(a) states that, in the Commissioner’s opinion, it is necessary for the controller or processor to comply with a requirement in the notice for the purposes of the relevant review, and

(b) gives the Commissioner’s reasons for reaching that opinion, subsections (6) and (7) of section 146 do not apply but the notice must not require the controller or processor to comply with the requirement before the end of the period of 7 days beginning when the notice is given.

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(3) During a relevant period, section 147 has effect as if for subsection (5) there were substituted –

“(5) The Commissioner may not give a controller or processor an assessment notice with respect to the processing of personal data for the special purposes unless a determination under section 174 with respect to the data or the processing has taken effect.”

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Applications in respect of urgent notices

- 4 Section (*Applications in respect of urgent notices*) applies where an information notice or assessment notice contains a statement under paragraph 2(2)(a) or 3(2)(a) as it applies where such a notice contains a statement under section 143(7)(a) or 146(8)(a).”

A Lord Ashton of Hyde to move, “That this House do not insist on its Amendment 62B proposed instead of the words left out by Commons Amendment 62, to which the Commons have disagreed, and do agree with the Commons in their Amendments 62BZA to 62BA and 62BC to 62BF in lieu of Amendment 62B.”

A1★ Lord McNally to move, as an amendment to Motion A, to leave out “62BC to 62BF in lieu of Amendment 62B” and insert “62BD to 62BF in lieu of Amendment 62B but do disagree with the Commons in their Amendment 62BC and do propose Amendment 62BCA in lieu –

After Clause 176

62BCA Insert the following new Clause –

“Effectiveness of the media’s dispute resolution procedures

- (1) The Secretary of State must, before the end of each review period, appoint an Independent Reviewer to report to the Secretary of State, before the end of each review period, about –
 - (a) the use of relevant alternative dispute resolution procedures during that period in cases involving actual or alleged failure by a relevant media organisation to comply with the data protection legislation, and
 - (b) the effectiveness of those procedures in such cases.
- (2) For the purposes of subsection (1) the Independent Reviewer must be –
 - (a) the Press Recognition Panel (incorporated by the Royal Charter dated 3 November 2014), if it agrees to act, or
 - (b) otherwise, a person who is or has been a judge of the High Court, the Court of Appeal or the Supreme Court.
- (3) A person reporting under subsection (1) must have regard to the Leveson Inquiry - Report into the culture, practices and ethics of the press laid before Parliament under section 26 of the Inquiries Act 2005 and in particular any relevant conclusions and recommendations.
- (4) As soon as practicable after receiving a report under subsection (1), the Secretary of State must –
 - (a) lay a copy before Parliament; and
 - (b) send a copy to the Scottish Ministers, the Welsh Ministers and the Executive Office in Northern Ireland.
- (5) In this section –

“relevant alternative dispute resolution procedures” means alternative dispute resolution procedures provided by persons who produce or enforce codes of practice for relevant media organisations;

“relevant media organisation” means a body or other organisation whose activities consist of or include journalism, other than a broadcaster;

“review period” means –

- (a) the period of 3 years beginning with the date on which this Act is passed, and
- (b) each subsequent period of 3 years.”

A2 Lord Stevenson of Balmacara to move, as an amendment to Motion A, at end to insert, “and do propose amendment 62BZAA to Commons Amendment 62BZA –

62BZAA Line 2, at beginning insert –

- “() within six months of the passing of this Act carry out, or commission another person to carry out, a Background Review of the extent to which the processing of personal data for the purposes of journalism in all parts of the United Kingdom, in the five year period ending 13 July 2011, complied with –
- (i) data protection legislation at that time, and
 - (ii) good practice in the processing of personal data for the purposes of journalism,””

A3★ Lord Falconer of Thoroton to move, as an amendment to Motion A, at end to insert “and do propose amendments 62BFA and 62BFB to Commons Amendment 62BF –

62BFA★ Line 24, at end insert –

- “() During a relevant period, section 144(1) does not apply (and proceedings in respect of an information notice given during a relevant period may continue after the end of the period).”

62BFB★ Line 36, leave out from “period,” to end of line 41 and insert “section 147(5) does not apply (and proceedings in respect of an assessment notice given during a relevant period may continue after the end of the period).””

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