

HOUSE OF LORDS

Select Committee on the Constitution

3rd Report of Session 2024–25

Data (Use and Access) Bill [HL]

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Select Committee on the Constitution

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<u>Lord Burnett of Maldon</u>	<u>Lord Keen of Elie</u>
<u>Baroness Drake (Chair)</u>	<u>Lord Strathclyde</u>
<u>Lord Falconer of Thoroton</u>	<u>Lord Thomas of Gresford</u>

Declaration of interests

See Appendix 1.

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Committee staff

The current staff of the committee are Rachel Borrell (Clerk), Kate Wallis (Clerk), Alice Edmonston (Policy Analyst) and Sam Smith (Committee Operations Officer).

Contact details

All correspondence should be addressed to the Constitution Committee, Committee Office, House of Lords, London SW1A 0PW. Telephone 020 7219 5960. Email constitution@parliament.uk

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Data (Use and Access) Bill [HL]

Introduction

1. The Data (Use and Access) Bill was introduced in the House of Lords on 23 October. Second reading is scheduled for 19 November 2024.
2. The Bill replaces, and is very similar to, the Data Protection and Digital Information Bill introduced in the House of Commons on 8 March 2023, but which had not passed before the dissolution of Parliament prior to the general election on 4 July 2024.
3. The Government's stated aim in the Data (Use and Access) Bill is "to harness the power of data for economic growth, support a modern digital government, and improve people's lives."¹ The Bill seeks to update data protection laws in the UK post-Brexit. At present, the Data Protection Act 2018 supplements EU General Data Protection Regulations (GDPR) which have, since Brexit, been incorporated into UK law as the UK GDPR.
4. **We reiterate our statement from our report on the Data Protection and Digital Information Bill that "[d]ata protection is a matter of great importance in maintaining a relationship of trust between the state and the individual. Access to personal data is beneficial to the provision of services by the state and assists in protecting national security. However, the processing of personal data affects individual rights, including the right to respect for private life and the right to freedom of expression. It is important that the power to process personal data does not become so broad as to unduly limit those rights."**²

Digital Verification Services

5. Part 2 of the Bill relates to digital verification services (DVS), which are facilities that, for example, allow people to verify their identities online when buying products. This Part of the Bill establishes a DVS trust framework and provides for supplementary codes and a DVS register.
6. Clause 28 requires the Secretary of State to prepare and publish a document which sets out the rules concerning the provision of DVS.³
7. The Delegated Powers and Regulatory Reform Committee (DPRRC), in its report earlier this year on the Data Protection and Digital Information Bill, commented on equivalent provisions in that Bill. The DPRRC noted that: "[w]hile there is no legal requirement for a person providing digital verification services to comply with the rules set out in the main code, there are legal consequences which flow from compliance or non-compliance."⁴ The DPRRC therefore criticised the nature of the equivalent power in that Bill—clause 53—stating:

1 [Explanatory Notes to the Data \(Use and Access\) Bill \[HL\]](#), para 1 [Bill 40 (2024–25) - EN]

2 Constitution Committee, [Data Protection and Digital Information Bill](#) (2nd Report, Session 2023–24, HL Paper 53), para 3

3 [Data \(Use and Access\) Bill \[HL\]](#), clause 28

4 Delegated Powers and Regulatory Reform Committee, [Data Protection and Digital Information Bill: Pedicabs \(London\) Bill \[HL\]](#) (10th Report, Session 2023–24, HL Paper 60), para 18

“[W]e consider that the exercise of the powers conferred by clause 53 should be made subject to parliamentary scrutiny, with the affirmative procedure providing the appropriate level of scrutiny.”⁵

8. **We agree with, and reiterate, the DPRRC’s conclusions on the previous iteration of this clause in the Data Protection and Digital Information Bill. The exercise of the Secretary of State’s duty in clause 28 should be made subject to parliamentary scrutiny.**

General Data Protection Regulation

9. The Bill, principally in Part 5, gives ministers powers to change the GDPR regime by secondary legislation.
10. Article 6 of the UK GDPR sets out the circumstances in which the processing of personal data is lawful.
11. The Bill, in clause 70, adds a provision allowing personal data to be processed on the basis of a ‘recognised legitimate interest’, and sets out the conditions (in Schedule 4) which must be met if processing is to be considered necessary for the purposes of a recognised legitimate interest. Under clause 70(4) the Secretary of State has the power to change the grounds for lawful processing of data.⁶
12. Clause 71 sets out the conditions for determining whether the reuse of personal data is permitted in compliance with the purpose limitation principle outlined in Article 5(1)(b) of the UK GDPR. Clause 71(5) gives the Secretary of State the power to change the conditions under which this principle is met.⁷
13. **Clauses 70(4) and 71(5) give the Secretary of State discretion to determine and vary the conditions under which personal data can be processed. *We are not satisfied that the case has been sufficiently made to entrust the powers in these clauses to secondary legislation.***
14. Currently, if political parties or other campaigners, including candidates, use personal data for unsolicited campaigning material, this is treated as direct marketing and is subject to regulations. Clause 114 of the Data Protection and Digital Information Bill would have given the Secretary of State the power, by regulations, to provide an exception from direct marketing provisions for communications conducted for the purposes of democratic engagement activities (or, in the case of registered political parties, election activities).
15. **We expressed concern in our report on the Data Protection and Digital Information Bill that the terms ‘democratic engagement’ and ‘democratic engagement activities’ were broad and not adequately defined.⁸ We are, therefore, pleased to see that this provision is not included in the Data (Use and Access) Bill.**
16. Clause 9 of the Data Protection and Digital Information Bill would have amended Article 12 of the UK GDPR to broaden the basis for refusal of

5 Delegated Powers and Regulatory Reform Committee, *Data Protection and Digital Information Bill: Pedicabs (London) Bill [HL]* (10th Report, Session 2023–24, HL Paper 60), para 23

6 *Data (Use and Access) Bill [HL]*, clause 70

7 *Data (Use and Access) Bill [HL]*, clause 71

8 Constitution Committee, *Data Protection and Digital Information Bill* (2nd Report, Session 2023–24, HL Paper 53), para 9

a data access request by providing more leeway to ‘data controllers’. The existing test allows data controllers to refuse or charge a reasonable fee for “manifestly unfounded or excessive” requests. Clause 9 would have permitted a controller to charge a reasonable fee or refuse to act on a request which is “vexatious or excessive”.

17. In our report on the Data Protection and Digital Information Bill, we expressed concerns about this clause and recommended that:

“The House may wish to seek further explanation as to how the new test provided for by clause 9 is to be applied. The Government should provide assurances that clause 9 will not significantly limit an individual’s ability to access information about their personal data or information about how it is being collected and used”.⁹

18. **The Data (Use and Access) Bill does not include this clause and has no reference to ‘vexatious’ requests. We welcome the removal of this provision.**

Constitutional statutes

19. Parliamentary sovereignty dictates that no Parliament can bind its successors, and generally the courts interpret inconsistencies between two Acts in favour of the later passed—a principle known as ‘implied repeal’. Clause 105 of the Bill inserts a new section 183A into the Data Protection Act 2018, which prevents any relevant enactment or rule of law from overriding the main data protection legislation unless it makes express provision to do so.¹⁰
20. **Since a judgment by Lord Justice Laws, a Lord Justice of Appeal, in *Thoburn* in 2002, the courts have generally considered certain acts of Parliament to be of such constitutional significance that they should be treated as ‘constitutional statutes’ and protected from implied repeal.¹¹ Clause 105 in effect seeks to bestow a status equivalent to that of a ‘constitutional statute’ on the Data Protection Act 2018. We draw this to the attention of the House.**

Henry VIII power

21. Clause 133 is a Henry VIII power that enables the Secretary of State to, by regulations, make consequential amendments to any provision made by the Bill.¹² It allows for amendment to any “enactment passed or made before the end of the Session in which this Act is passed”.¹³
22. ***The House may wish to seek clarification as to why this power to amend enactments later in the same Parliamentary session is necessary, given that the Government, and indeed Parliament, is in a position to ensure that future draft legislation is compatible with the Bill.***

9 Constitution Committee, *Data Protection and Digital Information Bill* (2nd Report, Session 2023–24, HL Paper 53), para 12

10 [Data \(Use and Access\) Bill \[HL\]](#), clause 105

11 *Thoburn v Sunderland County Council* [2002] EWHC 195 (Admin)

12 [Data \(Use and Access\) Bill \[HL\]](#), clause 133

13 [Data \(Use and Access\) Bill \[HL\]](#), clause 133(3)(b)

Information standards for health and social care

23. Clause 119 makes provision about information standards for health and adult social care in England and information technology.¹⁴ It gives effect to Schedule 15 which amends Part 9 of the Health and Social Care Act 2012.
24. Under section 250 of the 2012 Act the Secretary of State may prepare and publish ‘an information standard’ containing standards in relation to the processing of information, including standards about how information is shared, which make it easier to compare data across the health and adult social care sector. Schedule 15 amends section 250 of the 2012 Act to include a standard relating to information technology or information technology services used or intended to be used in connection with the processing of information. The Government explains:
- “For the health and adult social care system to work efficiently and effectively, data needs to flow through the system in a standardised way, so that when it is accessed by or provided to an organisation for any purpose it can be read, be meaningful to, and be easily understood by the recipient and/or user of the data. This relies on data being collected, processed, and shared in a consistent way.”¹⁵
25. Information standards are prepared and published by the Secretary of State (in relation to health care and adult social care) and by NHS England (in relation to NHS services). Under section 250(6) of the 2012 Act relevant public bodies “must have regard to an information standard published under this section”. Before publishing an information standard, the Secretary of State must consult such persons as the Secretary of State considers appropriate.¹⁶ Information standards are not required to be laid before Parliament.
26. *The new provisions in Schedule 15 are wholly in line with existing powers in the Health and Social Care Act 2012. However, given that information standards may encompass and impose duties upon a range of IT providers, the House may wish to satisfy itself as to whether the 2012 Act should be further amended to provide that information standards for health and adult social care in England should be laid before Parliament for scrutiny.*

14 [Data \(Use and Access\) Bill \[HL\]](#), clause 119

15 [Explanatory Notes to the Data \(Use and Access\) Bill \[HL\]](#), para 44 [Bill 40 (2024–25) - EN]

16 Health and Social Care Act 2012, [section 251\(1\)](#)

APPENDIX 1: LIST OF MEMBERS AND DECLARATIONS OF INTEREST

Members

Lord Anderson of Ipswich
 Baroness Andrews
 Lord Beith
 Lord Burnett of Maldon
 Baroness Drake (Chair)
 Lord Falconer of Thoroton
 Baroness Finn
 Lord Foulkes of Cumnock
 Baroness Goldie
 Lord Keen of Elie
 Lord Strathclyde
 Lord Thomas of Gresford

Declarations of interest

Lord Anderson of Ipswich
No interests declared
 Baroness Andrews
No interests declared
 Lord Beith
No interests declared
 Lord Burnett of Maldon
No interests declared
 Baroness Drake (Chair)
No interests declared
 Lord Falconer of Thoroton
No interests declared
 Baroness Finn
No interests declared
 Lord Foulkes of Cumnock
No interests declared
 Baroness Goldie
No interests declared
 Lord Keen of Elie
No interests declared
 Lord Strathclyde
No interests declared
 Lord Thomas of Gresford
No interests declared

A full list of members' interests can be found in the Register of Lords' Interests: <https://members.parliament.uk/members/lords/interests/register-of-lords-interests>

Professor Stephen Tierney, University of Edinburgh, and Professor Roger Masterman, University of Durham, acted as legal advisers to the Committee. They declared no relevant interests.