

Data (Use and Access) Bill [HL]

RUNNING LIST OF ALL AMENDMENTS ON THIRD READING

*Tabled up to and including
31 January 2025*

[Amendments marked ★ are new or have been altered]

After Clause 80

LORD VALLANCE OF BALHAM

- ★ After Clause 80, insert the following new Clause –
- “Data protection by design: children’s higher protection matters**
- (1) Article 25 of the UK GDPR (data protection by design and by default) is amended as follows.
- (2) After paragraph 1 insert –
- “1A. In the case of processing carried out in the course of providing information society services which are likely to be accessed by children, when assessing what are appropriate technical and organisational measures in accordance with paragraph 1, the controller must take into account the children’s higher protection matters.
- 1B. The children’s higher protection matters are –
- (a) how children can best be protected and supported when using the services, and
- (b) the fact that children –
- (i) merit specific protection with regard to their personal data because they may be less aware of the risks and consequences associated with processing of personal data and of their rights in relation to such processing, and
- (ii) have different needs at different ages and at different stages of development.”

- (3) In paragraph 3, for “1 and 2” substitute “1 to 2”.
- (4) At the end insert –
- “4. Paragraphs 1A and 1B are not to be read as implying anything about the matters that may be relevant to the assessment of what are appropriate technical and organisational measures for the purposes of paragraph 1 in cases other than those described in paragraph 1A.
5. In this Article, “information society services” does not include preventive or counselling services.””

Member's explanatory statement

This amendment imposes duties to take account of matters relating to children on controllers involved in providing information society services which are likely to be accessed by children. The duties apply when these controllers are designing the means of processing personal data and when carrying out the processing.

After Clause 139

BARONESS OWEN OF ALDERLEY EDGE
LORD CLEMENT-JONES
LORD PANNICK
LORD BROWNE OF LADYTON

- ★ After Clause 139, insert the following new Clause –

“Digitally created sexually explicit photographs, films or images

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

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

- (1) A person (A) commits an offence if –
- (a) A creates or solicits the creation of a digitally produced sexually explicit photograph, film or image which appears to be of another person (B),
 - (b) B does not consent to the creation or solicitation of the photograph, film or image, and
 - (c) A does not reasonably believe that B consents.
- (2) Subsection (1) applies when the solicitation of the digitally produced sexually explicit photograph, film or image occurs in the United Kingdom, irrespective of the location of the person or persons (whether or not identified) who have been solicited for the creation of such a photograph, film or image.
- (3) A person (A) may commit a solicitation offence under this section whether or not creation occurs.

- (4) 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).
- (5) In relation to section 127(1) of the Magistrates' Court Act 1980 (limitation of time) the date on which the "matter of complaint" arose shall be taken to be the date on which B becomes aware that an offence under this section may have been committed.
- (6) The photograph, film or image to which the offence under this section relates, and anything containing it, is to be regarded for the purposes of sections 153 and 157(3)(b) of the Sentencing Code (deprivation orders) as used for the purpose of committing the offence (including where it is committed by aiding, abetting, counselling or procuring).
- (7) In this section –
 - "digitally produced" means created, in whole or in part, by the use of any electronic service or programme or electronic means whatsoever;
 - "film", "photograph" and "image" have the meaning and the scope stated in section 66A(3) to (5);
 - "sexually explicit photograph, film or image" means a photograph, film or image which appears to be of B in an "intimate state" as defined in section 66D(5) to (7); and
 - "soliciting" means encouraging or facilitating the creation of a digitally produced sexually explicit photograph, film or image."

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