62 Britton Street
London, EC1M 5UY
United Kingdom
T +44 (0)203 422 4321
@privacyint
www.privacyinternational.org

9 October 2017

The Rt Hon Matt Hancock MP
Minister of State for Digital
100 Parliament Street
London, SW1A 2BQ

Dear Minister,

We congratulate you and your team for the efforts put in getting the Data Protection Bill published, and we particularly welcome the objective of this Bill to reform the UK legislation in order to give "people more control over use of their data."

We also acknowledge and welcome the fact that the Bill seeks to achieve the ambitious aims of bringing the EU Data Protection Regulation (GDPR) and the Data Protection Law Enforcement Directive (DPLED) into the UK domestic legal system, covering three distinct sectors (general, law enforcement and intelligence.) We think, however, that the Bill is overly and unnecessarily complex in its design and structure, even more so than the current Data Protection Act which has been described by senior judges as 'inelegant and cumbersome' and a 'thicket'.[1] In our experience of research over the years we have found that neither businesses (for example in the case of identity theft) nor public institutions (for example in the case of data sharing with commercial entities) understand well their obligations under data protection legislation. It is to be regretted therefore that the Government has not made the effort to put this situation right.

We have also identified other important areas of substance where the Bill would benefit from being strengthened.

In particular, the Bill's objective to be "fit for the digital age in which an ever-increasing amount of data is being processed" risks being frustrated. In our view the Bill has severe safeguard deficiencies in its conditions for collection and use of sensitive personal data, when it is in the 'substantial public interest'. Similarly, the Bill lacks adequate safeguards with regards to profiling and automated decision making, when such decisions are permitted without human intervention. Both are permitted derogations from the EU General Data Protection Regulation, and the Government seems to have made full use of them to weaken protections for individuals.

[1] Lord Phillips MR and Justice Morland during Naomi Campbell v Mirror Group Newspapers [2002].

We are equally concerned by the wide scope of the exemption from the data protection regime for national security: provisions on national security certificates lack transparency and means to challenge them effectively when such challenges may be justified. Similarly, we are very concerned by the almost unfettered powers for cross-border transfers of personal data by intelligence agencies without appropriate levels of protection.

Last but not least, along with UK consumer organisations and digital rights groups, we strongly believe that one of the fundamental aims of the Bill, to provide individuals "better protection" in the face of ever more sophisticated and opaque practices of data processing, would be better served if the Bill introduced collective representation of individuals as permitted by Article 80(2) of GDPR. We are ready to provide many examples from around Europe where consumer and privacy groups successfully challenged digital corporations for both consumer and data protection law infringements, following detailed research into illegal practices.

These observations are further elaborated in the attached Privacy International's briefing for the second reading of the Bill at the House of Lords. We hope you find them useful as the Bill proceeds through the Parliamentary stages.

Yours sincerely,

Gus Hosein
Executive Director
Privacy International

Anna Fielder
Chair Emeritus
Privacy International

Encl.: Privacy International's briefing on the Data Protection Bill for second reading in House of Lords