

Data (Use and Access) Bill [HL]

RUNNING LIST OF ALL AMENDMENTS ON THIRD READING

*Tabled up to and including
3 February 2025*

[Amendments marked ★ are new or have been altered]

After Clause 80

LORD VALLANCE OF BALHAM
BARONESS KIDRON

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

LORD PONSONBY OF SHULBREDE

★ After Clause 139, insert the following new Clause –

“Creating purported intimate image of adult

- (1) The Sexual Offences Act 2003 is amended in accordance with subsections (2) and (3).
- (2) After section 66D insert –

“66E Creating purported intimate image of adult

- (1) A person (A) commits an offence if –
 - (a) A intentionally creates a purported intimate image of another person (B),
 - (b) B does not consent to the creation of the purported intimate image, and
 - (c) A does not reasonably believe that B consents.
- (2) “Purported intimate image” of a person means an image which –
 - (a) appears to be, or to include, a photograph or film of the person (but is not, or is not only, a photograph or film of the person),
 - (b) appears to be of an adult, and
 - (c) appears to show the person in an intimate state.
- (3) Subsections (5) to (9) of section 66D (person in an intimate state) apply for the purposes of this section as if references in those subsections to a photograph or film were references to an image.

- (4) References in this section to creating a purported intimate image of a person do not include doing so by modifying a photograph or film of the person where what is created by the modification is an image which –
 - (a) appears to show the person, but
 - (b) does not appear to show –
 - (i) something within section 66D(5)(a) to (e) (read with subsections (6) and (7) of that section) which is not shown in the photograph or film, or
 - (ii) a person who is not shown in the photograph or film.
- (5) It is a defence for a person charged with an offence under this section to prove that the person had a reasonable excuse for creating the purported intimate image.
- (6) A person who commits an offence under this section is liable on summary conviction to a fine.

66F Creating purported intimate image of an adult: further definitions etc

- (1) This section applies for the purposes of section 66E.
 - (2) “Consent” to the creation of a purported intimate image includes general consent covering the particular act of creation as well as specific consent to that particular act.
 - (3) Whether a belief is “reasonable” is to be determined having regard to all the circumstances, including any steps A has taken to ascertain whether B consents.
 - (4) “Photograph” includes the negative as well as the positive version.
 - (5) “Film” means a moving image.
 - (6) A reference to an “image”, “photograph” or “film” includes data stored by any means which is capable of conversion into an image, photograph or film.
 - (7) An image of a person appears to be an image of an adult if –
 - (a) the impression conveyed by the image is that the person shown is aged 18 or over, or
 - (b) the predominant impression conveyed by the image is that the person shown is aged 18 or over (even if some of the physical characteristics shown are those of a person under 18).”
- (3) In section 79(5) (meaning of references to image of a person), after “a person” insert “(except in sections 66E and 66F)”.

(4) In the Sentencing Code, after section 154 insert –

“154A Purported intimate images to be treated as used for purpose of certain offences

- (1) This section applies where a person commits an offence under section 66E of the Sexual Offences Act 2003 (creating purported intimate image of adult).
- (2) The purported intimate image to which the offence relates, and anything containing it, is to be regarded for the purposes of section 153 (and section 157(3)(b)) as used for the purposes of committing the offence (including where it is committed by aiding, abetting, counselling or procuring).”

Member's explanatory statement

This clause makes it an offence to create a purported intimate image of an adult without consent and provides that deprivation orders can be made under the Sentencing Code in connection with the offence.

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."

Clause 142

LORD PONSONBY OF SHULBREDE

- ★ Clause 142, page 174, line 22, at end insert –

"(c) section (*Creating purported intimate image of adult*) (creating purported intimate image of adult) extends to England and Wales only."

Member's explanatory statement

This amendment provides that the new clause "Creating purported intimate image of adult" extends to England and Wales only.

Title

LORD PONSONBY OF SHULBREDE

- ★ Title, line 18, after "services;" insert "to make provision about the creation of purported intimate images;"

Member's explanatory statement

This amendment is consequential on the amendment inserting the new clause "Creating purported intimate image of adult".

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