



Department for
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The Rt Hon Liam Byrne MP
House of Commons
London
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Dear Liam

Data Protection Bill – government amendments for report stage

Further to my letter of 29 March, a copy of which I placed in the House Library, I am today writing to set out the Government's amendments ahead of Report Stage of the Data Protection Bill. As recent experience has demonstrated, this is an incredibly timely piece of legislation and these final amendments will ensure that personal data in the UK has the very best protections.

Enforcement powers

The Information Commissioner's investigation into Cambridge Analytica is unprecedented in its scale – Cambridge Analytica are alleged to have unlawfully received records on some 80 million individuals – and its complexity. It has, necessarily, pushed the boundaries of what the drafters of the Data Protection Act 1998 could envisage. While recognising that the Bill already expands and enhances the Commissioner's ability to enforce in such circumstances, the Government undertook to consider whether further provision was desirable in light of the Commissioner's experience. Following extensive conversations with the Commissioner and others I can confirm that our conclusion is that such provision is indeed desirable. The amendments we are tabling today will therefore, among other things:

- Enable the Commissioner to issue an information notice to persons other than a controller or processor (e.g. an employee or former employee of the controller who might have knowledge about the alleged breach);
- Criminalise controllers who seek to frustrate an information or assessment notice by deliberately destroying, falsifying or concealing evidence which has been identified as being relevant to an investigation;
- Enable the Commissioner to seek a court order to force a person to comply with an information notice. At the moment, a person might prefer to pay a fine rather than hand over the information, but this provision will make sure that consequences of non-compliance are more serious.
- Allow the Commissioner to impose urgent information, assessment and enforcement notices. At the moment, controllers and processors must have a minimum of seven days to comply, but we agree with the Commissioner that there might be cases where organisations should have to respond more quickly; and

- Modernise the Commissioner's powers of search and seizure by ensuring that she can access information which might be accessible from computers in the premises, but is actually held elsewhere (e.g. in the cloud).

I am pleased to confirm that the Commissioner has written to me to underline her support for the Government's amendments. I would also like to take this opportunity to thank the Commissioner and her officials for their close working on this important issue.

Parish Councils

The Government is grateful to the National Association of Local Councils and colleagues from all sides of the House for their representations in respect of parish and community councils. Small councils are not exempt from the new law and as with other organisations, they must carry out their responsibilities to protect personal data. Nonetheless, as with all sectors of the economy, the Government is implementing a fair a proportionate regulatory regime and good arguments have been made that further adjustment is needed.

By describing parish and community councils as "public authorities", the Bill gives these councils additional obligations above and beyond those placed on other small organisations, including that they must appoint a data protection officer. We have been working to minimise the impact of this requirement, but have concluded that as parish and community councils process very little personal data, the burden they will face is disproportionate. We are therefore tabling amendments today that will take them out of the definition of "public authorities" for data protection purposes. This will, among other things, ensure that very few councils will be required to appoint a Data Protection Officer. Their status in respect of other legislation, including the Freedom of Information Act, is unaffected.

Democratic engagement

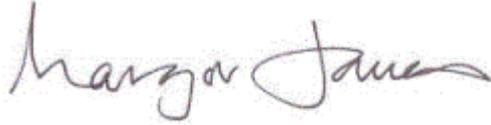
In Public Bill Committee, the government tabled amendments to make it clear that the processing of personal data "necessary for the performance of a task carried out in the public interest", includes an activity that supports or promotes democratic engagement. This provides clarity about how political parties and elected representatives can process data in order to continue to engage with the public.

I am grateful to Darren Jones for his subsequent letter of 20 March, concerning what is now clause 8(e) of the Bill (public interest nature of activities that support or promote democratic engagement). I have reflected carefully on the issues he raises, but remain firmly of the view that provision to limit the scope of this provision is unnecessary. In particular, I wanted to take this opportunity to underscore that, in the Government's view, firms like Cambridge Analytica would not be able to claim public interest irrespective of whether or not clause 8(e) is included in the Bill. This is because, while they might at least *claim* to be undertaking activities that support or promote democratic engagement, they are very unlikely to meet other relevant tests, including, but not limited to, the 'lawful basis' test set out Article 6(3) of the GDPR.

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I am enclosing further details of all government amendments tabled. I am copying this letter to the members of the DCMS Select Committee; former members of the Public Bill Committee; the Information Commissioner and others who have expressed an interest in the Bill's passage. I will also place a copy in the House Library.

Yours ever

A handwritten signature in black ink that reads "Margot James". The signature is written in a cursive style with a large initial 'M' and a long, sweeping tail.

MARGOT JAMES MP
Minister for Digital and the Creative Industries