PRIVACY INTERNATIONAL

Privacy International's Proposed Amendments to the Data Protection Bill for Report Stage at House of Commons

April 2018

About Privacy International

Privacy International (PI) was founded in 1990. It is a leading charity promoting the right to privacy across the world. It is based in London and, within its range of activities, investigates how our personal data is generated and exploited and how it can be protected through legal and technological frameworks. It has focused on the General Data Protection Regulation (GDPR) and its passage through the EU institutions since 2009. It is frequently called upon to give expert evidence to Parliamentary and Governmental committees around the world on privacy issues and has advised, and reported to, among others, the Council of Europe, the European Parliament, the Organisation for Economic Co-operation and Development, and the United Nations.

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Overview of key issues

Amending the Data Protection Bill is essential:

- To ensure the protection of human rights in the UK, including the right to privacy and protection of personal data.

- If the UK hopes to achieve a decision of adequacy from the EU Commission, to permit the transfer of personal data to the UK from the EU, following the UK's departure from the UK.

Privacy International's concerns with the Bill are set out in detail in our briefing for the Commons available here: https://privacyinternational.org/report/1703/submission-data-protection-bill-public-bill-committee

The amendments focus on the following issues:

1. Delegated powers

The Bill has many regulation making powers, and, despite some minor improvements during its House of Lords Passage, still grants an unacceptable amount of power to the Secretary of State to introduce secondary legislation, bypassing effective parliamentary scrutiny. We recommend that the Bill is amended to limit such broad powers. Amendments are needed to Clauses 10, 16, 35, 86, 113 and 179 to address these concerns.

2. **Representation of data subjects (Collective Redress)**

The Bill does not provide for qualified non-profit organisations to pursue data protection infringements of their own accord, as provided by EU General Data Protection Regulation (GDPR) in its article 80(2). We do not consider the small concession in the form of a proposed review in 30 months' time as sufficient and strongly recommend that the Bill is amended to include this provision to ensure data breaches, dangerous security flaws and unlawful conduct are remedied in an effective and efficient manner. Amendments are needed to Clause 180 to address these concerns.

3. Exemptions/ conditions for processing open to abuse

We have specific concerns regarding some of the wide-ranging conditions for processing and exemptions to the obligations and rights in the Bill/ GDPR, in

particular in relation to immigration, political parties and the intelligence services. We recommend that these be narrowed or removed. Amendments are needed to Paragraph 22 of Schedule 1, Paragraph 4 of Schedule 2, and relevant paragraphs in Schedules 9 and 11 as they refer to Part 4 to address these concerns

4. Automated decision-making

Automated decision-making without human intervention should be subject to very strict limitations to address issues of fairness, transparency, accountability and discrimination. The Bill provides insufficient safeguards. We recommend the Bill to be amended to include further concrete safeguards. Amendments are needed to clause 14 (Part 2, general processing); clauses 49, 50 (Part 3, law enforcement); and clauses 96, 97 (Part 4, intelligence services) to address these concerns.

5. National Security Certificates

There have been modest improvements addressing the lack of transparency however, Privacy International maintains strong concerns about the broad and indefinite nature of national security exemptions; whether they are necessary and proportionate; whether oversight for issuing of a national security certificate is sufficient; and whether the right of appeal such certificates provides an effective judicial remedy. We want concrete safeguards to be included in the Bill. Amendments are needed to clauses 26, 27, 28 (Part 2, general processing), clause 79 (Part 3, law enforcement) and clauses 110, 111 (Part 4, intelligence services) to address these concerns.

6. Intelligence agencies - cross border transfers

The Bill provides for almost unfettered powers for cross-border transfers of personal data by intelligence agencies without appropriate levels of protection; this is an infringement of the requirements of Council of Europe's modernised Convention 108. We recommend that rules for such transfers are brought into line with those required in the Bill for law enforcement purposes. Amendments are needed to clause 109 to address these concerns.

Amendments proposed by PI in order of appearance in the Bill

References are to the Data Protection Bill [HL] (as amended in the Public Bill Committee) (available at: https://publications.parliament.uk/pa/bills/cbill/2017-2019/0190/18190.pdf)

PART 2 - GENERAL PROCESSING

Clause 8: Lawfulness of processing: public interest etc. – limit condition

Page 5, line 39, remove "includes" and insert "refers to"

Clause 10: Special categories – remove delegated power

Amendments

Page 6, line 37, leave out sub-section (6)

Page 7, line 1, leave out subsection (7) *(consequential to the amendment above)*

Rationale

These amendments would remove from the Bill excessively broad delegations of law-making power to the Secretary of State.

Briefing https://privacyinternational.org/report/1703/submission-data-protection-bill-public-bill-committee

See page 7

Schedule 1: Paragraph 22 - remove condition for political parties

Amendment

Page 130, line 43, remove paragraph 22

Rationale

This condition for processing is unjustified and open to abuse by political parties in the digital age given the scope of granular profiling and micro targeting.

Briefing https://privacyinternational.org/report/1703/submission-data-protection-bill-public-bill-committee

See page 10

Clause 14: Automated decision-making authorised by law: safeguards

Ensure automated decision-making does not apply to a decision affecting an individual's human rights

Amendment

Clause 14, page 8, line 11, at end insert –

"(2A) A decision that engages an individual's rights under the Human Rights Act 1998 does not fall within Article 22(2)(b) of the GDPR (exception from prohibition on taking significant decisions based solely on automated processing for decisions that are authorised by law and subject to safeguards for the data subject's rights, freedoms and legitimate interests)."

Rationale

This amendments would clarify that the exemption from prohibition on taking significant decisions based solely on automated processing does not include decisions that engage an individual's human rights.

Clarify the meaning of decision "based solely on automated processing"

Amendment

Page 8, line 11 , at end insert:

"() A decision is 'based solely on automated processing' for the purposes of this section if, in relation to a data subject, there is no meaningful input by a natural person in the decision-making process."

Rationale

This amendment would make clear that a decision with fabricated human involvement would also be subject to the restrictions/ safeguards set out in the GDPR and the rest of the Bill.

Strengthen safeguards regarding automated decision-making authorised by law

Amendment:

Page 8, line 22 at end, after "and" insert:

"provide meaningful information about the logic involved, an explanation of the decision reached, as well as the significance and legal consequences of such processing; and"

Rationale

This amendment would ensure a meaningful right to explanation of the decision reached by automated processing authorised by law.

Ensure full right to challenge and redress regarding automated decision-making authorised by law

Amendment

Page 8, line 35, after paragraph (5), insert:

"() Data subject affected by a qualifying significant decision under this section retains the right to lodge a complaint to the Commissioner under Section 156 and to seek compliance order by a court under Section 158."

Rationale

It is essential that data subjects have the right to challenge such a decision, as highlighted in recital 71 of GDPR.

Briefing https://privacyinternational.org/report/1703/submission-data-protection-bill-public-bill-committee

See pages 14-15

Clause 16: Power to make further exemptions etc. by regulations

Remove wide ranging regulation making power

Amendment

Page 9, line 37, leave out clause 16

Rationale

This amendment would remove from the Bill excessively broad delegations of law-making power to the Secretary of State.

Briefing https://privacyinternational.org/report/1703/submission-data-protection-bill-public-bill-committee

See page 7

Schedule 2: Paragraph 4 - Remove immigration exemption

Amendment

Page 141, line 18, leave out paragraph 4

Rationale

This amendment removes an unjustified and discriminatory exemption to data subjects' rights where personal data is being processed for the maintenance of effective immigration control, or the investigation or detection of activities that would undermine it.

Briefing https://privacyinternational.org/report/1703/submission-data-protection-bill-public-bill-committee

See page 11

Clause 26: national security and defence exemption

Amendments

Page 16, line 40, delete "(b) defence purposes."

Page 17, line 3, insert after the words "GDPR (rights of data subjects)" the words 'where the processing of the personal data is necessary for the purpose of safeguarding national security and to the extent that the application of those provisions would be likely to prejudice national security.'

Page 16, delete lines 42 to page 17 line 2 45

Page 17, delete lines 5 to 6

Page 17, delete lines –9 to 10

Page 17, delete lines 11 to 33

Rationale

Defence purposes is new and undefined and there is absolutely no justification for there to be such an extensive list of exemptions; this amendment would ensure that defence purposes is removed and the exemption is limited to what is necessary and would not cause harm.

Briefing https://privacyinternational.org/report/1703/submission-data-protection-bill-public-bill-committee

See pages 17-22

Clause 27: National security: certificate

Amendments

Page 17, line 34, delete "Subject to subsection (3), a certificate signed by"

Page 17, line 34, insert after "a Minister of the Crown" the words "must apply to a Judicial Commissioner for a certificate, if exemptions are sought"

Page 17, line 35, delete "certifying that exemption"

Page 17, line 35, insert after "from" the word "specified"

Page 17, line 35, delete the words “all or any of the”

Page 17, line 35 - 36 delete the words “listed in section 26(2) is, or at any time was, required”

Page 17, line 37, delete the words “conclusive evidence of that fact”

Page 17, line 37, insert new subsections:

() The decision to issue the certificate must be:
(a) approved by a Judicial Commissioner,
(b) Laid before Parliament,
(c) published and publicly accessible on the Information Commissioner’s Office website.

() In deciding whether to approve an application under subsection (1), a Judicial Commissioner must review the Minister’s conclusions as to the following matters:

(a) Whether the certificate is necessary on relevant grounds, and
(b) Whether the conduct that would be authorised by the certificate is proportionate to what it sought to be achieved by that conduct, and
(c) Whether it is necessary and proportionate to exempt all provisions specified in the certificate.

Page 17, line 38, insert before “A certificate” the words “An application for”

Page 17, line 39, delete the word “may”

Page 17, line 39, insert before the word “identify”, the word “Must”

Page 17, line 39, delete the word “general”

Page 17, line 39, insert after the words “means of a” the word “detailed”

Page 17, line 42, insert after the words “Any person” the words “who believes they are”

Page 17, line 42, insert after the word “directly” the words “or are indirectly”

Page 17, line 43, insert after the words “against the certificate” the word “, and”

Page 17, lines 44 - 45, delete the words “applying the principles applied by a court on an application for judicial review”

Page 17, line 45, insert after the words “judicial review” the words “it was not necessary or proportionate to issue”

Page 17, lines 45 – 46, delete the words "the Minister did not have reasonable grounds for issuing"

Page 17, line 42, delete the subsection (2(b)) which states "may be expressed as having prospective effect."

Page 17, line 42, replace 27(2)(b) and insert new subsections in clause 27(2) which states:

...
(c) Must specify each provision of this Act which it seeks to exempt, and
(d) Must provide a justification for both (a) and (b).

...

Page 17, after line 42, insert new subsections which state:

() Where a Judicial Commissioner refuses to approve a Minister's application for a certificate under this Chapter, the Judicial Commissioner must give the Minister of the Crown reasons in writing for the refusal.
() Where a Judicial Commissioner refuses to approve a Minister's application for a certificate under this Chapter, the Minister may apply to the Information Commissioner for a review of the decision.
() It is not permissible for exemptions to be specified in relation to:
(i) Chapter II of the applied GDPR (principles) –

a. Article 5 (lawful, fair and transparent processing)
b. Article 6 (lawfulness of processing)
c. Article 9 (processing of special categories of personal data)

(ii) Chapter IV of the applied GDPR –

a. GDPR Articles 24 – 32 inclusive;
b. GDPR Articles 35 – 43 inclusive;

(iii) Chapter VIII of the applied GDPR (remedies, liabilities and penalties)

a. GDPR Article 83 (general conditions for imposing administrative fines);
b. GDPR Article 84 (penalties);

(iv) Part 5 and Part 6 of this Act.
(v) Part 7 of this Act, sections 180 - 182 (representation of data subjects)

Page 18, line 16, delete the words 'unless the contrary is proved.'

Page 17, line 16, insert after the words 'deemed to be such a certificate' the words 'only if it has been approved by a Judicial Commissioner'.

Rationale

These amendments ensure more transparency over, lawfulness and accountability for the procedure of issuing of national security certificates

Briefing https://privacyinternational.org/report/1703/submission-data-protection-bill-public-bill-committee

See page 17 - 22

Clause 28 - National Security and defence

Amendment

page 18, line 25, delete the words 'and defence'
page 18, line 30 - 31, delete the words 'or for defence purposes'
page 18 line 34 to page 19 line 8, delete subsections (2) (3) (4).

Rationale

As for clause 26

Briefing https://privacyinternational.org/report/1703/submission-data-protection-bill-public-bill-committee

See page 17 - 22

PART 3 - LAW ENFORCEMENT PROCESSING

Clause 35(6) & (7): Regulation making power re conditions for processing

Amendment

Restrict the scope of delegated powers to add, vary or omit conditions for processing.

Page 22, line 14, leave out subsection (6)

Page 21, line 17, leave out subsection (7) (*consequential to the amendment above)*

Rationale

This amendment would remove from the Bill excessively broad delegations of law-making power to the Secretary of State.

Briefing https://privacyinternational.org/report/1703/submission-data-protection-bill-public-bill-committee

See page 7

Clause 49: Right not to be subject to automated decision-making

Clarify the meaning of decision "based solely on automated processing"

Amendment

Page 30, line 19, add the following: "A decision is 'based solely on automated processing' for the purposes of this section if, in relation to a data subject, there is no meaningful input by a natural person in the decision-making process."

Rationale

This amendment would make clear that a decision with fabricated human involvement would also be subject to the restrictions/ safeguards set out in this Part of the Bill.

Ensure automated decision-making does not apply to a decision affecting an individual's human rights

Amendments

Page 30, line 19, after "by law" add the following: ", subject to subsection ()"

Page 30, line 19, add new sub clause:

"() A controller may not take a significant decision based solely on automated processing if that decision affects the rights of the data subject under the Human Rights Act 1998"

Rationale

This amendment clarifies that automated individual decision-making must not apply to decisions that affect individual's human rights. This is fundamental to ensure the Bill addresses the current (and planned) reliance of police forces on profiling and tracking technologies.

New Clause - Strengthen safeguards regarding automated individual decision-making

Amendment

Page 31, line 12, after Clause 50 insert the following new clause:

"() Right to information about decision-making

Where—

the controller processes personal data relating to a data subject, and results produced by the processing are applied to the data subject,

the data subject is entitled to obtain from the controller, on request, knowledge of the reasoning underlying the processing.
(2) Where the data subject makes a request under subsection (1), the controller must comply with the request without undue delay."

Rationale

The proposed new clause replicates clause 96 of Part IV of the Bill related to processing by intelligence agencies. This clause in turn incorporates Council of Europe Convention 108 and ensures an obligation to provide information about the logic involved in the automated decision, provided for in the GDPR.

Briefing https://privacyinternational.org/report/1703/submission-data-protection-bill-public-bill-committee

See pages 14-15

Clause 79: National security certificates: certificates by the Minister

Amendments

Page 46, line 36, insert after "A Minister of the Crown" the words "must apply to a Judicial Commissioner for a certificate".

Page 46, line 36, delete the words "may issue a certificate certifying"

Page 46, line 37 insert "(d)" after 44(4), after (45(4), after 48(3) and after 68(7) so it reads 44(4)(d), 45(4)(d), 48(3)(d) or 68(7)(d),

Page 46, line 37, insert after "or 68(7)" the words "if he or she believes".

Page 46, line 38, insert new clause after 79(1) which reads:

() The decision to issue the certificate must be:
(a)Approved by a Judicial Commissioner,
(b)Laid before Parliament,
(c) Published and publicly accessible on the Cabinet Office website.

Page 46, line 39 insert before the words "The certificate may" the words "An application for a"

Page 46, line 39, before the word "certificate" delete the word "The"

Page 46, line 39, after the word "certificate" delete the word "may"

Page 46, line 39, after the word "certificate" insert the word "must"

Page 46, line 40, delete the words "relate to a" and "which"

Page 47, line 40 insert before the word "relate" the words "a. Identify which"

Page 46, line 41, delete the words “has” and “imposed”

Page 46, line 41, after the words “a controller has” insert the words “seeks to”

Page 46, line 41 - 42, add in sub-subsection (d) to all references clauses to read: 44(4)(d), 45(4)(d), 48(3)(d), 68(7)(d).

Page 46, line 42, delete the word “or” and insert the word “and”

Page 47, line 1 - 2, delete the entire sub-clause which reads “(b) identify any restriction to which it relates by means of a general description.”

Page 46, line 2, insert new clauses as sub-clauses to clause 79(2):
(c) Identify the personal data to which it applied by means of a detailed description, and
(d) provide a justification for both (a) and (c).

Page 47, line 2, after clause 79(2) insert new clause: which reads:

() A certificate is valid for 6 months.In deciding whether to approve an application under subsection (1), a Judicial Commissioner must review the Ministers’ conclusions as to the following matters:

(a) Whether the certificate is necessary on relevant grounds, and
(b) Whether the conduct that would be authorized by the certificate is proportionate to what is sought to be achieved by that conduct, and
(c) Whether it is necessary and proportionate to exempt all provisions specified in the certificate.

Page 47, lines 3 to 6, delete entire clause 79(3)

Page 47, lines 7 to 8, delete entire clause 79(4)

Page 47, line 9, insert new clauses before 79(5) which read:

() Where a Judicial Commissioner refuses to approve a Minister’s application for a certificate under this section, the Judicial Commissioner must give the Minister of the Crown reasons in writing for the refusal.

()Where a Judicial Commissioner refuses to approve a Minister’s application for a certificate under this Chapter, the Judicial Commissioner must give the Minister of the Crown reasons in writing for the refusal.

Page 47, line 9, insert after the words “Any person” the words “who believes they are”

Page 47, line 9, insert after the word “directly” the words “or are indirectly”

Page 47, line 10, before the word “may” insert “(a)” and after the word “certificate” insert the word “, and”

Page 47, line 10 after the words “against the certificate” insert “(b) rely upon section 183 of this Act.”

Page 47, line 12, after the words “judicial review” insert the words “it was not necessary or proportionate to issue”

Page 47, lines 16 to 33, delete in their entirety, clauses (7), (8), (9), (10) and (11).

Page 47, lines –38 to 41, delete in its entirety, clause (13).

Rationale

These amendments ensure more transparency over, lawfulness and accountability for the procedure of issuing of national security certificates. See also Clause 27

Briefing https://privacyinternational.org/report/1703/submission-data-protection-bill-public-bill-committee

See pages 17 - 22

PART 4 - INTELLIGENCE SERVICES PROCESSING

Clause 86: The first data protection principle

Restrict the scope of delegated powers to add, vary or omit conditions for processing

Amendment

Page 51, line 21:Leave out subsection (3)

Page 51, line 24: Leave our subsection(4) *(consequential to the amendment above)*

Rationale

This amendment would remove from the Bill excessively broad delegations of law-making power to the Secretary of State.

Briefing https://privacyinternational.org/report/1703/submission-data-protection-bill-public-bill-committee

See page 8

Schedule 9: Conditions for processing under Part 4

Remove the condition that allows processing for the exercise of any other functions of a public nature exercised in the public interest by a person

Amendment

Page 193, line 3
Leave out subsection 5(e).

Rationale

*Re*moves and overly wide condition for processing

Remove the condition that allows processing necessary for the purposes of legitimate interests pursued by the controller or third party/ parties to whom the data is disclosed.

Amendment

Page 193, line 5
Leave out subsection 6

Rationale

Removes processing of personal data when it is in the legitimate interest of intelligence services; intelligence services should be required to comply with the same standards as other public bodies.

Briefing https://privacyinternational.org/report/1703/submission-data-protection-bill-public-bill-committee

See page 12-13

Clause 96: Right not to be subject to automated decision-making

Ensure automated-decision making does not apply to decisions affecting individual's human rights

Amendment

Page 56, line 38, add after "law": "unless the decision affects an individual's rights under the Human Rights Act 1998"

Rationale

This amendment aims to clarify that automated individual decision-making must not apply to decisions that affect individuals' human rights.

Briefing https://privacyinternational.org/report/1703/submission-data-protection-bill-public-bill-committee

See pages 14-15

Clarify the meaning of decision "based solely on automated processing"

Amendment

Page 56, line 36, add the following: "() A decision is 'based solely on automated processing for the purposes of this section if, in relation to a data subject, there is no meaningful input by a natural person in the decision-making process."

Rationale

This amendment would make clear that a decision with fabricated human involvement would also be subject to the restrictions/ safeguards set out in this Part of the Bill.

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See pages 14-15

Clause 109: Transfers of data outside the UK

Additional safeguards

Amendments

Page 62, line 1, after "the transfer is" add "is provided by law and is".

Page 62, line 6, add new sub-clauses 109(3), (4), (5) and new section ():

(3) The transfer falls within this subsection if the transfer–
- (a) is based on an adequacy decision (see section 74)
- (b) if not based on an adequacy decision, is based on there being appropriate safeguards (see section 75), or
- (c) if not based on an adequacy decision or on there being appropriate safeguards, is based on special circumstances (see section 76 as amended by subsection (5)).

(4) A transfer falls within this subsection if
- (a) The intended recipient is a person based in a third country that has (in that country) functions comparable to those of the controller or an international organisation, or
- (b)The transfer meets the following conditions

  (i) The transfer is strictly necessary in a specific case for the performance of a task of the transferring controller as provided by law or for the purposes set out in subsection (2).

  (ii) The transferring controller has determined that there are no fundamental rights and freedoms of the data subject concerned that override the public interest necessitating the transfer

  (iii) The transferring controller considers that the transfer of the personal data under subsection (4)(a) would be ineffective or inappropriate (for

example, where the transfer could not be made in sufficient time to enable its purpose to be fulfilled).
(iv) The transferring controller informs the intended recipient of the specific purpose or purposes for which the personal data may, so far as necessary, be processed.
(v) The transferring controller informs a controller under subsection (4)(a) of the transfer in that third country without undue delay of the transfer, unless this would be ineffective or inappropriate
(vi) The transferring controller documents any transfer and informs the Commissioner about the transfer on request.

(5) The reference to law enforcement purposes in subsection (4) of Section 76 are to be read as the purposes set out in subsection (2).

() Subsequent transfers

(1) Where personal data is transferred in accordance with section 109, the transferring controller must make it a condition of the transfer that the data is not to be further transferred to a third country or international organisation without the authorisation of the transferring controller.

(2) A transferring controller may give an authorisation under subsection (1) only where the further transfer is necessary for the purposes in subsection (2).

(3) In deciding whether to give the authorisation, the transferring controller must take into account (among any other relevant factors) –
(a) the seriousness of the circumstances leading to the request for authorisation,
(b) the purpose for which the personal data was originally transferred, and
(c) the standards for the protection of personal data that apply in the third country or international organisation to which the personal data would be transferred.

Rationale

The amendment ensures provision of meaningful safeguards and an appropriate level of protection as provided by Convention 108 when data is transferred outside of the UK by intelligence agencies

Briefing https://privacyinternational.org/report/1703/submission-data-protection-bill-public-bill-committee

See pages 21

Clause 110: National Security

Restricting the scope of the national security exemption

Amendments

Page 62, line 16, after the words "(rights of data subjects)" add the words "except section 96(1)".

Page 62, line –17 - 28, delete all clauses 110(2)(c) to (e).

Page 62, line 17 insert a new sub-clause (3) which reads:

In Chapter 4, section 108 (communication of personal data breach), the Commissioner for the purposes of the Intelligence Services processing is the Investigatory Powers Commissioner.

In Part 5, inspection in accordance with international obligations, the Commissioner for the purposes of the Intelligence Services processing is the Investigatory Powers Commissioner.

In Schedule 13, other general functions of the Commissioner, paragraphs 1(a) and (g) and 2, the Commissioner for the purposes of the Intelligence Services processing is the Investigatory Powers Commissioner.

In Part 6, Enforcement, the Commissioner for the purpose of the Intelligence Services processing is the Investigatory Powers Commissioner.

Clause 111: National security: certificate

Making national security certificates more transparent and accountable

Page 62, line 30, delete 'Subject to sub-section (3) a certificate signed by a"

Page 62, line 30, insert after the words "certificate signed by" the word "A"

Page 62, line 31, before the word "certifying" insert the words "must apply to a judicial commissioner for a certificate, if exemptions are sought"

Page 62, line 31, delete the words "certifying that exemption"

Page 62, line 31 after the word "from" insert the word "specified"

Page 62, line 31, delete the words "all or any of the"

Page 62, line 32, delete the words "is, or at any time was required"

Page 62, line 33, delete the words "is conclusive evidence of that fact".

Page 62, line 34, after clause (1) insert new clauses:

() A certificate is valid for 6 months.

() The decision to issue the certificate must be:
(a) approved by a Judicial Commissioner,
(b) laid before Parliament,

(c) published and publicly accessible on the Cabinet Office website.

() In deciding whether to approve an application under subsection (1), a Judicial Commissioner must review the Minister's conclusions as to the following matters:

(a) Whether the certificate is necessary on relevant grounds, and

(b) Whether the conduct that would be authorised by the certificate is proportionate to what it sought to be achieved by that conduct, and

(c) Whether it is necessary and proportionate to exempt all provisions specified in the certificate.

Page 62, line 35, insert before the word "certificate" the words "An application for a"

Page 62, line 35, delete the words "under subsection (1)

Page 62, line 36 delete the word "may"

Page 62, line 36, insert at the start of the subsection the word "Must"

Page 62, line 36, delete the word "general"

Page 62, line 37, before the word "description" insert the word "detailed"

Page 62, line 38, delete the subsection which reads "(b) may be expressed as having prospective effect".

Page 62, line 38, insert new clauses:

(2) …

(c) Must specify each provision of section 110(2) which it seeks to exempt, and

(d) Must provide a justification for seeking to exempt the personal data to which it applied and the provisions it seeks to exempt.

() Where a Judicial Commissioner refuses to approve a Minister's application for a certificate under this Chapter, the Judicial Commissioner must give the Minister of the Crown reasons in writing for the refusal.

() Where a Judicial Commissioner refuses to approve a Minister's application for a certificate under this Chapter, the Minister may apply to the Information Commissioner for a review of the decision.

Page 62, line 39, insert after the words "Any person" the words "who believes they are" and after the words "directly" insert the words "or are indirectly".

Page 62, line –41 - 42 delete the words "applying the principles applied by a court on an application for judicial review" and insert the words "it was not necessary or proportionate to issue"

Page 62, lines –42 - 43 delete the words "the Minister did not have reasonable grounds for issuing"

Page 63, lines 3 - 14 delete clauses (5), (6), (7) and (8).

Rationale

These amendments ensure more transparency over, and accountability for, the procedure of issuing of national security certificates.

Briefing https://privacyinternational.org/report/1703/submission-data-protection-bill-public-bill-committee

See page 17 - 22

Clause 112 - Other exemptions

Schedule 11: Exemptions under Part 4

Restrict the conditions for processing under Part 4

Amendments

Page 195, line 26, leave out sub - paragraph 1(a)

Page 195, line 29, leave out sub-paragraph (c)

Page 197 and 198,

Leave out paragraphs 10 (Negotiations), 12 (Exam scripts and marks), 13 (Research and statistics), 14 (Archiving in the public interest).

Rationale

These amendments would restrict the sweeping exemptions for the Intelligence Services provided in Schedule 11, first by restricting the extent of the listed provisions and second by deleting exemptions that are have no justification in the context of data processing by the intelligence services and have been copied wholesafe from the Data Protection Act 1998.

Briefing https://privacyinternational.org/report/1703/submission-data-protection-bill-public-bill-committee

See page 12-13

PART 7 - SUPPLEMENTARY AND FINAL PROVISION

Clause 180 - 182: Representation of data subjects

Adding rights from Article 80(2) of GDPR

Amendments

Clause 180

Page 105, line 7, from the title of clause 180 remove “with their authority”

Page 105, line 16, at end insert—

“( )
In relation to the processing of personal data to which the GDPR applies, Article 80(2) of the GDPR (representation of data subjects) permits and this Act provides that a body or other organisation which meets the conditions set out in that Article has the right to lodge a complaint, or exercise the rights, independently of a data subject’s mandate, under—
(a) Article 77(right to lodge a complaint with a supervisory body);
(b) Article 78 (right to an effective judicial remedy against a supervisory authority); and
(c) Article 79 (right to an effective judicial remedy against a controller or processor), of the GDPR if it considers that the rights of a data subject under the GDPR have been infringed as a result of the processing.”

Page 105, line 27, at end insert –

"() The rights in subsection (2)(a) - (d) may also be exercised by a body or other organisation that meets conditions in subsections (3) and (4) independently of a data subject’s authorisation.”

Clause 182 (Consequential to the above amendments)

Page 106, line 19, remove clause 182.

Rationale

Enables implementation of Article 80.2 of GDPR to be included in the Bill, and ensures provisions for better empowerment of citizens’ data protection rights and more effective enforcement. The current Bill, in clause 182, includes provision for reviewing the implementation of Article 80(2) of GDPR two and a half years after the provisions of section 180 coming into force. This should happen immediately, through amendment to clause 180 and therefore a review should not be necessary.

Briefing https://privacyinternational.org/report/1703/submission-data-protection-bill-public-bill-committee

See pages 8-9