

Data Protection Bill

Amendments

1. Solely automated decision making and profiling

Amendment 74A

Case studies and applied questions of use [in support of amendment 74A](#), page 7, line 11, at end insert “() This section does not apply in respect of a child.” Article 22 supporting Recitals 38, 65 and 71 need to be on the face of the bill. Much of the strength of GDPR for children lies in recitals, not the regulations, and we fear especially in the context of Brexit we will lose sight of them in future, causing confusion for data controllers and processors, and lack of clarity on rights for children. We suggest rewriting to make this protection for children clear to all data users.

[\[Download link to briefing on Article 22, Recital 71 and children\]](#)

2. Data Subjects’ Right to Representation

Amendment 184 (Clause 173)

Article 80(2) relevant for children and school records. We need Article 80(2) of the GDPR to be implemented in the UK Bill (the government has chosen not to do this so far.) Article 80(2), an optional power in the GDPR, would give not-for-profit bodies the option to take up complaints on Information Rights without having an affected member of the public instruct them. This is especially relevant for children, who as vulnerable individuals are often unaware of their rights and not empowered to be able to enact them. This would give recognised groups an ability to better stand up for children’s rights and represent their data protection and privacy interests.

[See also the Open Rights Group briefing: <https://www.openrightsgroup.org/blog/2017/time-to-make-data-protection-work-for-consumers>]

3. Immigration Clause [\[download our detailed briefing .pdf 183kB\]](#)

Amendment 80

Remove. Schedule 2, Part 1, Paragraph 4. This would remove a whole range of individuals’ rights as long as the purpose could be justified broadly as something to do with immigration. Public and professional trust in the school census has been damaged in reusing pupil data for operational immigration based uses and misleading data collection purposes. In April 2017, the NUT conference supported motions opposing nationality and country of birth collection and calling for more information to be given to schools and parents. Ongoing uses of the database for non-educational purposes threaten the statistical integrity of the National Pupil Database. Beyond the potential individual and group harms, by repurposing data gathered for statistical purposes for operational uses, defenddigitalme believes that the use jeopardises the privileges of research exemptions the NPD enjoys under data protection law, in the public interest. This is perhaps why the government seeks to removed the data protection rights to question the purpose of processing, to lodge a complaint (GDPR Article 15 1(f), and 13 (2)(d) and understand its legal basis as listed in GDPR Article 14 (1)(c) and supported by Recital 63 of the GDPR, which clarifies one reason for allowing individuals to access their personal data is so they are aware of and can verify the lawfulness of processing, and right to error rectification (the listed provisions (d) GDPR Article 16.

4. Clause 9 (6) and Clause 15, Delegated Powers

Secondary powers are inappropriately wide. Recommend remove from the bill (see ref para 35 in Delegated Powers and Regulatory Reform Committee Report on Data Protection Bill [6th report] <https://publications.parliament.uk/pa/ld201719/ldselect/lddelreg/29/29.pdf>)

Comment on debate to date

1. 13 Nov 2018

Amendment 79

Page 8, line 23, leave out “scientific or historical”

Part 2 - General processing

Chapter 2

*14(2)(f) Part 6 makes provision containing derogations from rights contained in Articles 15, 16, 18, 19, 20 and 21 of the GDPR for **scientific or historical** research purposes, statistics purposes and archiving purposes, as allowed for by Article 89(2) and (3) of the GDPR.*

It should be noted that this exemption does not prevent processing, it merely makes the processing exempt from safeguards as outlined in Article 89 and Recital 156. Safeguards such as data minimisation and the subject rights of Article 15 Right of Access, Article 16 Right to rectification, Article 18 Right to Restriction of Processing, Article 19 Notification (communications after) regarding rectification, Article 20 Right to Data portability, and Article 21 Right to object (6) *unless the processing is necessary for the performance of a task carried out for reasons of public interest.*

Article 89 states:

(2) Where personal data are processed for scientific or historical research purposes, or statistical purposes, Union or Member state law may provide for derogations from the rights referred to in Articles 15, 16, 18 and 21 subject to the conditions and safeguards referred to in paragraph 1 of this Article in so far as such rights are likely to render impossible or seriously impair the achievement of specific purposes and such derogations are necessary for the fulfilment of those purposes.

(3) Where personal data are processed for archiving purposes in the public interest,

(4) Where processing referred to in paragraphs 2 and 3 serves at the same time another purposes, the derogations shall apply only to processing for the purposes referred to in those paragraphs.

Lord Hyde is therefore correct therefore that Article 89(4) of the GDPR is clear that, “we may derogate only in relation to specifically historical or scientific research.”

Recital 156 states:

The accompanying recital 156, is clear that “*the processing of personal data for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes should be subject to appropriate safeguards for the rights and freedoms of the data subject pursuant to this Regulation. Those safeguards should ensure that technical and organisational measures are in place in order to ensure, in particular, **the principle of data minimisation.***”

*“to be carried out **when the controller has assessed** the feasibility to fulfil those purposes by processing data **which do not permit or no longer permit the identification of data subjects**, provided that appropriate safeguards exist (such as, for instance, **pseudonymisation of the data**).”*

Lord Lucas in effect made the case that all research is equal, and that his company's use of the National Pupil Database should also be exempt from safeguards for individuals.

*"I offer as an example the National Pupil Database, which the Department for Education makes available. It is very widely used, principally to help improve education. In my case, I use it to provide information to parents via the Good Schools Guide; in many other cases it is used as part of understanding what is going on in schools, suggesting where the roots of problems might lie, and how to make education in this country better. That does not fall under "scientific or historical" and is a good example of why that phrase needs widening."*¹

While we appreciate his interest in access to children's personal data in order to produce the Good School's Guide, the discussion fails to take into account that national pupil database distributes health and other sensitive data (SEN, codes for pregnancy, mental and physical health, ethnicity).

This is without children and parent's knowledge or consent.

It also fails to take account of the overriding principle of GDPR regards children, recital 38, they merit specific protections.

Research from the national pupil database includes identifying and sensitive data release to newspaper journalists², TV, Think Tanks and charities, and a wide range of commercial companies.

Resulting outputs of some of this third party data use are products sold by commercial companies, not equivalent to "public interest" research. We estimate about 28% of requests since 2012.

Questions

1. On the amendments 99-102 laid by Lord Hyde:

ref [https://publications.parliament.uk/pa/bills/lbill/2017-2019/0066/18066-II\(rev\).pdf](https://publications.parliament.uk/pa/bills/lbill/2017-2019/0066/18066-II(rev).pdf)

Why are Free schools not listed explicitly yet Academies are? (this may be obvious, just not to me)

2. Access to an Educational Record is inconsistent today - can this be fixed?

Today there are differences for children and parents what they can access of their own educational record at school, depending on which type of school they attend. Does the DP Bill present any opportunity to unify these, in support of all children's rights? If a child attends a maintained school, parents have a right to access the child's educational record. There is no equivalent legal right at free schools and Independent schools to access your child's educational record. It will be up to the school to decide whether to grant such access. It is likely to depend on the contractual relationship between parent and school. See: <https://ico.org.uk/for-the-public/schools/pupils-info>

3. As regards national pupil data and the indefinite retention (and distribution and use) of children's SEN and reasons for exclusion. Will this Bill support children's rights or continue to disempower them with large scale processing without privacy impact assessment; and exemptions from subject access, rectification, or to object to any processing despite its widespread third party distribution and **operational use** by the Home Office potentially causing harm and distress (in contradiction to s33 DPA exemption rules), and without consent or fair processing?

[\[download briefing on AP expansion\]](#)

Ref: [link: [Third party register pre-2017](#)] and [[Jan-May 2017](#), broken in two and archived mid-2017]

¹ [http://hansard.parliament.uk/Lords/2017-11-13/debates/EC101CF2-FA1C-4397-9A29-7F07333B396B/DataProtectionBill\(HL\)#contribution-50D7577B-2411-401F-9291-955560125AFE](http://hansard.parliament.uk/Lords/2017-11-13/debates/EC101CF2-FA1C-4397-9A29-7F07333B396B/DataProtectionBill(HL)#contribution-50D7577B-2411-401F-9291-955560125AFE)

² <https://www.whatdotheyknow.com/request/293030/response/723407/attach/5/The%20Times.pdf>