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My Lords

Data Protection Bill: Day 3 of Committee Stage

I write to you to follow up on a number of issues arising on day 3 of Committee Stage of the Data Protection Bill.

Processing by political parties

Lord Kennedy asked about processing undertaken by political parties. A political party is no different from any other data controller and they will need to comply with the overarching principles in the Data Protection Bill and the GDPR. As I explained during the debate, data about somebody's political opinions is regarded as a 'special category' which means that processing without the data subject's consent is only permitted if one of the conditions contained in Article 9(2) of the GDPR or Schedule 1 to the Bill is met. Paragraph 17 of that Schedule is particularly relevant. It allows processing of personal data revealing political opinions to the extent that processing of that data is necessary for the purposes of the person's or organisation's political activities which include campaigning, fund-raising, political surveys and casework. It will be for each controller to determine what processing activities are necessary in the circumstances of the case, but the Information Commissioner's existing guidance on political campaigning recognises that engaging voters is important in a healthy democracy.

The Noble Lord also asked about the definition of profiling. The relevant definition is provided in Article 4 of the GDPR ("any form of automated processing of personal data... in particular to analyse or predict aspects concerning [the data subject's] performance at work, economic situation, health, personal preferences, interests, reliability, behaviour, location or movements").



In addition, the Government sees no contradiction between the requirements of Schedule 1, paragraph 17(3)(a), which allows data subjects to write to political parties to require them to stop processing their personal data using that paragraph, and the Regulations made under section 13 of the Representation of the People Act 1983. These Regulations require Electoral Registration Officers to supply a copy of the electoral register to registered political parties which request it. Importantly, the mere act of receiving a copy of the register is not prohibited by a notice received under paragraph 17(3) since the register itself does not contain any 'special category' personal data.

Age verification

Part 3 of the Digital Economy Act 2017 requires those making available online pornography to persons in the UK on a commercial basis to introduce robust age verification controls to prevent under 18s from accessing their pornographic material. The British Board of Film Classification (BBFC), as the intended regulator, will monitor and identify non-compliant websites and give notice to the appropriate persons. The regulator will have the power to issuing a notice to payment-service providers or ancillary service providers to encourage them to withdraw supporting services from a non-complying person, or to require Internet Service Providers to block access to offending material. There is no hierarchy of enforcement powers and it is envisaged that the eventual regulator will consider what action is appropriate to take to ensure compliance on a case-by-case basis.

Lord Stevenson asked "where we had got to" in terms of implementing these provisions. Our aim has always been to try to bring these provisions into force for Spring 2018. As Peers may be aware, before they can be brought into force, further Parliamentary procedures need to be completed, including the formal designation of the BBFC as age verification regulator. The Government is currently preparing to lay before both Houses the proposal to designate the BBFC as age verification regulator. The BBFC has made good progress in developing their internal processes and are meeting regularly with key stakeholders including the internet service providers, mobile network operators, age verification solution providers and the adult industry. DCMS officials continue to work closely with the BBFC to oversee delivery of the project.

The Government takes the issue of data privacy and security extremely seriously. It is absolutely right that users undergoing age verification checks have the right for their data to be safeguarded. We have always been clear that this process is about age verification, not identification of the individual, and the Bill provides clear incentives for websites to minimise the amount of personal data they hold.

Automated decision-making

Lord Clement-Jones asked what the status would be of guidance produced by the Article 29 Working Party after the UK's exit from the European Union. It is worth reminding ourselves that guidance issued by the Article 29 Working Party – so called because it was established by Article 29 of the 1995 Directive – has never been binding on supervisory authorities. That said, it is influential and many supervisory authorities, including the

Information Commissioner, regularly draw on it where it is appropriate to do so in the UK context in informing their activities. Nothing in this Bill, or the GDPR, will prevent the Information Commissioner from drawing on its guidance in the future at her discretion. However, it is worth noting that the GDPR repeals the 1995 Directive. As such, the Article 29 Working Party itself will cease to exist on 25 May 2018.

Further, the noble Lord suggested that, without guidance produced by the Article 29 Working Party being recognised in the UK, human involvement would not have to be 'meaningful' to avoid the provisions of clause 13. That was not my argument. Rather, the Government feels it is inherent in the phrase 'decision making based solely on automated processing' (my emphasis) that token human engagement in the process is insufficient. It is reassuring that the Article 29 Working Party have come to a similar conclusion, but our logic here does not rely on them doing so.

I hope this provides noble lords with the clarification and reassurance they seek following discussions on day 3 of Committee. I am copying this letter to Baroness Williams of Trafford, Baroness Chisholm of Owlpen, the Minister for Digital and all Peers who spoke in Monday's debate and the Information Commissioner. I am also placing a copy in the House Library. If you would like to discuss these, or any further points, in more detail, please do not hesitate to get in touch.



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