

# Data (Use and Access) Bill [HL]

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## AMENDMENTS TO BE MOVED ON REPORT

*[Supplementary to the Marshalled List]*

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### Clause 94

BARONESS KIDRON  
LORD CLEMENT-JONES  
LORD FREYBERG

Clause 94, page 119, line 1, at end insert –

“(1) In the 2018 Act, in section 139, after subsection (2) insert –

“(2A) The report must include an assessment of the Commissioner’s performance of the duties assigned to it by regulations under section (*Enforcement*) of the Data (Use and Access) Act 2025.””

### Clause 109

LORD LUCAS

Clause 109, page 139, line 19, at end insert –

““service message” means a communication necessary for an administrative or servicing purpose including the performance of a contract to which the recipient is party, or in order to take steps at the request of the recipient prior to entering into a contract which does not contain any direct marketing content;

“regulatory communication” means a communication necessary for the compliance with a legal obligation or legislative measure, including those provided by a statutory regulator, which aims to improve customer outcomes and avoids active promotion or encouragement where possible following careful assessment of the risk of harms caused, or likely to be caused, to the recipient;”

**After Clause 114**

LORD LUCAS

After Clause 114, insert the following new Clause –

**“Use of electronic mail for solicited communications or non-direct marketing communications**

After Regulation 22 of the PEC Regulations insert –

**“Use of electronic mail for solicited communications or non-direct marketing communications**

**22A.** – (1) A person may transmit, or instigate the transmission of, a solicited communication by means of electronic mail to individual subscribers including for the purposes of direct marketing.

(2) A person may transmit, or instigate the transmission of, communications for non-direct marketing purposes by means of electronic mail where such communications establish a service message or regulatory communication.””

***Member's explanatory statement***

*This amendment would ensure that regulated professions, such as financial services firms, are able to comply with current and future regulatory requirements, such as the FCA's new Consumer Duty, which expect firms to communicate effectively with customers to ensure good customer outcomes. This amendment aligns to the wording of the UK GDPR (Recital 41) and includes Consumer Duty language of avoiding harm/improving outcomes.*

**After Clause 132**

BARONESS OWEN OF ALDERLEY EDGE

LORD CLEMENT-JONES

BARONESS KIDRON

LORD BROWNE OF LADYTON

*[Revised version of the amendment printed on 16 January 2025]*

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After Clause 132, insert the following new Clause –

**“Digitally created sexually explicit photographs or films**

In the Sexual Offences Act 2003, after section 66D, insert –

**“66E Creating or soliciting a non-consensual digitally produced sexually explicit photograph or film**

- (1) A person (A) commits an offence if –
- (a) A creates or solicits the creation of a digitally produced sexually explicit photograph or film of another person B,
  - (b) B does not consent to the creation or solicitation of the photograph or film, and
  - (c) A does not reasonably believe that B consents.

- (2) Subsection (1) applies when the solicitation of the creation of digitally produced sexually explicit photograph or film has taken place in the United Kingdom, irrespective of the location of the person or persons who have been solicited for the creation of such a photograph or film.
- (3) A person (A) may commit an offence under this section whether or not creation occurs.
- (4) It is a defence for a person charged with an offence under subsection (1) to prove that the person had a reasonable excuse for creating, or soliciting the creation of, the photograph or film.
- (5) A person who commits an offence under subsection (1) is liable on summary conviction to imprisonment for a term not exceeding the maximum term for summary offences or a fine (or both).
- (6) In relation to section 127(1) of the Magistrates' Court Act 1980 (limitation of time) the date on which the "matter of complaint" arose will be taken as the date on which B becomes aware that an offence under this section may have been committed.
- (7) In this section, "soliciting" means encouraging or facilitating the creation of a digitally produced sexually explicit photograph or film.
- (8) In this section, "sexually explicit photograph or film" means a photograph or film, as defined in section 66A(3) to (5), which appears to be a photograph or film of anyone in an "intimate state" as defined in section 66D(5), (6) or (7)."

BARONESS OWEN OF ALDERLEY EDGE

BARONESS GOHIR

LORD CLEMENT-JONES

*[Revised version of the amendment printed on 16 January 2025]*

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After Clause 132, insert the following new Clause –

**“Digitally created sexually explicit audio**

In the Sexual Offences Act 2003, after section 66D, insert –

**“66E Creating or soliciting a non-consensual digitally produced sexually explicit audio**

- (1) A person (A) commits an offence if –
  - (a) A creates or solicits the creation of digitally produced sexually explicit audio of another person B,
  - (b) B does not consent to the creation or solicitation of the audio, and
  - (c) A does not reasonably believe that B consents.
- (2) Overlaying audio onto sexually explicit photographs or films constitutes an offence for the purposes of subsection (1).

- (3) Subsection (1) applies when the solicitation of the creation of digitally produced sexually explicit audio has taken place in the United Kingdom, irrespective of the location of the person or persons who have been solicited for the creation of such audio.
- (4) A person A may commit an offence under this section whether or not creation occurs.
- (5) It is a defence for a person charged with an offence under subsection (1) to prove that the person had a reasonable excuse for creating, or soliciting the creation of, the audio.
- (6) In relation to section 127(1) of the Magistrates' Court Act 1980 (limitation of time) the date on which the "matter of complaint" arose will be taken as the date on which B becomes aware that an offence under section 66E may have been committed.
- (7) A person who commits an offence under subsection (1) is liable on summary conviction to imprisonment for a term not exceeding the maximum term for summary offences or a fine (or both).
- (8) In this section, "soliciting" means encouraging or facilitating the creation of audio.
- (9) In this section, "sexually explicit audio" means audio which appears to be audio of anyone in an "intimate state" as defined in section 66D(5)(a) or (b)."



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23 January 2025

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