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Dear Liam,

### **Data Protection Bill: Committee Stage**

I write to you to follow up on a number of issues raised during the Public Bill Committee of the Data Protection Bill. References to clause numbers are to the Bill as amended in Committee.

#### Re-identification of de-identified data

Darren Jones asked whether the re-identification offence in clause 167 would cover cases where “the information has been personally identifiable, then is pseudonymised in a pooled way, and is then re-identified” (col. 233). As set out in that clause, no offence is committed by a controller if they re-identify the data with the consent of the controller responsible for de-identifying it (which would also be the case if they are one and the same). It is also a defence for a controller to prove that they acted in the reasonable belief that they had the consent of the controller or the data subject (or would have had such consent if the controller or data subject had known about the re-identification and the circumstances of it).

Louise Haigh made a similar point in relation to the pricing of insurance. Considering the points I have set out, and the controller’s other obligations under the GDPR (e.g. under Article 14) suffice it to say that the most straightforward way for any controller to proceed will be on the basis of transparency and consent.

In any case, I agree that the use of pseudonymised information, and the potential for it to be re-identified, raises important ethical issues. It will continue to be an area of interest for not just the Information Commissioner and the Centre for Data Ethics and Innovation, but also the National Data Guardian for Health and Care, on whose recommendation clause 167 was included in the Bill.

### Enforcement notices

Louise Haigh asked about the Information Commissioner's ability to "issue corrective measures based upon the DPIA [Data Protection Impact Assessment] or indeed requiring a DPIA to be undertaken when it should have been" (col. 221). Since these concerns were first raised by the Commissioner's office last month, the Government has engaged with them to work through the issues raised and is considering whether an amendment is necessary. It is important to note that clause 146 of the Bill does already provide the Commissioner the ability to use her enforcement notice powers to require corrective measures to be taken in respect of (among other things) breaches of the data protection principles, data subject rights, and controller obligations under Articles 25 to 39 of the GDPR. Related provision is made in clauses 147 to 150.

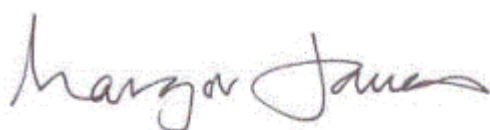
### Extra-territorial application

You asked about the extra-territorial application of the GDPR. He is right to say that, as set out Article 3, the GDPR is extra-territorial: it applies to "the processing of personal data of data subjects who are in the Union by a controller or processor not established in the Union, where the processing activities are related to the offering of goods or services... to such data subjects [or] the monitoring of their behaviour as far as their behaviour takes place within the Union". The nature of the internet means that enforcing data protection law on controllers based outside the EU will not always be easy; to effectively protect the UK public's personal information in a digital global environment, the Information Commissioner's Office needs to co-operate and act internationally. To this end, she is a leading member of international data protection networks globally, including being a founder member of the Global Privacy Enforcement Network, Common Thread Network of Commonwealth Countries and the International Conference of Data Protection Commissioners. And from May, controllers captured by the extra-territorial provisions of the GDPR will need to appoint an EU-based representative.

Finally, Victoria Atkins and I would like to take this opportunity to thank you, Brendan O'Hara, and all other honourable members who took part in Committee Stage of the Bill. In addition to the issues addressed directly over the four days of Committee, we committed to consider a number of potential amendments. We will write setting out the Government's proposed amendments in those areas in due course.

I am copying this letter to members of the Public Bill Committee and the Secretary of State for Digital, Culture, Media and Sport. 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.

Yours ever



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Minister for Digital and the Creative Industries