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My Lords

Data Protection Bill: Day 6 of Committee Stage

I write to you to follow up on a number of issues arising on day 6 of Committee Stage of the Data Protection Bill.

Re-identification of de-identified personal data

I would first like to respond to Lord Clement-Jones' remarks regarding his amendment to clause 162 which makes it an offence to re-identify personal data that has been de-identified without the consent of the data controller. I assured him that I would read Hansard to make sure I had directly addressed the amendment that was put forward.

Clause 162 provides a defence where a person acted in the reasonable belief that they would have had the consent of the controller had the controller known about the re-identification and the circumstances of it.

The noble Lord's amendment sought to insert at the end of clause 162(4) a defence for persons that had received retroactive approval for the actions taken. There was brief confusion as to whether the amendment was substitutional or additive, but I am confident that it is not needed in either case: retroactive approval can be relied upon as evidence in support of the existing defence (so there is no need for an additional defence), but equally it is possible to have reasonable prior belief and not be able to obtain retroactive approval – for example where the data controller does not respond to subsequent enquiries – so a substitution is not appropriate.



Data subject access

Lord Kennedy asked whether data subjects could use their access rights to ask a data controller (such as a virtual 'marketplace') to provide copies of reviews written about them by satisfied customers or other third parties. I can confirm that the GDPR allows data subjects' rights to be exercised in that way. Article 15 gives data subjects the right to obtain from the controller confirmation as to whether or not personal data about them is being processed and, if it is, to provide access to that data. Where the data subject makes the request by electronic means, and unless the data subject requests otherwise, the data must be provided in a commonly used electronic form. This will allow for reuse by the data subject in a relatively straightforward manner. It does not matter where the data held by the controller derived from – if it relates to the data subject, he or she is entitled to seek access to it.

Alteration etc of personal data to prevent disclosure

I committed to respond to Lord Clement-Jones' remarks towards the end of the day, in relation to the deletion of the summary offence contained within section 77(1)(b) of the Freedom of Information Act 2000. In fact, that summary offence is not deleted: rather, it is replaced by the offence contained in clause 163 of the Bill, and broadened to cover all data controllers (not just public authorities).

The noble Lord also noted that section 77 of the 2000 Act includes a six-month time limit, and it has not always proved possible for the Information Commissioner to bring a prosecution where appropriate within that constraint. The Government is aware of this issue and has chosen to extend the limitation period in relation to the offence in clause 163 to 6 months from the date the Commissioner was informed about the alleged breach and up to 3 years after the offence was committed. This should ensure that she is not prevented from making full use of her powers under clause 163.

Finally, Baroness Williams and I would like to take this opportunity to thank all Peers who took part in Committee Stage of the Bill. In addition to the issues addressed directly over the six days of Committee, we committed to consider a number of potential amendments. We hope to write shortly setting out the Government's proposed amendments in those areas ahead of the first day of Report Stage on the 11 December. We will also respond to the reports of the Delegated Powers and Regulatory Reform and Constitution Committees on a similar timescale.

I am copying this letter to Baroness Williams of Trafford, Baroness Chisholm of Owlpen, the Minister for Digital, all Peers who spoke in the debate and the Information Commissioner. I will also place 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 with me.

A handwritten signature in cursive script that reads "Henry Ashton".

Lord Ashton of Hyde
Parliamentary Under Secretary of State