

Data Protection and Digital Information Bill

AMENDMENTS
TO BE MOVED
IN GRAND COMMITTEE

Clause 1

BARONESS KIDRON
LORD CLEMENT-JONES
BARONESS JONES OF WHITCHURCH

Clause 1, page 2, line 16, leave out “and (3)” and insert “, (3) and (3A)”

Member's explanatory statement

This amendment, and another to Clause 1 in the name of Baroness Kidron, would ensure that controllers have a duty to identify when a user is or may be a child to give them the data protection codified by the Data Protection Act 2018.

BARONESS KIDRON
LORD CLEMENT-JONES
BARONESS JONES OF WHITCHURCH

Clause 1, page 2, line 26, at end insert –

- “(3A) The third case is where the identifiable living individual is a child, or may be a child, and the controller or processor knows, or ought reasonably to know, that –
- (a) another person could obtain the information as a result of the processing, and
 - (b) the living individual could be identifiable (as described in 3(3)) by that person.”

Member's explanatory statement

This amendment, and another in the name of Baroness Kidron to this clause, would ensure that controllers have a duty to identify when a user is or may be a child to give them the data protection codified by the Data Protection Act 2018.

Clause 3

BARONESS KIDRON
LORD CLEMENT-JONES
BARONESS JONES OF WHITCHURCH

Clause 3, page 5, line 3, at end insert—

“(e) the data subject is not a child or could or should be known to be a child.”

Member's explanatory statement

As drafted, Clause 3 creates a lower threshold for consent in relation to further uses of data for scientific research which is defined broadly (Clause 2) and enables uses of a child's data – that may be intimate or long lasting. This amendment ensures the Bill maintains the high level of protection for children established in DPA 2018 even when the protections offered to adults are lowered.

After Clause 4

BARONESS KIDRON
LORD CLEMENT-JONES
BARONESS JONES OF WHITCHURCH

After Clause 4, insert the following new clause—

“Definition of sensitive personal data to include children's personal data

In Article 9(1) of the UK GDPR, after “orientation” insert “and children's personal data”.

Member's explanatory statement

This amendment ensures that children's data is included in the definition of sensitive personal data and benefits from the heightened protections that are afforded to this category of data.

Clause 5

BARONESS KIDRON
LORD CLEMENT-JONES
BARONESS JONES OF WHITCHURCH

Clause 5, page 7, leave out lines 6 and 7 and insert—

“(b) the need to provide children with a higher standard of protection with regard to their personal data and to ensure the Data Protection and Digital Information Act 2024 does not reduce, minimise or undermine existing standards and protections of children's data.”

Member's explanatory statement

This amendment prevents any diminution by the Secretary of State of standards established in the 2018 Act for the protection of children's privacy and safety when exercising powers to amend a list of 'recognised legitimate interests' (RLI's).

BARONESS KIDRON
LORD CLEMENT-JONES
BARONESS JONES OF WHITCHURCH

Clause 5, page 7, line 13, at end insert "to adults"

Member's explanatory statement

The Bill amends article 6 of GDPR (Lawfulness of Processing) to include direct marketing as a purpose for which controllers may be able to process data under the "legitimate interests" purpose. This amendment ensures that children continue to enjoy current protections and safeguards on direct marketing.

Clause 6

BARONESS KIDRON
LORD CLEMENT-JONES
BARONESS JONES OF WHITCHURCH

Clause 6, page 8, line 26, at end insert –

“(f) that under the 2018 Act, children are entitled to a higher standard of protection that requires a defined purpose for which their data is being collected and processed. Further processing of children's data is highly unlikely to be compatible with the original purpose.”

Member's explanatory statement

As drafted, the Bill lowers the threshold for further processing that is deemed compatible with the original purpose, which this amendment aims to reverse.

BARONESS KIDRON
LORD CLEMENT-JONES
BARONESS JONES OF WHITCHURCH

Clause 6, page 9, line 17, at end insert “, taking into account that under the 2018 Act, children are entitled to a higher standard of protection that requires a defined purpose for which their data is being collected and processed. Further processing of children's data is highly unlikely to be compatible with the original purpose.”

Member's explanatory statement

As drafted, the Bill lowers the threshold for when further processing is deemed compatible with the original purpose (Annex 2). This amendment aims to ensure that, when exercising their powers, the Secretary of State must prevent any diminution in the level of protection children are currently entitled to in DPA 2018.

Clause 14

BARONESS KIDRON
LORD CLEMENT-JONES
BARONESS JONES OF WHITCHURCH

Clause 14, page 26, line 37, at end insert –

“(b) the data subject is a child or may be a child unless the provider is satisfied that the decision is in, and compatible with, the best interests of a child, taking into account their rights and development stage.”

Member's explanatory statement

This amendment ensures that significant decisions that impact children cannot be made using automated processes unless they are in a child's best interest. This upholds data law introduced in 2018.

Clause 15

BARONESS KIDRON
LORD CLEMENT-JONES
BARONESS JONES OF WHITCHURCH

Clause 15, page 30, line 37, at end insert –

“(ba) in paragraph 3(c) for “Article 32” substitute “Articles 25 and 32””

Member's explanatory statement

This amendment would add data protection by design as an additional measure for processors, to ensure that they are accountable for the design of their systems and services, noting the challenge that controllers often face when engaging processors for services such as AI and cloud computing and what influence they can have on the design.

Clause 17

BARONESS KIDRON
LORD CLEMENT-JONES
BARONESS JONES OF WHITCHURCH

Clause 17, page 34, line 9, at end insert –

“4A. The senior responsible individual must ensure they understand the heightened risk associated with children's data and the fact that, under the 2018 Act, children are entitled to a higher standard of protection and they must give due regard to child data subjects in the performance of their tasks.”

Member's explanatory statement

This amendment ensures that senior responsible individuals' tasks include a specific requirement to consider children. This amendment ensures senior responsible individuals understand the risks and rights of children and are required to take both into account when performing their duties.

Clause 18

BARONESS KIDRON
LORD CLEMENT-JONES
BARONESS JONES OF WHITCHURCH

Clause 18, page 39, line 3, after “severity” insert “taking into account that under the 2018 Act, children are entitled to a higher standard of protection than adults with regard to their personal data”

Member's explanatory statement

This amendment ensures that obligations upon data controllers and processors regarding record keeping reflect amendment [Minimum standards for children's risk assessment] that processing is automatically deemed to be high risk where a service is likely to be accessed by children.

BARONESS KIDRON
LORD CLEMENT-JONES
BARONESS JONES OF WHITCHURCH

Clause 18, page 40, line 11, after “severity” insert “taking into account that under the 2018 Act, children are entitled to a higher standard of protection than adults with regard to their personal data”

Member's explanatory statement

This amendment ensures that obligations upon data controllers and processors regarding record keeping reflect amendment [Minimum standards for children's risk assessment] that processing is automatically deemed to be high risk where a service is likely to be accessed by children.

Clause 20

BARONESS KIDRON
LORD CLEMENT-JONES
BARONESS JONES OF WHITCHURCH

Clause 20, page 41, line 15, at end insert –

“(4A) After Article 35(11) insert –

- “12. Where a service is likely to be accessed by children, processing is automatically considered high risk and a controller must carry out a children's data protection impact assessment as prescribed in the Age-Appropriate Design Code by the Information Commissioner's Office.
13. A children's data protection impact assessment must include –
 - (a) a systematic description of the envisaged processing operations and the purposes of the processing, including, where applicable, the legitimate interest pursued by the controller,
 - (b) an assessment of the necessity and proportionality of the processing operations in relation to the purposes,

- (c) an assessment of the risks to the rights and freedoms of children, and
 - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of personal data and to demonstrate compliance with this Regulation taking into account the rights and legitimate interests of data subjects and other persons concerned.
14. A children’s data protection impact assessment must give due consideration to—
- (a) children’s interests and fundamental rights and freedoms as set out in the United Nations Convention on the Rights of the Child and General Comment 25 on Children’s Rights in relation to the Digital Environment,
 - (b) the principle established in the 2018 Act, that children are entitled to a higher standard of protection than adults with regard to their personal data, and
 - (c) the views of children or their representatives on the intended processing, without prejudice to the protection of commercial or public interests or the security of processing operations.
15. Where appropriate, when carrying out children’s data protection impact assessment, the controller may seek the views of data subjects or their representatives on the intended processing, without prejudice to the protection of commercial or public interests or the security of processing operations.””

Member's explanatory statement

This amendment retains the current requirement to undertake a comprehensive data protection impact assessment for services likely to be accessed by children. It upholds existing standards established in DPA 2018 to ensure children’s continued privacy and safety.

BARONESS KIDRON
LORD CLEMENT-JONES
BARONESS JONES OF WHITCHURCH

Clause 20, page 41, line 15, at end insert—

- “(4A) Public authorities subject to the Freedom of Information Act 2000 must publish risk assessments conducted under Article 35 GDPR, within one month of the risk assessment being completed, unless an exemption under that Act applies.
- (4B) Where an exemption applies, public authorities must consider whether the risk assessment can be published in part.
- (4C) The Cabinet Office must maintain a register of public sector risk assessments published, covering the previous two years.”

Member's explanatory statement

This would require public bodies to publish risk assessments to create transparency and accountability. This would also place on statute a provision that is already contained in the Information Commissioner's FOIA publication scheme guidance. It would also require the Cabinet Office to create and maintain an accessible register to improve accountability.

Clause 21

BARONESS KIDRON
LORD CLEMENT-JONES
BARONESS JONES OF WHITCHURCH

Clause 21, page 41, line 37, leave out “and (3)” and insert “(3) and (3A)”

Member's explanatory statement

This amendment is consequential on the other amendment to this Clause in the name of Baroness Kidron

BARONESS KIDRON
LORD CLEMENT-JONES
BARONESS JONES OF WHITCHURCH

Clause 21, page 42, line 7, at end insert –

“(3A) After paragraph 3, insert –

- “3A. In relation to children’s data protection impact assessments (CDPIA), the controller may consult the Commissioner on mitigation measures, prior to processing where the CDPIA (under section 20 of the Data Protection and Digital Information Act 2024) indicates that the processing would result in a high risk.
- 3B. When consulting the Commissioner pursuant to paragraph 1, the controller must provide the Commissioner with –
- (a) where applicable, the respective responsibilities of the controller, joint controllers and processors involved in the processing, in particular for processing within a group of undertakings,
 - (b) the purposes and means of the intended processing,
 - (d) the measures and safeguards provided to protect the rights and freedoms of data subjects,
 - (c) where applicable, the contact details of the senior responsible individual,
 - (d) the data protection impact assessment provided for in section 18 of the Data Protection and Digital Information Act 2024, and
 - (e) any other information requested by the Commissioner.”

Member's explanatory statement

This amendment retains the current requirement to consult with the Information Commissioner when high-risk processing of children's data has been identified. It upholds existing standards established in DPA 2018 and is necessary to ensure children's continued privacy and safety.

Clause 33

BARONESS KIDRON
LORD CLEMENT-JONES
BARONESS JONES OF WHITCHURCH

Clause 33, page 61, line 28, at end insert –

- “(4A) When directed to prepare a code under this section or by regulations made by the Secretary of State –
- (a) the Commissioner must prepare the code as soon as reasonably practicable and must submit it to the Secretary of State before the end of the period of 18 months beginning when the Data Protection and Digital Information Act 2024 is passed, and
 - (b) the Secretary of State must lay it before Parliament as soon as reasonably practicable and in accordance with the provisions in section 124D of this Act.”

Member's explanatory statement

This amendment seeks to ensure that codes of practice deemed necessary for the protection of data subjects, including children, are produced in a timely manner and not subject to undue delay.

BARONESS KIDRON
LORD CLEMENT-JONES
BARONESS JONES OF WHITCHURCH

Clause 33, page 61, line 29, at end insert –

- “(5A) Any transitional provision or saving provision under subsection (5) must cease to have effect before the end of the period of 12 months beginning when the code comes into force.”

Member's explanatory statement

This amendment mirrors the wording in section 123 of the 2018 Act and extends it to all Codes of Practice. This seeks to ensure there is no undue delay in the requirement to comply with the full force of a Code of Practice.

After Clause 35

BARONESS KIDRON
LORD CLEMENT-JONES
BARONESS JONES OF WHITCHURCH

After Clause 35, insert the following new clause—

“Code of Practice on Children and AI

- (1) The Commissioner must prepare a code of practice in accordance with sections 33 and 34 of this Act which contains such guidance as the Commissioner considers appropriate on standards of fairness and ethical practice in the use of children’s data and personal information in the development of AI including general purpose AI and use of foundational models that impact children.
- (2) In preparing a code or amendments under this section, the Commissioner must—
 - (a) have regard to—
 - (i) children’s interests and fundamental rights and freedoms as set out in the United Nations Convention on the Rights of the Child and General Comment 25 on Children’s Rights in relation to the Digital Environment,
 - (ii) the fact that children are entitled to a higher standard of protection than adults with regard to their personal data as established in the 2018 Act, and
 - (iii) the potential harm to future life chances, income, health and wellbeing,
 - (b) must also consult with—
 - (i) academics with expertise in the field, and
 - (ii) persons who appear to the Commissioner to represent the interests of children.
- (3) In this section—

“fairness and ethical practice in the use of children’s data and personal information in the development of AI” means having regard to—

 - (a) risk assessment;
 - (b) accountability;
 - (c) transparency;
 - (d) lawfulness;
 - (e) accuracy;
 - (f) fairness;
 - (g) ethical use;

“impacts children” means AI technology that is—

 - (a) based on data sets that include (or may include) children’s data;
 - (b) used to automate services likely to be accessed by children and access their data;
 - (c) used to make decisions that impact children;

- (d) used to surface or deprioritise content, information, people, accounts, services or products to children;
 - (e) used to predict or inform children’s behaviour, opinions, opportunities and decision-making using personal data;
 - (f) used to imitate children’s physical likeness, movements, voice, behaviour and thoughts using personal data;
- “risk assessment” includes guidance on how controllers articulate and evaluate the following four stages –
- (a) the intention and goals in creating an AI model and how these have evolved over time;
 - (b) the inputs used to build, train and evolve an AI model;
 - (c) the assumptions and instructions that inform the AI model's decision-making;
 - (d) intended and actual outputs and outcomes of the AI model.”

Member's explanatory statement

Given the rapid acceleration in the development of AI technology, this Code of Practice ensures that data processors prioritise the interests and fundamental rights and freedoms of children and sets out what this means in practice.

BARONESS KIDRON
LORD CLEMENT-JONES
BARONESS JONES OF WHITCHURCH

After Clause 35, insert the following new Clause –

“Code of practice on children’s data and scientific research

- (1) The Commissioner must prepare a code of practice in accordance with sections 33 and 34 of this Act which contains –
 - (a) practical guidance in relation to the processing of children’s personal data for the purposes of scientific research and technological development whether as a commercial or non-commercial activity;
 - (b) such other guidance as the Commissioner considers appropriate to promote good practice in the processing of children’s personal data for the purposes of scientific research and technological development;
 - (c) practical guidance on how to prioritise the best interests of the child including the use of their data to pursue research for commercial objectives.
- (2) In preparing a code or amendments under this section, the Commissioner must –
 - (a) have regard to –
 - (i) children’s interests and fundamental rights and freedoms as set out in the United Nations Convention on the Rights of the Child and General Comment 25 on Children’s Rights in relation to the Digital Environment, and
 - (ii) the fact that children are entitled to a higher standard of protection than adults with regard to their personal data in DPA 2018.
 - (b) must consult with –

- (i) academics;
- (ii) data scientists with expertise in building and assessing the reliability and performance of APIs (application programming interfaces);
- (iii) persons who appear to the Commissioner to represent the interests of data subjects including children.”

Member's explanatory statement

Research into issues affecting children is needed, but this amendment seeks to avoid the wholesale use of a child's data for commercial purposes. A code of practice would ensure a children's data has the highest level of protection whilst facilitating academic research.

Clause 43

BARONESS KIDRON
LORD CLEMENT-JONES
BARONESS JONES OF WHITCHURCH

Clause 43, page 77, line 28, at end insert –

- “(4A) The report must set out the information required under subsections (2) to (4) as it relates to children separately and provide details of all activities carried out by the Information Commissioner to support, strengthen and uphold the Age-Appropriate Design Code.”

Member's explanatory statement

This amendment seeks to ensure that the ICO's annual report includes information regarding the steps it has taken to uphold children's data rights and to protect their privacy and safety. This amendment aims to enhance understanding, transparency and accountability.

After Clause 125

BARONESS YOUNG OF OLD SCONE

After Clause 125, insert the following new Clause –

“Disclosure of climate and nature information to improve public service delivery

After section 35 of the Digital Economy Act 2017, insert –

“35A Disclosure of climate and nature information to improve public service delivery

- (1) When making significant announcements, Ministers and public authorities must, in an accurate and timely manner and in a machine-readable form, publicly disclose the potential current and future impact on specified matters to improve public service delivery.
- (2) The Secretary of State must issue guidance in respect of the format of the information provided under subsection (1).

- (3) In this section—
- “significant announcements” means—
- (a) the laying of primary legislation before Parliament,
 - (b) announced changes to the timing, level and scope of Government targets, or
 - (c) announced Government contracts or spending on infrastructure with a value of more than £500m,
 - (d) policies which may have, or have the potential to have, a significant impact on specified matters.
- “specified matters” means—
- (a) United Kingdom greenhouse gas emissions as defined in the Climate Change Act 2008,
 - (b) management of the risks of the current and predicted impacts of climate change in the United Kingdom identified in the most recent report under section 56 of the Climate Change Act 2008,
 - (c) environment targets set using the powers in sections 1 to 3 of the Environment Act 2021.”

Member's explanatory statement

This amendment would require Ministers and public authorities such as regulators to disclose analysis of the potential current and future impact of announcements, including legislation, changes in targets and large contracts on UK climate change mitigation targets, adaptation to climate impacts and nature targets.

Clause 128

BARONESS KIDRON

Baroness Kidron gives notice of her intention to oppose the Question that Clause 128 stand part of the Bill.

Member's explanatory statement

Removing Clause 128 would address concerns over the extent to which UK citizens may have their bank accounts monitored irrespective of any wrongdoing, and the attendant risk of unfair and inappropriate outcomes based on false conclusions reached by an automated system over their financial activity. Such outcomes may be likely to have a disproportionate impact on the poor, the disabled and the old.

Schedule 11

BARONESS KIDRON

Baroness Kidron gives notice of her intention to oppose the Question that Schedule 11 be the Eleventh Schedule to the Bill.

Member's explanatory statement

This is consequential to removing Clause 128.

After Clause 149

BARONESS KIDRON
LORD CLEMENT-JONES
BARONESS JONES OF WHITCHURCH

After Clause 149, insert the following new Clause –

“Protection of children

- (1) Nothing in this Act is to be construed as reducing, minimising or undermining existing standards and protections of children under the 2018 Act.
- (2) In exercising functions or applying or interpreting the provisions in this Act, the Secretary of State, the Information Commission and data controllers and processors must give due consideration to –
 - (a) children’s interests and fundamental rights and freedoms as set out in the United Nations Convention on the Rights of the Child and General Comment 25 on Children’s Rights in relation to the Digital Environment, and
 - (b) the fact established in the 2018 Act that children are entitled to a higher standard of protection than adults with regard to their personal data.”

Member's explanatory statement

This amendment enshrines the Government commitment made by Ministers at second reading in the Commons to maintaining existing standards of data protection for children in the 2018 Act.

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14 February 2024

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