

# DATA (USE AND ACCESS) BILL [HL]

## EXPLANATORY NOTES ON COMMONS AMENDMENTS

### What these notes do

- 1 These Explanatory Notes relate to the Commons Amendments to the Data (Use and Access) Bill [HL] as brought from the House of Commons on 7 May 2025.
- 2 These Explanatory Notes have been prepared by the Department for Science, Innovation and Technology, the Department of Health and Social Care, the Home Office, the Department for Business and Trade, HM Treasury, the Department for Energy Security and Net Zero, to assist the reader of the Bill and the Commons amendments, and to help inform debate on the Commons amendments. They do not form part of the Bill and have not been endorsed by Parliament.
- 3 These Explanatory Notes, like the Commons amendments themselves, refer to Bill 179, the Bill as first printed for the Commons.
- 4 These Explanatory Notes need to be read in conjunction with the Commons amendments and the text of the Bill. They are not, and are not meant to be, a comprehensive description of the Commons amendments.
- 5 Commons Amendments 1 to 79 were tabled in the name of the Minister.

# Commentary on Commons amendments

## Commons Amendments to Clause 4: Power to make provision in connection with business data

### Commons Amendments 1 to 6

- 6 Commons Amendments 1 and 2 to clause 4(4)(a) and Commons Amendment 3 adding clause 4(4)(aa) would expressly enable regulations to:
  - require business data to be provided to a third-party recipient who is a person appointed by a public authority to do something with the business data; and
  - require that third-party recipient to publish or disclose the business data.
- 7 These amendments are intended to clarify that data can flow directly to and from the person appointed by the public authority, rather than directly involving the public authority itself. The amended clause would provide a legislative basis for the proposed Fuel Finder open data scheme, involving publication of information about road fuel prices.
- 8 Commons Amendment 4 would make a consequential change to clause 4(4)(b) to reflect Commons Amendments 1 to 3.
- 9 Commons Amendments 5 and 6 would make consequential changes to clause 4(4)(c) to reflect Commons Amendments 1 to 3.

## Commons Amendments to Clause 8: Enforcement of regulations under this Part

### Commons Amendments 7 and 8

- 10 Commons Amendments 7 and 8 would adjust the way in which clauses 9 and 10 are signposted in clause 8(3), to reflect the fact that clauses 9 and 10 make provision about regulations under Part 1, not just regulations under clause 8(1).

### Commons Amendment 9

- 11 Commons Amendment 9 would make a minor change to clause 8(5) so that it refers to clauses 3(2) and 5(3) rather than to conditions imposed by a decision maker. This is because authorisation or approval of third-party recipients will not necessarily involve decision-makers deciding whether a person satisfies those conditions.

### Commons Amendments 10, 11 and 13

- 12 Commons Amendments 10, 11 and 13 to clause 8(10) would expressly allow regulations to require enforcers to publish or provide documents as well as information, ensuring consistency with equivalent provisions relating to decision-makers and interface bodies in clauses 6(9) and 7(4)(k).

### Commons Amendment 12

- 13 Commons Amendment 12 would remove unnecessary wording in clause 8(10)(a) which is already provided by the power for regulations to make provision generally or in relation to particular cases conferred by clause 21(1)(a).

## Commons Amendment to Clause 10: Financial penalties

### Commons Amendment 14

- 14 Commons Amendment 14 would add a new paragraph (f) to clause 10(4), expressly enabling regulations to make provision about what must or may be done with amounts paid as financial penalties. This is consistent with provision that may be made relating to fee and levy receipts in clauses 11(1)(b) and 12(1)(b).

## Commons Amendments to Clause 11: Fees

### Commons Amendments 15 to 17

- 15 Commons Amendments 15 to 17 to clause 11(1)(a), 11(3) and 11(4)(b) remove the requirement for the amount of fees provided for by regulations under clause 11 to be linked to the expenses of performing duties or exercising powers conferred by or under Part 1 regulations. This would allow for regulations to provide for the charging of fees that exceed expenses where appropriate. This is vital to ensure that smart data schemes can operate on a commercial basis in Open Banking, and in other schemes, where necessary.

### Commons Amendment 18

- 16 Commons Amendment 18 would add new subsections (9)-(11) to clause 11. Clause 11(9) enables regulations to make clear whether or not powers to charge arising otherwise than under regulations made under Part 1 can be used in connection with activities carried on pursuant to such regulations. Clause 11(11) clarifies that powers to charge arising otherwise than under regulations made under Part 1 include powers under other legislation, contracts or other arrangements whenever entered into.”
- 17 Amendment 18 would also add clause 11(10), which is intended to clarify (in line with the policy intention set out in paragraph 246 of the Explanatory Notes of 7 February 2025) that clause 11 does not prevent or limit what third-party recipients (other than those to which clause 4(4)(a) or (b) applies) can charge. This is necessary for the functioning of smart data schemes, as it would ensure that there is a commercial incentive for persons to operate as third-party recipients.

## Commons Amendments to Clause 14: The FCA and financial services interfaces

### Commons Amendment 19 to 21

- 18 Commons Amendment 19 would add a new provision to clause 14, and provide that the Treasury’s powers to confer rule-making powers on the Financial Conduct Authority (FCA) in connection with the use of interfaces, include powers relating to the use of interfaces when taking action described in clause 2(4) of the Bill (persons authorised to receive customer data taking action on behalf of customers). This amendment would bring the Bill in line with the intended policy, by allowing the FCA to be able to make interface-related rules for data sharing and the taking of action described in clause 2(4). This would ensure that Open Banking, and future smart data schemes in financial services, are able to function properly.
- 19 Commons Amendment 20 is consequential to Commons Amendment 19. Commons Amendment 21 defines the terms used in Commons Amendment 19.

## **Commons Amendments to Clause 15: The FCA and financial services interfaces: supplementary**

### **Commons Amendments 22 and 23**

- 20 Commons Amendments 22 and 23 would insert a reference into clause 15(6) to allow fees to be paid to ‘a person acting on behalf of an interface body, or person listed in clause 15(7)’. This amendment would bring clause 15 in line with clause 11(1) and ensure, as per the policy intention, that fees can be paid to a person acting on behalf of a participant in smart data schemes in financial Services.

### **Commons Amendments 24 to 26**

- 21 Commons Amendment 24 would further amend clause 15(6), and mirror the amendments to clause 11, removing the requirement for fees to be linked to expenses incurred. Along with Commons Amendments 25 and 26, these changes would provide that FCA rules may allow participants to charge for, and make profits on, activities done in performance of duties or exercise of powers conferred on the person by or under Part 1 regulations. This clarification seeks to ensure a sustainable commercial model can operate in Open Banking.

### **Commons Amendment 27**

- 22 Commons Amendment 27 would allow the FCA to make rules around what interface bodies or other recipients of fees may do with fees received. This is an amendment to make Clause 15 consistent with Clause 11, which already allows regulations to make provision about the treatment of amounts paid as fees.

### **Commons Amendment 28**

- 23 Commons Amendment 28 would insert an additional provision to Clause 15 and mirrors equivalent amendments to Clause 11. The new provision would enable FCA rules to make clear whether – otherwise than in reliance on FCA rules - persons may or may not require payment in relation to activities described in clause 15(8).

## **Commons Amendment to Clause 21: Regulations under this Part: supplementary**

### **Commons Amendment 29**

- 24 Commons Amendment 29, which would add new subsection (3A) to clause 21(3), to clarify that the regulation-making power under new clause 11(9) (inserted by Commons Amendment 18) is not restricted by clause 21(3) (which prevents Part 1 regulations from enabling or requiring a person to set the amount or maximum amount of fees, or the method of determining those amounts, subject to certain exceptions).

## **Commons Amendment to Clause 23: Related subordinate legislation**

### **Commons Amendment 30**

- 25 Clause 23 provides that Part 1 powers may be used to make provision in connection with “related subordinate legislation” (that being subordinate legislation which contains provision described in clauses 2(1) to (4) or 4(1) to (4)). Those clauses sometimes refer to things that are “specified”, for example, persons “of a specified description”.

- 26 Commons Amendment 30 would clarify that when identifying whether subordinate legislation is “related subordinate legislation” the use of “specified” in clauses 2(1) to (4) or 4(1) to (4) should be read as including things specified in any subordinate legislation.

## **Commons Amendment to Clause 25: Other defined terms**

### **Commons Amendment 31**

- 27 Commons Amendment 31 would add new subsection (4) to clause 25, clarifying that references in Part 1 to regulations made under clause 4(3) in clauses 5 to 21 include regulations made under clause 4(4)(b) and (c).
- 28 This amendment reflects clause 4(4), under which regulations may require an immediate recipient of business data to which clause 4(4)(a) or 4(4)(aa) (inserted by Commons Amendment 3) applies to publish or provide business data to a customer or another person of a specified description. Clause 4(4)(b) enables regulations to make, in relation to the clause 4(4)(a) or (aa) recipient, provision that could be made in relation to data holders under clauses 4(3) or 5 to 21. Clause 4(4)(c) enables regulations to make, in relation to persons to whom that recipient then provides the business data, provision that could be made in relation to third party recipients under those clauses.

## **Commons Amendment to Clause 28: DVS Trust Framework**

### **Commons Amendment 32**

- 29 Commons Amendment 32 would remove subsections (3) and (4) which were added to clause 28 at Lords Report stage. These subsections required the Secretary of State, when preparing the DVS trust framework, to assess whether certain listed public authorities reliably verify personal data.

## **Commons Amendment to Clause 45: Power of public authority to disclose information to registered person**

### **Commons Amendment 33**

- 30 Commons Amendment 33 would remove subsection (6), inserted in clause 45 at Lords Report stage. The subsection stated that public authorities must not disclose personal data under this clause unless the data is clearly defined and accompanied by metadata, and the authority can confirm the information is accurate, has not been changed or tampered with, or has been changed lawfully and was accurate at the time of the change.

## **Commons Amendments to Clauses 56: National Underground Asset Register: England and Wales**

### **Commons Amendment 34**

- 31 Commons Amendment 34 would remove subsection (3) of new section 106C as inserted by clause 56 into the New Roads and Street Works Act 1991. The subsection required the Secretary of State to provide guidance to relevant stakeholders on cyber security measures before they receive information from NUAR.

### **Commons Amendment 35**

- 32 Commons Amendment 35 would amend new section 106I(4) as inserted by clause 56 into the New Roads Street Works Act 1991. The amendment would replace the requirement for the

Secretary of State to consult the Welsh Ministers before making regulations under Part 3A of the 1991 New Roads and Street Works Act as amended by this Bill. Instead, the Secretary of State would be required to obtain the consent of the Welsh Ministers in relation to any provision which would be within the legislative competence of Senedd Cymru if contained in an Act of the Senedd.

## **Commons Amendments to Clauses 57: Information in relation to apparatus: England and Wales**

### **Commons Amendments 36 to 39**

- 33 Commons Amendment 36 would amend clause 57(3) of the Bill. This amendment would replace the requirement for the Secretary of State to consult the Welsh Ministers before making regulations under section 79 of the New Roads and Street Works Act 1991, as amended by this Bill. Instead, the Secretary of State would be required to obtain the consent of the Welsh Ministers before making regulations under section 79 of the New Roads and Street Works Act 1991 in relation to any provision that relates to apparatus in streets in Wales.
- 34 Commons Amendment 37 would amend clause 57(4) of the Bill. The amendment would insert a new subsection (4A) into section 80 of the New Roads and Street Works Act 1991 that would require the Secretary of State to obtain the consent of the Welsh Ministers before making regulations under section 80 of the New Roads and Street Works Act 1991 in relation to any provision that relates to apparatus in streets in Wales.
- 35 Commons Amendment 38 would remove a requirement for the Secretary of State to consult Welsh Ministers before making regulations under section 80 of the New Roads and Street Works Act 1991. It is consequential on Commons Amendment 37.
- 36 Commons Amendment 39 would remove clauses 57(8) and (9) from the Bill. These clauses would have extended the Street Works (Records) (England) Regulations 2002 to also cover Wales, replacing the Street Works (Records) (Wales) Regulations 2005.

## **Commons Amendment to Clauses 58: National Underground Asset Register: Northern Ireland**

### **Commons Amendment 40**

- 37 Commons Amendment 40 would replace new Article 59(A1) as inserted by clause 58 into the Street Works (Northern Ireland) Order 1995 with a new Article 59(A1) which would require the Secretary of State to obtain the consent of the Department of Infrastructure in Northern Ireland before making regulations under the Street Works (Northern Ireland) Order 1995.

## **Commons Amendments to Clauses 59: Information in relation to apparatus: Northern Ireland**

### **Commons Amendments 41 and 42**

- 38 Commons Amendment 41 would amend new Article 39(7) as inserted by clause 59 into the Street Works (Northern Ireland) Order 1995 and is consequential on Commons Report Amendment 40. New Article 39(7) as inserted by clause 59 into the Street Works (Northern Ireland) Order 1995 requires the Secretary of State, before making regulations under that Article, to consult the Department for Infrastructure. In light of Commons Amendment 40, as set out above, new Article 39(7) is no longer needed.

- 39 Commons Amendment 42 would amend new Article 40(5)(a) as inserted by clause 59 into the Street Works (Northern Ireland) Order 1995 and is consequential on Commons Amendment 40. Under the new Article 40 (5)(a) as inserted by clause 59 into the Street Works (Northern Ireland) Order 1995, the Secretary of State is required to consult the Department of Infrastructure before regulations can be made under this Article. In light of the Commons Amendment 40, as set out above, new Article 40(5)(a) is no longer needed.

## **Commons Amendment to Clause 67: Meaning of research and statistical purposes**

### **Commons Amendment 43**

- 40 Commons Amendment 43 would remove the words "and that is conducted in the public interest" from Clause 67. Those words would add a public interest test to the definition of scientific research in new paragraph 2 of Article 4 of the UK GDPR.

## **Commons Amendment to Clause 95: Analysis of performance**

### **Commons Amendment 44**

- 41 Commons Amendment 44 would remove subsection (1) which was inserted at Report stage in the Lords.
- 42 Subsection (1) required the Information Commissioner's Office to report on performance of enforcement duties assigned to it by clause 138 which was also inserted in the Lords.

## **Commons Amendment 45: Economic impact assessment**

### **Commons Amendment 45**

- 43 Commons Amendment 45 would require the Secretary of State, within 12 months of Royal Assent, to prepare and publish an economic impact assessment relating to copyright and artificial intelligence.
- 44 The impact assessment would cover the options relating to copyright and AI training set out in the Government's recent consultation on copyright and AI, as well as any alternative options to the extent they are useful to consider. The impact assessment must consider, among other things, the impacts on copyright owners, and developers and users of AI, including the impacts on micro, small, and medium-sized businesses, and individuals.

## **Commons Amendment 46: Report on the use of copyright works in the development of AI systems**

### **Commons Amendment 46**

- 45 Commons Amendment 46 would require the Secretary of State, within 12 months of Royal Assent, to prepare and publish a report on the use of copyright works in the development of AI systems.
- 46 The report must consider the options relating to copyright and AI training set out in the Government's recent consultation on copyright and AI, as well as any appropriate alternative options. The report must consider and make proposals in relation to:
- Technical measures and standards (such as those concerned with metadata) that may be used to control the use of, and access to, copyright works for the purpose of training AI



systems. This would include measures and standards relating to access to works by web crawlers.

- The effect of copyright on access to, and use of, data by developers of AI systems. This would include text and data mining.
  - Transparency by developers of AI systems about their use of, and access to, copyright works for the purpose of training AI systems. This would include transparency about the use of web crawlers to access copyright works.
  - The granting of copyright licences to developers of AI systems.
- 47 In preparing the report the Secretary of State must consider the likely effect in the United Kingdom of proposals on copyright owners, and persons who develop or use AI systems.

## **Commons Amendment 47: Compliance with UK copyright law by operators of web crawlers and general-purpose AI models**

### **Commons Amendment 47**

- 48 Commons Amendment 47 would remove clause 135, which was inserted at Report stage in the Lords.
- 49 This clause would require the Secretary of State to make regulations requiring the operators of web crawlers and general-purpose artificial intelligence models whose services have links with the United Kingdom within the meaning of section 4(5) of the Online Safety Act 2023 to comply with United Kingdom copyright law, including the Copyright, Designs and Patents Act 1988, regardless of the jurisdiction in which the copyright-relevant acts relating to the pre-training, development and operation of web crawlers and general-purpose AI models take place. Draft regulations were required to be laid before Parliament within six months of Royal Assent.

## **Commons Amendment 48: Transparency of crawler identity, purpose, and segmentation**

### **Commons Amendment 48**

- 50 Commons Amendment 48 would remove clause 136, which was inserted at Report stage in the Lords.
- 51 This clause would require the Secretary of State to make provisions by regulations requiring operators of web crawlers and general-purpose artificial intelligence models whose services have links with the United Kingdom within the meaning of section 4(5) of the Online Safety Act 2023 to disclose information regarding the identity of crawlers used by them or by third parties on their behalf. The clause would also require the Secretary of State to make provision by regulations requiring operators of web crawlers and general-purpose AI models to deploy distinct crawlers for different purposes and to ensure that the exclusion of a crawler by a copyright owner does not negatively impact the findability of the copyright owner's content in a search engine. Draft regulations would be required to be laid before Parliament within six months of Royal Assent.



## **Commons Amendment 49: Transparency of copyrighted works scraped**

### **Commons Amendment 49**

- 52 Commons Amendment 49 would remove clause 137, which was inserted at Report stage in the Lords.
- 53 This clause would require the Secretary of State to make provision by regulations requiring operators of web crawlers and general-purpose artificial intelligence models whose services have links with the United Kingdom within the meaning of section 20 4(5) of the Online Safety Act 2023 to disclose information regarding text and data used in the pre-training, training and fine-tuning of general-purpose AI models. Draft regulations would be required to be laid before Parliament within six months of Royal Assent.

## **Commons Amendment 50: Enforcement**

### **Commons Amendment 50**

- 54 Commons Amendment 50 would remove clause 138, which was inserted at Report stage in the Lords.
- 55 This clause would require the Secretary of State to make provision by regulations requiring the Information Commission to monitor and secure compliance with the duties under clauses 136 and 137 and set out the details of how this was to be achieved and do so within six months of Royal Assent.

## **Commons Amendment 51: Technical solutions**

### **Commons Amendment 51**

- 56 Commons Amendment 51 would remove clause 139, which was inserted at Report stage in the Lords.
- 57 This clause would require the Secretary of State to conduct a review of the technical solutions that may be adopted by copyright owners and by the operators of web crawlers and general-purpose artificial intelligence models whose services have links with the United Kingdom within the meaning of section 4(5) of the Online Safety Act 2023 to prevent and to identify the unauthorised scraping or other unauthorised use of copyright owners' text and data. The Secretary of State would be required to report on such solutions and issue guidance within 18 months of Royal Assent.

## **Commons Amendment 52: Data Dictionary**

- 58 Commons Amendment 52 would remove clause 140, which was inserted at Report stage in the Lords.
- 59 This clause would enable the Secretary of State to make regulations to determine the definitions of core personal attributes, and any associated metadata. Those regulations may require such definitions to be used in the context of Parts 2, 4 and 7 of this Bill, as well as to any personal data recorded by public authorities in general.

## Commons Amendments to Clause 141: Creating, or requesting the creation of, purported intimate image of adult

### Commons Amendments 53, 54, 56, 57, 58, 59, 60, 61, 64 and 68

- 60 Commons Amendment 54 would remove provisions from clause 141(2)), which were added at Lords Third Reading, and would have inserted new section 66E(2) into the Sexual Offences Act 2003, which provided for an offence of soliciting the creation of a purported intimate image without consent or reasonable belief in consent. Amendments 53 and 68 would make amendments to Clause 141, consequential to Amendment 54. Amendment 56 would instead add to clause 135(2) provisions which would insert a new section 66EA into the Sexual Offences Act 2003, providing for new offences of requesting the creation of a purported intimate image of another adult, without their consent or reasonable belief in their consent. Amendments 57, 58, 59, 60, 61 and 64 would make amendments to Clause 141, consequential to Amendment 56.
- 61 New section 66EA(1) provides that it is an offence if a person (A) intentionally requests the creation of a purported intimate image of another person (B), without B's consent or a reasonable belief in B's consent. The offence is committed whether the request is made to create a specific purported intimate image, or a purported intimate image in general.
- 62 New section 66EA(2) provides that it is an offence to request that if a purported intimate image of another adult is created, it includes or excludes something in particular. This could be, for example, where one person offers to make some purported intimate images of a person in general, and another person replies with a request for a specific image, such as an image of that person in particular underwear, naked or engaged in a particular sexual act.
- 63 New section 66EA(3) explains that a 'request' includes doing an act which could reasonably be taken to be a request (such as, nodding, giving a 'thumbs up', 'liking' a message or otherwise indicating agreement in response to an offer, or complying with condition of an offer, for example by sending money).
- 64 New section 66EA(4) provides that making a "request" includes both making a request directed to a particular person or persons, and making a request available to one or more people (or people generally), without directing it to a particular person or people (for example, by posting a request on a large online forum).
- 65 New section 66EA(5) provides that "consent" for the purposes of these offences means consent to the specific type of request in question: either consent to a request directed to a particular person or persons, or consent to a request made available to one or more people (or people generally), without directing it to a particular person or people.
- 66 New section 66EA(6) provides that the offences at 66F (1) and (2) can be committed irrespective of whether or not the image being requested is ever, in fact, created and irrespective of whether another individual has also made the same request for a purported intimate image. This ensures that if, for example, multiple people vote for the same option in a poll to request the creation of an image (or that an image should include or exclude a particular thing), each individual who votes would commit the offence. However, a person merely encouraging someone else to create an image when they are aware that the other person had already expressed a settled intent to create such an image would not commit the offence. The subsection also provides that the offences include acts of requesting, irrespective of the location of any person who is being requested to create the image.
- 67 New section 66EA(7) provides for a defence of reasonable excuse, to both of these offences, with

the legal burden on the defendant. This would mean that if a person could prove on the balance of probabilities that they had a reasonable excuse for requesting the creation of the image, they would not be guilty of this offence. The Government anticipates that this would apply only in very rare scenarios. In particular, it is the Government's view that in the case of images appearing to show a person engaged in sexual activity, it is extremely unlikely that the person requesting the creation of the image would be able to satisfy the legal burden of proving that they had a reasonable excuse for doing so.

- 68 New section 66EA(8) sets out that the offences will be triable only summarily, and that the maximum penalty on conviction is an unlimited fine or imprisonment not exceeding the maximum term for summary offences (or both).
- 69 New section 66EA(9) provides that references to a purported intimate image, to creating such an image and to a person shown in an intimate state have the same meaning as in section 66E.

### Commons Amendment 55

- 70 Commons Amendment 55 would add to clause 141(2) provisions which would insert a new section 66E(8) into the Sexual Offences Act 2003, containing a defence to the offence of creating a purported intimate image without consent or reasonable belief in consent, where the person had a reasonable excuse for doing so, with the legal burden on the defendant. This would mean that if a person could prove on the balance of probabilities that they had a reasonable excuse for creating the image without consent or reasonable belief in consent, they would not be guilty of this offence. The Government anticipates that this would apply only in very rare scenarios. In particular, it is the Government's view that in the case of images appearing to show a person engaged in sexual activity, it is extremely unlikely that the person creating the image would be able to satisfy the legal burden of proving that they had a reasonable excuse for doing so.

### Commons Amendment 62

- 71 Commons Amendment 62 would insert at proposed new section 66E of the Sexual Offences Act 2003 (to be inserted by clause 141 of the Bill) a new subsection (8) defining the term 'the maximum term for a summary offence', which is used in proposed new section 66E as part of the maximum penalty of the offence, but which is not defined. In line with how the same term is defined in other legislation, the definition sets out that if the offence is committed before the time when section 281(5) of the Criminal Justice Act 2003 comes into force, the term means 6 months, and if the offence is committed after that time, the term means 51 weeks.

### Commons Amendment 63

- 72 Commons Amendment 63 would add to clause 141(2) provisions which would insert a new section 66G into the Sexual Offences Act 2003. Subsection (1) makes an exception to the generally applicable statutory time limit for offences tried in a magistrates' court (which is six months from when the offence was committed), to enable prosecutions for the offences at sections 66E and 66EA to be brought at any date which is both within six months from when the sufficient evidence comes to the prosecutor's knowledge to justify a prosecution and within three years from when the offence was committed. Subsection (2) would provide that a certificate signed by or on behalf of a prosecutor stating the date on which evidence which the prosecutor thinks is sufficient to justify a prosecution came to the prosecutor's knowledge is conclusive evidence of that fact.

## Commons Amendments 65

- 73 Commons Amendment 65 would insert a new section 177DA into the Armed Forces Act 2006 to ensure that where the offence of creating a purported intimate image without consent or reasonable belief in consent is committed, courts within the Service Justice System have the power to make a deprivation order in respect of the images to which the offence relates, and anything containing them. Such an order could be used to deprive the offender of ownership or the image or anything containing it such as a mobile phone, laptop or hard drive. This would reflect the position in civilian courts, following the insertion of proposed section 154A into the Sentencing Code by clause 141, by Government amendment at Lords Third Reading.

## Commons Amendments 66

- 74 Commons Amendment 66 would provide that a person cannot be guilty, under section 45 or 46 of the Serious Crime Act 2007, of encouraging or assisting the offence under new section 66F of the Sexual Offences Act 2003.

## Commons Amendment 67 and 69

- 75 Commons Amendment 67 is consequential on Commons Amendment 69.
- 76 Commons Amendment 69 would insert new subsections (3), (4), and (5) into new section 154A of the Sentencing Act 2020 (added to the Bill by Government amendment during Lords Third Reading).
- 77 New subsections (3) and (4) provide that for the purposes of the powers under section 153 of the Sentencing Act 2020 to deprive offenders of certain property following conviction for a criminal offence (including property used for the purpose of committing the offence), where a person commits an offence under new section 66EA (requesting the creation of a purported intimate image of an adult) purported intimate images which are connected with the offence, or any device containing those images, are to be treated as having been used for purposes of committing the offence such that the power under section 153 of the Sentencing Act 2020 will apply to such images. This mirrors the position in relation to the “creating” offence under section 66E, following an amendment at Lords Third Reading, which added provisions into clause 141 inserting proposed section 154A(1) and (2) into the Sentencing Act 2020 .
- 78 New subsection (5) provides that a purported intimate image of an adult is an “image which is connected with an offence” under new subsection (4) if it was in the offender’s possession or control as a result of the request, and it appears to be of the person who was the subject of the request. The subsection provides that, if the image meets these conditions, it does not have to be the precise image requested (for example, if the request was for a naked image of an individual, and the image appears to depict the same individual wearing only underwear, this would still be an “image connected with an offence” for these purposes).

## Commons Amendments to Clause 144: Extent

### Commons Amendments 70 to 74

- 79 Commons Amendments 70, 71, 72, 73 and 74 would make amendments to Clause 141, consequential to Amendments 65 and 66.

## Commons Amendments to Clause 147:

### Commons Amendment 75

- 80 Commons Amendment 75 removes the privilege amendment inserted by the Lords.

*These Explanatory Notes relate to the Commons Amendments to the Data (Use and Access) Bill [HL] as brought from the House of Commons on 7 May 2025 (HL Bill 100)*

## **Commons Amendment to Schedule 11:**

### **Commons Amendment 76**

- 81 Commons Amendment 76 adds references to investigating crime to existing references in the Data Protection Act 2018 to detecting or preventing crime. (There are similar amendments in paragraphs 23, 26(2) and (3), 27(2) and (3) and 29 of Schedule 11.)

## **Commons Amendment to Schedule 15: Enforcement of regulations under this Part**

### **Commons Amendment 77**

- 82 Schedule 15 (Information Standards for Health and Adult Social Care in England) inserts into Chapter 1 of Part 9 of the Health and Social Care Act 2012 (information standards) a power to publish a public censure statement where the Secretary of State has grounds to suspect that a relevant IT provider is not complying with a mandatory information standard (s251ZC). It is possible, although not likely, that this new power may involve the use of personal data.
- 83 Commons Amendment 77 would confirm that any personal data processed in the exercise of the power is subject to the relevant, existing, data protection legislation.
- 84 Following EU Exit, a form of wording has been included for new powers or duties that may involve the processing of personal data to ensure that existing data protection legislation applies. This avoids any doubt arising about whether later, inconsistent, legislation has impliedly repealed the UK's data protection legislation.

## **Commons Amendments to Title**

### **Commons Amendment 78**

- 85 This amendment is consequential on Commons Amendments 45 and 46.

### **Commons Amendment 79**

- 86 This amendment is consequential on Commons Amendment 54.

## **Financial Effects of Commons Amendments**

- 87 Commons amendments 15, 16 and 17 to clause 11 would allow for regulations to enable persons listed in clause 11(2) to charge fees that exceed expenses where appropriate. Commons amendment 24, 25 and 26 would amend clause 15, and mirror the amendments to clause 11, removing the requirement for fees charged by participants in smart data schemes in the financial services sector to be linked to expenses incurred. The existing ways and means resolution for the Bill covers clauses 11 and 15 and would cover these amendments.

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