

Automated Processing, and the Framework on Data Processing by Government

Given the exceptional time constraints committee stage has been given, we are overly brief.

Amendments

- Amendment 1 probes a requirement that Government processes data for purposes outlined by Parliament.
- Amendments 2 and 3 make the 'Framework' on data processing by Government into a Code of Practice.
- Amendment 4 resolves the problem of ownership of the Framework/Code by having it be a professional ICO code, not a political Ministerial code.
- Amendment 5 points out a likely drafting error in the Bill.

In practice, 2, 3, and 4 are grouped as one amendment, since either a Code or ICO authorship would suffice, and address both our concerns, and those from the Commissioner.

Background

The framework for data processing by Government will govern how medical records and other sensitive data are processed. Data Processing is how Government makes decisions - the debate around Schedule 2 paragraph 4 shows how that goes wrong.

There does not have to be any suggestion of malintent. The rule of law is silent on intent - it is entirely about process. This Bill is all about process, and in parts, undermining that process, and thereby undermining public trust in institutions (and in some cases, Government backbenchers argue, democracy itself).

Durham police have run trials for AI informed custodial decisions¹ which showed bias around poorer areas,² and in Sunderland data is handed to Palantir to process and detect patterns, including on 'anti-social behaviour', for the purpose of 'strengthening families'.³

As such, the rules covering the frameworks for processing must be apolitical and independent - as the GDPR mandates.

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¹ <http://www.bbc.co.uk/news/technology-39857645>

² <http://www.wired.co.uk/article/police-ai-uk-durham-hart-checkpoint-algorithm-edit>

³ <https://www.computerworlduk.com/data/sunderland-council-builds-big-data-intelligence-hub-with-palantir-3572330/>

medConfidential Amendments:

1) In clause 8, remove “includes” and insert in place “is”

Explanation: the purposes of Government data processing is determined by Parliament.

2) In c185(1), delete ‘a document’, and insert in place ‘a Code of Practice’,

3) In c185(5), after ‘consult’, insert ‘treating the document as a Code of Practice, including with’

Explanations: require this document to be a Code of Practice, requiring consultation and normal processes.

4) In 185(1), 185(4), 185(5), and 187(1), 187(2), 187(3), and 187(4),

delete ‘the Secretary of State, and insert in place ‘the Commissioner’

Explanation: places the Bill under the authorship of the ICO, not Ministers.

Additional likely drafting error:

5) In Clause 172(2)(b), delete “a person” and insert in place “any data subject”

Explanation: this looks like a drafting error, as while intended to apply to data subjects, “a person” may be an organisation who was involved in performing the “de-identifying” which then might be able argue that re-identification was intended to cause them significant financial loss (i.e. damage) with implications for liability.

We also fully support the removal of paragraph 4 from schedule 2.

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