

**Data Protection Bill:
Summary of government amendments for Lords Committee tabled on 20 October
2017**

Note: amendment numbers below are in the format “Clause/Schedule-page number – line number” as they will not be otherwise numbered until the first marshalled list of amendments is produced.

	Amendment Number	Clause / Schedule Amended	Purpose
	Part 2 - General data processing		
1	4-3-40	Clause 4	A technical amendment to ensure there is clarity that the definition of health professional in clause 183 applies in Part 2 of the Bill.
2 12	Sch1-113-8 10-6-12	Schedule 1 Clause 10	The GDPR refers to health data being processed under the “responsibility” of a health professional whereas the Bill says under the “supervision” of a health professional. To clarify that no intentional difference in meaning is being conveyed, these amendments ensure that consistent language is used.
3	Sch1-120-37	Schedule 1	The Bill contains provision, copied from the Data Protection Act, to allow Members of Parliament to be informed of prisoners being released into their constituencies. The Bill extends this provision to Members of the Scottish Parliament but no provision is made for members of the Welsh Assembly because the Welsh Government was still considering the issue at the point of Bill introduction. The amendment extends the same privileges to members of the Welsh Assembly.
4	Sch1-121-1	Schedule 1	This amendment fills a technical gap which may limit the ability of legal publishers to publish judgments. Judgments often contain details of individuals including sensitive data relating to criminal convictions. The amendment creates a new processing condition for special categories of data and criminal conviction data to allow the publication of this material.
5 6 7 8 9	Sch1-121-3 Sch1-121-4 Sch1-121-5 Sch1-121-9 Sch1-121-11	Schedule 1	The Bill contains provision to allow anti-doping programs in sport to operate in the absence of the data subject’s consent to continued processing. These amendments broaden this exemption to capture a wider range of behaviours that sports governing bodies are investigating to maintain the integrity of sport by permitting the processing of special categories of data, including health data, for these purposes.

	Amendment Number	Clause / Schedule Amended	Purpose
10 11 17 18 19 56 57 65 66 67	Sch1-121-36 Sch1-121-38 Sch2-126-29 Sch2-126-30 Sch2-126-31 Sch8-170-28 Sch8-170-30 Sch11-174-18 Sch11-174-19 Sch11-174-20	Schedule 1 Schedule 2 Schedule 8 Schedule 11	The Bill makes provision to allow the processing of personal data to establish a legal claim. This sort of processing would generally be done by an instructed lawyer on behalf of the claimant. These amendments ensure that there is consistency in the language used across the Bill, maintaining consistency with the language used in the Data Protection Act 1998.
13	10-6-16	Clause 10	Clause 10 provides supplementary provision for clause 9. This is a technical amendment is a correction to ensure the clause correctly cross refers to clause 9.
14 15 16	13-7-9 13-7-10 13-7-15	Clause 13	To maintain consistency with the language of the GDPR stakeholders have asked us to insert the word “similarly” at the start of clause 13(2)(b). This amendment ensures there is consistency and avoids any confusion. The text in the Bill that describes the operation of Article 22 of the GDPR is also subject to a technical amendment.
20 21	Sch2-127-33 Sch2-127-38	Schedule 2	Paragraph 7 of this Schedule restricts the exercise of rights by data subjects where necessary for the purposes of discharging functions concerned with the protection of members of the public, charities and fair competition in business, as set out in the table. This technical amendment makes is clear that dishonesty, malpractice or other seriously improper conduct does not have to relate to financial services to engage the restrictions.
22	Sch2-130-2	Schedule 2	Paragraph 9 of this Schedule exempts various regulators from having to comply with certain data rights where these would compromise investigations or active regulatory activity. This amendment adds additional regulators to protect the integrity of their work.
23	Sch2-135-42	Schedule 2	Where confidential references are given for employment purposes they are exempted from data rights. This amendment extends this to references given for volunteers.
24 90	Sch2-137-45 184-105-21	Schedule 2 Clause 184	Clause 184 contains a definition of “publish” that applies to the whole Bill. A technical amendment extends this definition to related terminology such as “publications”. An amendment also removes an unnecessary duplicate definition of “publish” found in Schedule 2.
25 26	Sch2-138-10 Sch2-138-30	Schedule 2	These technical amendments simply improve the consistency of drafting language in the schedule.

	Amendment Number	Clause / Schedule Amended	Purpose
27 28 29 30 31 32 33 34 35	Sch3-140-35 Sch3-142-43 Sch3-146-4 Sch3-147-19 Sch3-147-28 Sch3-147-35 Sch3-147-38 Sch3-147-43	Schedule 3	This Schedule creates exemptions from the GDPR where necessary for education purposes. These technical amendments ensure that the schedule correctly applies to independent schools and academies in England. Further technical amendments ensure consistent application between England, Wales, Scotland and Northern Ireland.
36	Sch4-152-6	Schedule 4	The reference to the Adoption Support Services and Allowances (Scotland) Regulations 2009 is deleted because regulation 28(1) has been repealed and is now covered by paragraph 3(3)(f) of the Schedule.
37 38	Sch5-155-39 Sch5-156-2	Schedule 5	In paragraph 4(9) of the schedule, the reference to sub-paragraph (7) should in fact be to (8). Those who brought the error to our attention thought that further clarity would help so a further related technical adjustment has been tabled.
39 40 41 42 43 44 45 46 47 48 49	Sch6-157-11 Sch6-157-20 Sch6-157-28 Sch6-158-38 Sch6-159-3 Sch6-159-33 Sch6-163-13 Sch6-163-40 Sch6-165-2 Sch6-166-12 Sch6-166-14	Schedule 6	This Schedule contains modifications to the GDPR to create the “applied GDPR” which relates to general data processing outside the scope of EU law. These amendments correct a number of drafting errors recently identified.
Parts 3 - Law enforcement processing			
50 51 52 53 54	Sch7-168-13 Sch7-168-36 Sch7-169-4 Sch7-169-9	Schedule 7	These amendments add to the list of competent authorities who process personal data for law enforcement purposes.
55 58 59	Sch8-170-20 Sch9-171-34 Sch10-173-6	Schedule 8 Schedule 9 Schedule 10	The technical amendment to Schedule 8 clarifies that sensitive processing under Part 3 is lawful for purposes of the exercise of a function conferred on a person by a rule of law as well as by an enactment. A similar point arises in relation to Schedules 9 and 10 (which relate to Part 4).
Parts 4 - Intelligence services processing			
60 61	90-51-9 90-51-9-2	Clause 90	These amendments to clause 90 simply ensure that the summary description of the rights conferred on data subjects by Chapter 3 of Part 4, as set out in subsection (1) of that clause, fully itemises each of the relevant rights.

	Amendment Number	Clause / Schedule Amended	Purpose
62 63 64	92-53-18 97-56-14 98-56-38	Clause 92 Clause 97 Clause 98	Clause 102 provides that when two or more intelligence services jointly determine the purposes and means of processing personal data, they are joint controllers for the purposes of Part 4 of the Bill. The Bill provides that a court order may only be made against the controller responsible for a contravention. Technical amendments are needed to ensure that the liability of joint controllers is clear.
Part 5 - Information Commissioner			
68 69 70 71	127-68-31 127-68-32 127-68-37 127-69-17	Clause 127 Schedule 18	Clause 127 places a duty of confidentiality on the Information Commissioner and her staff. These technical amendments ensure consistency with section 59 of the Data Protection Act 1998.
72	133-72-33	Clause 133	Clause 133 includes provision to bind the Crown. This is unnecessary as clause 188 already binds the Crown. This minor amendment removes the duplication.
Part 6 - Enforcement			
73 74 78	139-76-2 148-81-38 150-83-40	Clause 139 Clause 148 Clause 150	Clause 139 provides an offence of failure to comply with an "information notice". The Bill, however, does not provide an offence for failure to comply with an "enforcement notice" for which there instead the possibility of an administrative penalty. This is inconsistent so these amendments ensure that an administrative penalty is the sanction for failure to comply with either notice. The offence in clause 139 of providing false information in response to an information notice is retained.
75 76 77	Sch16-189-9 Sch16-189-11 Sch16-189-21	Schedule 16	Where the Commissioner intends to give an administrative penalty she must give a notice of intent, to which the data controller may make representations. The Commissioner may not give a penalty notice in reliance on a notice of intent after the end of the period of 6 months beginning with the day after the notice of intent is given. In some complex cases the data controller may require more than 6 months to make representations. These amendments allow the Commissioner to offer controller more time but only if they consent to the possibility of a penalty beyond the normal 6 month limitation.

	Amendment Number	Clause / Schedule Amended	Purpose
79 80 81 82 83 84 85 86 87	164-93-6 164-93-8 166-94-27 166-94-28 166-94-34 166-94-38 166-94-42	Clause 164 Clause 166	Where person data is processed for special purposes (journalism, academic, artistic or literary purposes) there are certain exemptions in place so the Commissioner must first determine if processing is for a special purpose before taking further enforcement action. A special purposes determination can be appealed to a court, not a tribunal. These amendments correct the Bill as only a court, not tribunals are relevant and also make technical corrections to ensure compatibility with Scots law. The definition of “special purpose proceedings” is also widened slightly as special purposes could be asserted in a wider range of situations.
88 91	168-95-23 185-106-8	Clause 168 Clause 185	The term “data protection principles” is no longer used in Part 6 of the Bill so these amendments delete unnecessary definitions.
Part 7 - Supplementary			
89	169-96-8	Clause 169	Paragraph 24 of Schedule 2 provides journalistic exemptions. In determining whether a matter is the public interest journalists may refer to one of the codes of practice which are listed. The Secretary of State has the power to amend the list of codes by regulation. Clause 169 exempts the Secretary of State from having to consult the Information Commissioner before making regulations. This technical amendment restores the need to consult.
92	In the Title	Long Title	The Long Title includes a line to say that the Bill will “make provision for a direct marketing code of conduct.” As per clause 120 it is a “code of practice”, not a “code of conduct”. This amendment makes the necessary correction.

Department for Digital, Culture, Media and Sport
20 October 2017