



Department for
Digital, Culture
Media & Sport



Home Office

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My Lords,

Data Protection Bill: Days 1 and 2 of Report Stage

We write to you to follow up on a number of issues arising on days 1 and 2 of Report Stage of the Data Protection Bill.

Information Regulations

On the first day of Report, Lord Clement-Jones asked why the Government had tabled amendment 198 to remove a provision in Schedule 18 that would add a new section 76C to the Freedom of Information Act 2000 (FOIA).

The new sections 76B and 76C FOIA were intended to complement clauses 126 and 127 of the Bill. The Government has since tabled amendments that would generalise the provision in clauses 126 and 127. A side effect of these changes is that 76C is no longer necessary -- the same safeguards are now provided automatically by the new, more general provisions contained in clauses 126 and 127.

Behavioural characteristics

Baroness Hamwee asked what “behavioural characteristics” meant in the context of biometric data (as defined in Article 4 of the GDPR). The GDPR does not elucidate further. However, Opinion 3/2012 of the Article 29 Working Party suggested that:

There are behavioural-based techniques, which measure the behaviour of a person and include hand-written signature verification, keystroke analysis, gait analysis, way of walking or moving, patterns indicating some subconscious thinking like telling a lie, etc.

The Government is not aware of any mainstream provider using behavioural biometrics for identity verification at the moment. However, it is a rapidly developing field and it is quite plausible that technology along this lines will be commercialised in the next few years. That is why the GDPR rightly includes it alongside so-called “static” biometrics (including fingerprinting and iris scanning).

Processing by political parties

Baroness Hamwee queried the use of the term 'necessary' in regard to political processing and asked what it meant in this context.

The Supreme Court considered the term in the *Christian Institute* case [2016] UKSC 61 in the context of disclosure. It concluded that "necessary ... is an expression whose meaning depends on the context in which it falls to be applied. Where the disclosure of information constitutes an interference with rights protected by article 8 of the ECHR [right to respect for private and family life]... the requirement that disclosure is "necessary" forms part of a proportionality test: the disclosure must involve the least interference with the right to respect for private and family life which is required for the achievement of the legitimate aim pursued".

Automated decision-making

During the debate on amendments relating to automated decision-making, I (Baroness Williams) undertook to provide a copy of the Article 29 Working Party guidelines on this issue which were adopted in October.

These are available online from <https://goo.gl/td45sq> .

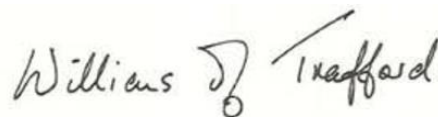
I would refer interested peers, in particular, to the section on "meaningful information about the 'logic involved'" on page 14 and that on "children and profiling" on pages 26 and 27, which was also referred to during our debate at Committee Stage.

We are copying this letter to Baroness Chisholm of Owlpen, Lord Keen of Elie the Minister for Digital, all Peers who spoke in the debate and the Information Commissioner. We 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 us.

Yours sincerely



Lord Ashton of Hyde



Baroness Williams of Trafford