

# Data (Use and Access) Bill [HL]

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MARSHALLED  
LIST OF AMENDMENTS  
TO BE MOVED  
ON THIRD READING

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*[Amendments marked ★ are new or have been altered]*

**Amendment  
No.**

**After Clause 80**

LORD VALLANCE OF BALHAM  
BARONESS KIDRON

- 1** 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

2 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).
- 5 (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),
- 10 (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),
- 15 (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.
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- (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**

- 60 (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).
- 65 (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 PANNICK

LORD CLEMENT-JONES

LORD BROWNE OF LADYTON

*As an amendment to Amendment 2*

3★ In the title of inserted section 66E, after “Creating” insert “or soliciting the creation of”

BARONESS OWEN OF ALDERLEY EDGE

LORD PANNICK

LORD CLEMENT-JONES

LORD BROWNE OF LADYTON

*As an amendment to Amendment 2*

4★ In inserted section 66E, after subsection (1) insert –

- “(1A) A person (A) commits an offence if –
- (a) A intentionally solicits the creation of 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.
- (1B) Subsection (1A) applies when the solicitation by A 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 an image.
- (1C) Subsection (1A) applies whether or not creation of such an image occurs.”

***Member's explanatory statement***

*This amendment seeks to ensure that the Government amendment includes an offence of soliciting a purported intimate image, as potential defendants may not themselves create such an image but solicit another to do so.*

BARONESS OWEN OF ALDERLEY EDGE

LORD PANNICK

LORD CLEMENT-JONES

LORD BROWNE OF LADYTON

*As an amendment to Amendment 2*

- 5★ In inserted section 66E, leave out subsection (5)

***Member's explanatory statement***

*This amendment would remove a “reasonable excuse” defence when a defendant has intentionally created the purported intimate image, the victim does not consent and the defendant does not reasonably believe that the victim consents.*

BARONESS OWEN OF ALDERLEY EDGE

LORD PANNICK

LORD CLEMENT-JONES

LORD BROWNE OF LADYTON

*As an amendment to Amendment 2*

- 6★ In inserted section 66E(6), leave out “a fine” and insert “imprisonment for a term not exceeding the maximum term for a summary offence or a fine (or both)”

***Member's explanatory statement***

*This amendment seeks to ensure that the courts have the option of sentencing a convicted defendant to a term of imprisonment if the court thinks that is appropriate in the circumstances of the individual case.*

BARONESS OWEN OF ALDERLEY EDGE

LORD PANNICK

LORD CLEMENT-JONES

LORD BROWNE OF LADYTON

*As an amendment to Amendment 2*

- 7★ In the title of inserted section 66F, after “Creating” insert “or soliciting the creation of”

**Clause 142**

LORD PONSONBY OF SHULBREDE

8 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

9 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”.*

BARONESS OWEN OF ALDERLEY EDGE

LORD PANNICK

LORD CLEMENT-JONES

LORD BROWNE OF LADYTON

*As an amendment to Amendment 9*

10★ After “creation” insert “and solicitation”

***Member's explanatory statement***

*This amendment relates to Amendment 4.*



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