



HOUSE OF LORDS

Delegated Powers and Regulatory Reform
Committee

9th Report of Session 2024–25

Data (Use and Access) Bill [HL]

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The Delegated Powers and Regulatory Reform Committee

The Committee is appointed by the House of Lords each session, most recently on 29 July 2024, and has the following terms of reference:

- (i) To report whether the provisions of any bill inappropriately delegate legislative power, or whether they subject the exercise of legislative power to an inappropriate degree of parliamentary scrutiny;
- (ii) To report on documents and draft orders laid before Parliament under or by virtue of:
 - (a) sections 14 and 18 of the Legislative and Regulatory Reform Act 2006,
 - (b) section 7(2) or section 19 of the Localism Act 2011, or
 - (c) section 5E(2) of the Fire and Rescue Services Act 2004;

and to perform, in respect of such draft orders, and in respect of subordinate provisions orders made or proposed to be made under the Regulatory Reform Act 2001, the functions performed in respect of other instruments and draft instruments by the Joint Committee on Statutory Instruments; and

- (iii) To report on documents and draft orders laid before Parliament under or by virtue of:
 - (a) section 85 of the Northern Ireland Act 1998,
 - (b) section 17 of the Local Government Act 1999,
 - (c) section 9 of the Local Government Act 2000,
 - (d) section 98 of the Local Government Act 2003, or
 - (e) section 102 of the Local Transport Act 2008.

Members

<u>Baroness Bakewell of Hardington Mandeville</u>	<u>Lord Goodman of Wycombe</u>
<u>Lord Carlile of Berriew</u>	<u>Baroness Humphreys</u>
<u>Baroness Chakrabarti</u>	<u>The Earl of Lindsay</u>
<u>Lord Cunningham of Felling</u>	<u>Lord McLoughlin</u> (Chair)
<u>Baroness Finlay of Llandaff</u>	<u>Lord Rooker</u>

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Committee Members' registered interests may be examined in the online Register of Lords' Interests at <https://www.parliament.uk/hlregister>. The Register may also be inspected in the Parliamentary Archives.

Publications

The Committee's reports are published by Order of the House in hard copy and on the internet at www.parliament.uk/hldprcpublications.

Committee Staff

The staff of the Committee are Jen Mills (Clerk) and Kiran Kaur (Committee Operations Officer).

General Information

General information about the House of Lords and its Committees, including guidance to witnesses, details of current inquiries and forthcoming meetings is on the internet at <http://www.parliament.uk/business/lords/>.

Contacts for the Delegated Powers and Regulatory Reform Committee

Any query about the Committee or its work should be directed to the Clerk to the Delegated Powers and Regulatory Reform Committee, Legislation Office, House of Lords, London, SW1A 0PW. The telephone number is 020 7219 3103. The Committee's email address is hldelegatedpowers@parliament.uk.

Ninth Report

DATA (USE AND ACCESS) BILL [HL]

1. This Bill had its second reading on 19 November. It contains provisions which are to a very large extent the same as provisions included in the Data Protection and Digital Information Bill (DPDI Bill), which we considered in our 10th report of Session 2023–24.¹
2. The Department for Science, Innovation and Technology has provided a delegated powers memorandum (“the memorandum”).² We draw the following provisions to the attention of the House.

Clause 28—Power to set rules for providers of digital verification services

3. Clause 28 requires the Secretary of State to prepare and publish a document which sets out the rules concerning the provision of digital verification services. Substantially the same provision was included at clause 53 of the DPDI Bill. We drew attention to it in paragraphs 18 to 23 of our report on that Bill. In our report we expressed the view that, since the rules would have legislative effect, they should be subject to parliamentary scrutiny. Nothing is said in the memorandum which we consider would lead us to change that view. **Accordingly, we remain of the view that the power conferred by clause 28 should be subject to parliamentary scrutiny, with the affirmative procedure providing the appropriate level of scrutiny.**

Clause 70—Power to amend the grounds for lawful processing of personal data

4. Clause 70 amends Article 6 of the UK General Data Protection Regulation (“UK GDPR”) which sets out the only circumstances in which the processing of personal data is lawful. The amendments include adding a new ground for lawful processing, namely processing which is necessary for the purposes of a recognised legitimate interest. Under the new ground, processing will only be treated as being for a recognised legitimate interest if it meets one of the conditions set out in a new Annex 1 to the UK GDPR (inserted by Schedule 4 to the Bill). The new provisions inserted into Article 6 also include a power to amend the conditions in Annex 1 by varying or adding to them, or by omitting provisions previously added under the regulation making power.
5. The same amendments to Article 6 were made by clause 5 of the DPDI Bill. The only substantial change affecting the delegated power has been to add a condition that the Secretary of State may only exercise the power if the Secretary of State considers that the processing to be added to Annex 1 is necessary to safeguard a public interest objective listed in Article 23(1)(c) to (j) of the UK GDPR.
6. In paragraph 6 of our report on the DPDI Bill we expressed the view that, since the grounds for lawful processing of personal data go to the heart of

¹ DPRRC, *10th Report* (Session 2023–24, HL Paper 60)

² Memorandum on the Data (Use and Access) Bill [HL] from the Department for Science, Innovation and Technology to the Delegated Powers and Regulatory Reform Committee (23 October 2024): <https://bills.parliament.uk/publications/56546/documents/5219>

the data protection legislation, they should not be capable of being changed by subordinate legislation. Nor did we find the Department's reasons for the power convincing, and those reasons remain substantially unchanged in the memorandum for this Bill.³ We remain of the view that the power is inappropriate. We do not consider that the condition which has been added to the Bill is sufficient to meet our objection. It seems to us that the requirement that the processing must be necessary to meet one of the public interest objectives listed in Article 23(1)(c) to (j) still leaves a wide margin of discretion, with the meaning of Article 23(1)(g) (which relates to the regulation of professions) in particular being unclear.

7. **Accordingly, we remain of the view that the power conferred by clause 70 is inappropriate and recommend that it is removed from the Bill.**

Clause 71—Power to amend conditions under which processing is treated as compatible with the original purpose

8. Clause 71 amends the provisions of the UK GDPR which relate to whether further processing of personal data is compatible with the original purposes for which it was collected. The clause works by inserting a new Article 8A into the UK GDPR, and is intended to clarify the circumstances in which further processing is to be treated as being compatible. To this end, Article 8A(3) sets out specific circumstances in which the processing of personal data for a new purpose is to be treated as being compatible with the original purpose. The matters specified in new Article 8A(3) include where the processing meets a condition in Annex 2. Annex 2, which is inserted by Schedule 5 to the Bill, contains a list of conditions which relate to public interest objectives such as public security, emergencies, crime, and the safeguarding of vulnerable individuals. Article 8A also includes a regulation making power which will allow the Secretary of State by regulations to amend Annex 2 to add to or vary its provisions.
9. The same amendments to the UK GDPR were made by clause 6 of the DPDI Bill, and the reasons given in the memorandum for the power are the same as those given in the delegated powers memorandum for the DPDI Bill.⁴ They focus on the need to ensure there is a mechanism to correct any adverse consequences which flow from the clarifications made by new Article 8A.
10. In paragraph 10 of our report on the DPDI Bill, we agreed with the statement made by the Department in its memorandum that the rules governing further processing “relate to a fundamental principle in the UK GDPR that processing in a manner incompatible with the original purpose is not permitted”.⁵ Given the fundamental nature of that principle and the fact that we found the Department's reasons for needing the power unconvincing, we took the view in our report that the delegated power was inappropriate. **We still remain of that view and accordingly recommend that the delegated power conferred by clause 71 is removed from the Bill.**

3 See paragraphs 331 to 333 of the memorandum.

4 See paragraphs 336 to 338.

5 The same statement is repeated in the memorandum to this Bill: see paragraph 335.

Clause 123—Power to make provision enabling providers of internet services to provide information for research about online safety matters

11. Clause 123 confers a power on the Secretary of State to make regulations to require providers of regulated internet services to provide information for the purposes of independent research into online safety matters. This power will be conferred by inserting a new section 154A into the Online Safety Act 2023 (“OSA”).
12. Subsection (2) of the section 154A sets out a non-exhaustive list of the things that may be included in the regulations. These include provision about enforcement of the requirements of the regulations which, by virtue of subsection (3), may include conferring powers of entry, imposing monetary offences, and the creation of offences (limiting the penalty for any such offence by reference to the limits for other information offences contained in the OSA). Subsection (5) enables the regulations to apply generally or only in relation to particular types of regulated services, research or information.
13. In the memorandum, the Department explains that the issue of access to data for research purposes was considered during passage of the OSA and the previous Data Protection and Digital Information Bill and follows similar provisions being included in the EU Digital Services Act. The memorandum states that OFCOM are currently preparing a report to be published by July 2025 which will provide significant evidence on the issue of access to data, upon which informed regulations can subsequently be made. The reason for leaving the whole regime to be set out in regulations arises from the desire to await the report by OFCOM, followed by a thorough consultation, to avoid including measures that are problematic, unworkable in practice or which do not deliver the policy aim or reflect upon and consider the important opinions of key stakeholders who will be most affected by the regulations.⁶
14. We accept that there are reasonable grounds for including this regulation making power. However, the House might find it helpful to have a fuller explanation of the powers from the Minister and how they might affect other provisions of the OSA.
15. Regulations under section 154A of the OSA will be subject to the first-time affirmative procedure. In our guidance to Departments on the use of such a procedure, we make it clear that the memorandum should explain fully why the negative procedure is thought to afford adequate scrutiny on subsequent exercises of the power and on what that prediction is based. In this case, the Department simply states:

“The negative procedure is considered to afford adequate scrutiny on subsequent exercises of the power, since it is thought most likely that those regulations will make minor amendments to the existing framework, rather than introduce wholesale reform.”⁷
16. We consider that this brief explanation does not meet the requirement in our guidance, particularly in explaining what the Department’s prediction is based on. We also note that, in saying that it is “most likely” that further regulations will only make minor amendments, the memorandum is

⁶ See paragraphs 464 and 465 of the memorandum.

⁷ See paragraph 467 of the memorandum.

acknowledging the possibility that subsequent regulations may have a greater significance. Looking at the nature of the power, and the fact that it allows different provision to be made for different types of regulated services, research and information, it is conceivable that significant variations in how the regulations apply to these different types may evolve over time and therefore lead to significant new provision being contained in subsequent regulations. We also take the view that the first-time affirmative procedure is inappropriate for a power which includes powers of entry, the creation of offences and a monetary penalty regime with no limit specified on the face of the Bill as to the maximum that a person would be liable to pay. In relation to this last point, we have recently expressed the view⁸ that, where a bill allows a monetary penalty to be imposed, the maximum that a person is liable to pay should be set out on the face of the bill.

17. **Accordingly, we consider that:**

- **the Department have failed to justify the use of the first-time affirmative procedure and that the power should instead be subject to the affirmative procedure in respect of all exercises of the power; and**
- **the maximum that a person is liable to pay under any monetary penalty regime established under the power should be set out on the face of the Bill.**

APPENDIX 1: MEMBERS' INTERESTS

Committee Members' registered interests may be examined in the online Register of Lords' Interests at <https://www.parliament.uk/hlregister>. The Register may also be inspected in the Parliamentary Archives.

For the business taken at the meeting on 27 November 2024, Members declared the following interests:

The Earl of Lindsay

Director and Chairman, UKAS Ltd (formerly Clinical Pathology Accreditation UK Ltd) (subsidiary of United Kingdom Accreditation Service (UKAS))

Interest declared on 17 January 2025, report updated on 20 January 2025.

Attendance

The meeting was attended by Baroness Bakewell of Hardington Mandeville, Lord Carlile of Berriew, Baroness Chakrabarti, Baroness Finlay of Llandaff, Lord Goodman of Wycombe, The Earl of Lindsay, Lord McLoughlin, and Lord Rooker.