



4 January 2018

My Lords,

DATA PROTECTION BILL - GOVERNMENT AMENDMENTS ON DE-IDENTIFIED DATA AND CROWN APPLICATION

Ahead of the final day of Report stage on 10 January, we have tabled some further government amendments.

De-identified data

In considering how best to secure the data they hold, one option available to data controllers is to make it harder for a third party acquiring the data (whether legally or illegally) to deduce which data relates to which individual. In some circumstances, they may be able to anonymise it: to make it impossible to make this kind of link. Equally, it may be possible for a third party with a sufficiently large database to identify some or all of the individuals captured by a data set. In cases where this is possible, the Bill says that the relevant personal data has been 'de-identified' rather than truly anonymised.

Clause 162 of the Bill creates a new criminal offence of circumventing this security measure by re-identifying data without the consent of the controller who de-identified it. A number of defences are provided, including a public interest defence. The Government has however received representations suggesting that clause 162 will nevertheless have a chilling effect on the activities of legitimate security researchers specialising in testing controllers' de-identification practices. For the avoidance of doubt, we have therefore decided to insert an additional defence targeted at these groups. We fully support those engaged in improving our cyber security.

Application to Crown bodies

Finally, we have tabled some technical amendments to address a problem raised by Crown bodies. Article 28(3) of the GDPR and clause 57(5) of the Bill require a contract to be in place for any arrangements between a controller and a processor for processing of personal data. Where Crown bodies have processing arrangements between themselves this would require bodies to create a contractual relationship. This is problematic as the Crown cannot contract with itself so these amendments allow Crown bodies to enter into a memorandum of understanding in-lieu of contract.

I will place a copy of this letter in the House library.

Yours sincerely,

A handwritten signature in cursive script that reads "Ashton of Hyde". The signature is written in dark ink on a light-colored background.

Lord Ashton of Hyde