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HOUSE OF COMMONS
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GENERAL COMMITTEES

Public Bill Committee

DATA PROTECTION BILL [LORDS]

Sixth Sitting

Tuesday 20 March 2018

(Afternoon)

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Saturday 24 March 2018

The Committee consisted of the following Members:

Chairs: David Hanson, †Mr Gary Streeter

† Adams, Nigel *(Lord Commissioner of Her Majesty's Treasury)*
† Atkins, Victoria *(Parliamentary Under-Secretary of State for the Home Department)*
† Byrne, Liam *(Birmingham, Hodge Hill)* (Lab)
† Clark, Colin *(Gordon)* (Con)
† Elmore, Chris *(Ogmore)* (Lab)
† Haigh, Louise *(Sheffield, Heeley)* (Lab)
† Heaton-Jones, Peter *(North Devon)* (Con)
† Huddleston, Nigel *(Mid Worcestershire)* (Con)
† Jack, Mr Alister *(Dumfries and Galloway)* (Con)
† James, Margot *(Minister of State, Department for Digital, Culture, Media and Sport)*
† Jones, Darren *(Bristol North West)* (Lab)
† Lopez, Julia *(Hornchurch and Upminster)* (Con)
† McDonald, Stuart C. *(Cumbernauld, Kilsyth and Kirkintilloch East)* (SNP)
† Murray, Ian *(Edinburgh South)* (Lab)
† O'Hara, Brendan *(Argyll and Bute)* (SNP)
† Snell, Gareth *(Stoke-on-Trent Central)* (Lab/Co-op)
† Warman, Matt *(Boston and Skegness)* (Con)
† Wood, Mike *(Dudley South)* (Con)
† Zeichner, Daniel *(Cambridge)* (Lab)

Kenneth Fox, *Committee Clerk*

† **attended the Committee**

Public Bill Committee

Tuesday 20 March 2018

(Afternoon)

[Mr Gary Streeter *in the Chair*]

Data Protection Bill [*Lords*]

2 pm

Liam Byrne (Birmingham, Hodge Hill) (Lab): On a point of order, Mr Streeter. The Minister suggested this morning that the Secretary of State for Digital, Culture, Media and Sport had not committed to the House yesterday to introduce powers to strengthen the Information Commissioner. However, on checking *Hansard* over lunch, I noticed that the Secretary of State said that where there is non-compliance with an audit,

"there is a very serious fine, but the question is whether the criminal penalties that can be imposed in some cases should be further strengthened. That detail is rightly being looked at in the discussions on the Data Protection Bill."—[*Official Report*, 19 March 2018; Vol. 638, c. 51.]

Most of us would assume that "further strengthened" meant that further powers would be suggested, but the Minister seemed to say this morning that that would not be the case. Could she clarify whether such amendments will be tabled?

The Chair: It is up to the Minister to decide whether she wishes to respond to that point of order.

The Minister of State, Department for Digital, Culture, Media and Sport (Margot James): I hesitated, Mr Streeter, because I am not quite sure that I can clarify the matter. I cannot answer the right hon. Gentleman's question. I reiterate that in answer to the important question about strengthening the Information Commissioner's powers, my right hon. Friend the Secretary of State said yesterday:

"We are considering those new proposals, and I have no doubt that the House will consider that as the Bill passes through the House."—[*Official Report*, 19 March 2018; Vol. 638, c. 49.]

In the context of the commissioner's request for additional powers, he said:

"We are therefore considering the Information Commissioner's request."—[*Official Report*, 19 March 2018; Vol. 638, c. 52.]

The right hon. Gentleman's point was recently made by the commissioner, so it is a point worth listening to. I can confirm that we are listening and reviewing, but beyond that, I cannot go.

The Chair: As the Speaker himself might say, the right hon. Gentleman has been here a long time and will no doubt find other ways to pursue the matter. I am grateful for the point of order.

Clause 132 ordered to stand part of the Bill.

Clauses 133 to 139 ordered to stand part of the Bill.

Clause 140

Publication by the Commissioner

Question proposed, That the clause stand part of the Bill.

Margot James: I was not planning to speak to this clause, but as it is relevant I will use the opportunity to give the right hon. Member for Birmingham, Hodge Hill further information. He asked about the code of conduct where the commissioner has a responsibility to publish the document about child-friendly regulation of websites. Clause 140 provides that the document can be published in a way the commissioner considers appropriate. Under clause 126, the Bill contains a duty to publish various codes of practice, including the age-appropriate design code. The Bill requires the commissioner to publish the age-appropriate design code within 18 months of Royal Assent, but as the matter is important and urgent, we will endeavour to do so sooner.

Question put and agreed to.

Clause 140 accordingly ordered to stand part of the Bill.

Clause 141 ordered to stand part of the Bill.

Clause 142

Inquiry into issues arising from data protection breaches committed by or on behalf of news publishers

Brendan O'Hara (Argyll and Bute) (SNP): I beg to move amendment 137, in clause 142, page 77, line 34, at end insert—

"(3) The Secretary of State must consult the Scottish Government and obtain its consent before establishing an inquiry under subsection (1)."

This amendment would ensure that before any inquiry was established, the UK Government must have consent from Scottish Government.

The Chair: With this it will be convenient to discuss the following:

Clause stand part.

Clauses 168 and 169 stand part.

Government amendment 72.

Amendment 138, in clause 207, page 121, line 12, after "subsections" insert "(1A),".

This amendment is a paving amendment for amendment 139.

Amendment 139, in clause 207, page 121, line 13, at end insert—

"(1A) Sections 168 and 169 extend to England and Wales only."

This amendment would ensure that clauses 168 and 169 would only extend to England and Wales and not apply in Scotland.

Brendan O'Hara: Amendments 137, 138 and 139, which stand in my name and that of my hon. Friend the Member for Cumbernauld, Kilsyth and Kirkintilloch East, were tabled because we believe that the Bill is incompatible with the devolution settlement, trampling roughshod over areas of wholly devolved competence. Whether by accident or design, the Lords amendments

on Leveson—in particular on section 40—that seek to impose a one-size-fits-all Truro to Thurso solution are wholly inappropriate, as they fail to recognise or take cognisance of the fact that in press regulation and criminal justice, to name just two fields, it is the Scottish Parliament, not this place, that has legislative competence. The three amendments draw that distinction and defend the devolution settlement, removing any lingering doubts as to where the hitherto clear legislative boundaries, which have existed since 1998, lie.

Amendment 137 relates to any future inquiry on press standards, styled as Leveson 2. The Scottish National party has been clear throughout that all individuals should be able to seek redress when they feel they have been the victim of press malpractice, and that it benefits each and every one of us to have media that are transparent and accountable. However, we have been equally clear that if there is to be a second part of the Leveson inquiry, the distinct legal context in Scotland must be taken into account. As press regulation and criminal justice are matters for the Scottish Parliament, it is that body that must be consulted about the scale and the scope of any future inquiry and how it will operate in Scotland. As long as the Scottish Government were consulted and the distinct Scottish legal system taken into account, we would be happy to support efforts to establish a second part of a Leveson inquiry because any reasonable person would agree that the terms of reference for that part of the inquiry have not yet been met.

It is unfortunate that we have had to table the amendments. It is not unreasonable to expect the House of Lords to know that press regulation and all the associated issues of the culture, practice and ethics of the press would fall under the devolved competence. A blanket UK-wide amendment would only negatively affect areas of devolved competence. We are disappointed that the amendments were necessary in the first place, but we sincerely hope that Members in all parts of the Committee support our attempts to respect the devolution settlement.

Amendment 139 would ensure that clauses 168 and 169 would extend only to England and Wales and would not apply in Scotland. Again, this is simply a case of our having to tidy up after the Lords. I want to put on record that there is no excuse for what we regard as lazy and entirely inappropriate amendments from the other place. By accident or design, those amendments take no cognisance whatsoever of which powers are devolved and which are reserved. For the future benefit of their lordships, let me say again what I have said on numerous occasions. Although data protection may well be an area of competence reserved to this place, press regulation and criminal justice are wholly devolved to the Scottish Parliament and have been for the past 20 years. If the Bill is not amended, the power of this Parliament will be extended into areas that are solely the preserve of the Scottish Parliament. I believe that will set a very dangerous precedent.

Not only does the Bill drive a coach and horses through the devolution settlement, but I would question why the House of Lords thought it in any way appropriate to apply section 40 of the Crime and Courts Act 2013 to the whole of the United Kingdom, because there is no such piece of legislation as the Crime and Courts Act in Scotland. It simply does not exist. Furthermore, the whole concept of exemplary damages, as I understand is being proposed, is not even recognised and has no equivalent in Scots law. If the Bill were passed unamended, it would force the Scottish Government to pass a legislative consent motion—something they have said they have no intention of doing because, as I said, press regulation and criminal justice are wholly devolved to the Scottish Parliament.

It is simply unacceptable for the UK Parliament to decide what should happen in Scotland with regard to press regulation; that is a job for the Scottish Parliament. The Scottish Government have made it clear that, although they are not opposed to press regulation and are having ongoing discussions with the Scottish media about how best to implement an independent press regulation system, it is for Holyrood to decide on a course of action, not to have it decided for them by Westminster. I fully expect the Government to seek to remove clauses 168 and 169 and the Opposition to seek to restore them on Report. I hope that, when the Labour Opposition do that on Report, they will ensure that what they bring back to the Floor of the House of Commons is compatible with the devolution settlement and that the proposed new clause will exclude Scotland from the section 40 legislation.

It is not enough for the Government to say that they understand and sympathise. I urge the Minister to accept our amendments because they preserve and protect the devolution settlement, which has worked well for the past 20 years in terms of press regulation and criminal justice. I ask the Minister and in particular Conservative Members representing Scottish constituencies to respect the devolution settlement and accept that what came back from the House of Lords flies in the face of the long-established devolution settlement. I ask them to accept that it is wholly inappropriate and inconsistent with Scots law and, therefore, support our amendments.

Liam Byrne: I want to say a few words in defence of the clause and touch on the amendments the Government have proposed. The substance of the clause is an attempt to ensure that we activate the second half of the Leveson inquiry, to look into allegations of collusion between the police and members of the fourth estate.

It is worth reminding ourselves of the absolute horror with which we all looked at the revelations about News International's malpractice. The idea that individuals from national newspapers could hack phones of pretty much anybody in the country, including most notoriously the phone of poor Milly Dowler, sell that information and turn it into front-page newspaper stories, absolutely shocked us. Serious questions were asked about the way the police investigation was conducted. That is why the House united not just to begin the Leveson inquiry, but to propose a second part to look into the question of police collusion. That element was not possible at the time because of the cases that were coming to court, both civil and criminal. The solution proposed by Mr Cameron, the then Prime Minister, which I believe was supported by the present Secretary of State for Digital, Culture, Media and Sport, was that there should be a second half of the Leveson inquiry. Mr Cameron said:

"One of the things that the victims have been most concerned about is that part 2 of the investigation should go ahead—because of the concerns about that first police investigation and about

[Liam Byrne]

improper relationships between journalists and police officers. It is right that it should go ahead, and that is fully our intention."—[*Official Report*, 29 November 2012; Vol. 554, c. 458.]

2.15 pm

Imagine our surprise when the Secretary of State decided to close the Leveson inquiry, saying that the world had changed and that all criminal behaviour and conduct in the fourth estate magically and mystically came to a definitive, categorical and unequivocal end in 2010. That, however, appears not to be the case. Subsequent to the Secretary of State's declaration that the world had suddenly returned to order and honesty, we heard the revelations of John Ford, a professional blagger employed by *The Sunday Times*, who set out several detailed allegations and examples of criminal behaviour relating to sensitive information, including on members of the Cabinet and their personal bank accounts. Furthermore, he claims that the practice persists today, saying that

"I know individuals who are still engaged in these activities on behalf of newspapers."

The Secretary of State has no evidential basis for his rather complacent assertion that the practice no longer occurs.

When the Secretary of State presented his decision to the House, most hon. Members who were lucky enough to hear his statement left the Chamber feeling fairly clear that he had explained that Sir Brian Leveson supported his decision to close down Leveson 2. Imagine our surprise when it subsequently emerged that Sir Brian "fundamentally disagrees" with the Government's decision to end part 2 of the inquiry. Anyone who enjoyed the Secretary of State's evidence session last week in front of the Select Committee on Digital, Culture, Media and Sport as much as I did will have noticed the rather penetrating questions from my hon. Friend the Member for Wrexham (Ian C. Lucas), which, frankly, the Secretary of State struggled to answer.

When Sir Brian Leveson said that some of the terms of reference could be changed, he was recommending that they be expanded, not restricted, so that the inquiry could look further into how social media companies collect and use data, as well as how they are used as conduits for fake news.

It is probably worth spelling out in more detail some of the evidence that Mr Ford has offered to Parliament. Not all members of the Committee luxuriate in membership of the Digital, Culture, Media and Sport Committee, so they will not all have seen John Ford's letter of 13 March. It is worth spending some time spelling out exactly what he said, because it is pretty important evidence that touches on Government policy. He states categorically, in black and white:

"I illegally accessed phone accounts, bank accounts, credit cards, and other personal data of public figures (mainly politicians and their families). My targets included politicians of all parties. In most cases, this was done without any legitimate public interest justification. Many blags were 'fishing expeditions' which, by definition, do not satisfy the public interest defence for section 55 of the Data Protection Act 1998.

I was tasked by at least 20 journalists at the Sunday Times, most of them senior, including by very senior executives. They all knew what I was doing and that it was against the law."

Mr Ford goes on to reflect on the Secretary of State's response to the urgent question on Wednesday 7 March. The Secretary of State said that the problem with criminal blagging was definitely, unequivocally, categorically a relic of the past and had absolutely, definitely, unequivocally come to an end in 2010. Mr Ford, I am afraid to say, begs to differ.

Mr Ford says in his letter to the Select Committee:

"I am sorry to inform you that Mr Hancock is totally wrong".

He goes on to say that

"having spent 15 years in the business, it is no surprise… that I still know people in the illegal data theft industry, and specifically,"—

this is the nub of the argument—

"that I know individuals who are still engaged in these activities on behalf of newspapers."

So it would seem that there are allegations that the malpractice did not unequivocally, categorically, absolutely, definitely come to an end in 2010.

There is clear evidence before a Select Committee of the House that malpractice continues. The decision therefore to shut down once and for all an inquiry into it can best be described as turning the other way and walking on by. Others, I suspect, will come up with rather fruitier descriptions of what the Secretary of State is up to.

The public policy challenge that the Minister has to reflect on is in the allegations that Mr Ford goes on to make about the inadequacy of the police and the Information Commissioner in taking meaningful action. Mr Ford, I am afraid, is on quite strong ground when he points to a past pattern of behaviour, such as the instance of Steve Whittamore, who was a prolific blagger in the mid-2000s, which neither Operation Glade nor Operation Motorman used to take any enforcement action against newspapers that had paid Whittamore thousands of pounds for illegal blags.

A track record of evidence is, I am afraid, coming to light for action simply not being taken against police officers or newspapers. Mr Ford, regrettably, is drawn to the conclusion that, if we look at the past activities of and the court cases settled by the Trinity Mirror group and News UK, taken together, they show that the police and the Information Commissioner's Office "are not interested" in or "don't feel equipped" taking on "newspapers in individual cases".

I suggest that when we have such extraordinary malpractice, so serious that the result was the closure of one of our oldest national newspapers, and when there is cross-party consensus led not by one of us—by a humble Back Bencher—but by the Prime Minister of this country who made a solemn promise, not only to the House and to Parliament but to the victims of the crimes, that Leveson 2 would go ahead, and we cannot believe those assurances, what are we ever to believe again from the mouth of a Prime Minister? The Minister is shaking confidence in prime ministerial pronouncements and in the cleanliness and hygiene of the fourth estate. One simply has to ask, what on earth are they worried about that would surface in Leveson 2?

The Secretary of State tried to rest his arguments in the House and before the Select Committee on the idea that many of the allegations that Mr Ford made had been reviewed comprehensively in Leveson part 1, but that completely ignores the solemn promise made by the Prime Minister of this country that Leveson 2

would take place. It also ignores the crucial evidence in Mr Ford's statement that he says that he knows of illegal activity that still persists. The Minister will probably say, "Well, if that's the case, it's a crime and should be reported to the police," and so on, but what we learned during Leveson 1 is that case studies such as that tend to be tips of icebergs. The real worry is that the iceberg in this case is wholesale police and newspaper collusion that, frankly, should be weeded out.

Over the past three or four years, we have learned to our great cost of the need sometimes to delve deep into the past—into the track record of offences, whether that is Hillsborough, Orgreave or the evidence surfaced by Leveson 1—to get to the truth so that public policy and reform can be better in the years to come. I do not understand why we would not take a systemic look at the allegations of collusion between the police and the media to satisfy ourselves that the system is beyond improvement.

I want to finish with the words of Madeleine McCann's father, Gerry McCann, whose family was unfortunately libelled and intruded upon by the press following Madeleine's disappearance. When he learned that the Government are scrapping Leveson part 2, he said that

"this Government has abandoned its commitments to the victims of press abuse to satisfy the corporate interests of the large newspaper groups…This Government has lost all integrity when it comes to policy affecting the press."

I hope that, having reflected on those harsh and serious words, the Minister will conclude that we have nothing to fear, nothing to hide and everything to gain from letting Sir Brian Leveson finish the job the Prime Minister said he would be allowed to finish.

Peter Heaton-Jones (North Devon) (Con): It is a pleasure to serve under your chairmanship, Mr Streeter. I declare an interest: I was a journalist for many years—I am no longer practising—although not in the hard-copy newspaper industry. Given my background, I take a deep interest in these matters.

I have a great deal of sympathy for the reasons for the Scottish National party tabling amendments 137, 138 and 139, and I absolutely understand the need for the tidying up that needs to be done to the amendment that has come from the other place, which appears to be addled in relation to the legal situation with the Scottish Parliament's devolved powers. I fully understand why the Scottish amendments have been tabled, and I have sympathy with the view that the Lords amendment needs tidying up. However, I cannot support the SNP amendments simply because I do not want the amendment from the other place, to which they would be attached, to be part of the Bill at all. I will go through some reasons to explain why, but I want to put on the record my sympathy for the reason for them being tabled.

The hon. Member for Argyll and Bute described the amendment from the other place as "lazy" because it does not take into account the Scottish devolved powers. That is one description of it. It is also, frankly, a bit mysterious. I find it a little hard to understand why we are discussing this issue at all in relation to the Bill. That amendment and the section 40 amendment, which we will discuss later, were attached to the Bill in the other place in much the same way as one attaches decorations to a Christmas tree. They are not part of what we should be discussing, although I am grateful that we have the opportunity so to do, because that allows the Government to put their case, as I am sure Ministers will do shortly, and as my right hon. Friend the Secretary of State did in the House earlier.

As I set out in my speech on Second Reading, I believe strongly that we should reject the amendments that have come to us from the other place—in particular, the amendment relating to Leveson 2. I heard everything the right hon. Member for Birmingham, Hodge Hill said about the need for Leveson 2 and about victims needing their day in court. I am not putting words into his mouth—I do not think he used exactly that phrase, and I do not disagree—and there is indeed a difficulty in that, of course, there are still examples of reporters working for a variety of news organisations who are undertaking practices that are either immoral or illegal, or in some cases both.

2.30 pm

When I started work as a journalist in 1986, it was quite clear that that was going on, and it is quite clear to me now that that is still going on. Establishing Leveson 2 would not change that; it would not put it right; it would not solve any of those wrongs. It would not even bring the sort of justice that I am sure we all want for members of the public who have been wronged by the media.

The right hon. Gentleman made great play on the fact the former Prime Minister said that Leveson 2 will go ahead. Indeed, he did. It was before my time in the House—I am not as long serving as other Members—but the fact is that things have changed markedly since the former Prime Minister made that commitment on going ahead with Leveson 2. The landscape has changed markedly. It is absolutely right that we take account now, in 2018, of the situation that we find ourselves in. Given that Leveson 1 has happened, given what we know Leveson 1 was able to achieve and what it was not able to achieve, and given some of the reforms that have since taken place, it is absolutely right that the current Government in 2018 revisit the matter. In my view, they have reached absolutely the correct conclusion: the grounds on which Leveson was originally to go ahead no longer are justified.

Liam Byrne: Like the hon. Gentleman, I wish that the entire media operated with the editorial standards of BBC Essex and the *Swindon Advertiser*. I was struck by a remarkable statement: that he believes that the mispractice or malpractice still goes on—I have written down carefully the words that he used. I cannot, therefore, understand why the conclusion he draws from the persistence of malpractice is to look the other way and to shut down an inquiry into whether it took place and who the guilty are. I would be grateful if he can correct me on my misunderstanding.

The Chair: Order. First, let me correct a possible misunderstanding. The right hon. Member for Birmingham, Hodge Hill mentioned that clauses 168 and 169 will be debated later. In fact, we are debating them as part of this group, as I tried to make clear when I introduced amendment 137.

Peter Heaton-Jones: Thank you for that clarification, Mr Streeter.

[Peter Heaton-Jones]

There is nothing remarkable about what I said. Quite clearly, there is still malpractice going on in the journalism industry. Is the right hon. Gentleman honestly trying to say that that is a remarkable thing to say?

Liam Byrne: Yes.

Peter Heaton-Jones: It is not remarkable at all. Of course it is going on, but establishing and carrying out Leveson 2 would do nothing to solve that problem and nothing to bring justice to the members of the public who have been done wrong by that small number of journalists who are acting in that way. I do not know why the right hon. Gentleman finds that a remarkable statement to make.

As for the statement that he made on Second Reading—that the Government's position is to say, "Nothing to see here—absolutely nothing happening"—that is not what the Government are saying at all. The Government's position is clear: Leveson 2 simply would not do what I think the right hon. Gentleman and probably everyone in this room would like it to do, which is to be some sort of cleansing disinfectant that solves all the problems. It simply will not do that.

Liam Byrne: As much as I respect the hon. Gentleman's omniscience, how could he possibly know that?

Peter Heaton-Jones: It is a big gamble to spend potentially £50 million when we are not sure whether it will have the required outcome. That is the point. The Lords amendment would start the Leveson 2 process, which would cost at a very conservative estimate £50 million, potentially last for a huge amount of time and still not get to the answer that we want. There must be better solutions.

I had started to discuss the fact that the landscape has changed and that the very framework in which we work has changed markedly since the former Prime Minister made the commitment to go ahead with Leveson 2. There have been huge changes. Not only have we had the Leveson 1 inquiry, which in its own terms of reference touched on many of the issues that the proposed Leveson 2 inquiry would cover, but we have had any number of changes, improvements, and reforms in the way the police and indeed the media operate. We have had Operations Elveden, Tuleta and Weeting, which included Operation Golding, all of which have investigated a wide range of practices in the interaction between the police and members of the media and journalists. At a total cost, incidentally, of about £40 million for those operations, they have done good work and all of them have resulted in significant reform.

When I first joined the journalistic trade, way back in 1986, there was malpractice on a scale that we would not believe, and it was completely normal for journalists to pick up the phone to a friendly police contact and get whatever information they wanted to write their next report. That was absolutely normal. It is not normal now. I am sure it still happens, but it is now not the norm, which is good. That is why we do not want to turn the clock back and commit ourselves to a very long inquiry—a Leveson 2 inquiry—which would not do what we want it to do.

Where malpractice occurs in the media, where cases such as those raised by the right hon. Gentleman come to light, and where members of the public are treated in the most despicable way by journalists, I want people to be able to have the right to redress, to have their day in court, and to be able to say, "This is what has happened and it must change," but Leveson 2 would not do that. It would not provide the means by which that happened. That is why the Secretary of State for Digital, Culture, Media and Sport was absolutely right to make the decision and to say that Leveson 2 is not on the Government's agenda, and nor should it go ahead. It is perhaps worth pointing out also that this Government were elected only nine months ago on a manifesto that specifically said that Leveson 2 would not go ahead. That was a manifesto commitment.

Mr Streeter, may I just seek absolute clarification from you? From your earlier instruction, are we now also talking about section 40?

The Chair: Yes. Clauses 168 and 169. Clause 168 refers to section 40 of the Crime and Courts Act 2013.

Peter Heaton-Jones: Yes it does. May I go on to address that briefly as well at this point, if that is in order?

The Chair: I would be delighted if the hon. Gentleman did that.

Peter Heaton-Jones: Thank you very much indeed.

I do not really have much to say. To be clear, we are considering the amendment made in the other place. It seeks to enact section 40 of the Crime and Courts Act 2013, which this Government and the Secretary of State have said we will not do—indeed, they have said that we wish to repeal section 40.

It is very clear in my mind that we need to reject the amendment made in the other place. There is a very straightforward reason, which is that section 40 does one key thing: it seeks to persuade media organisations, specifically newspapers, that have not signed up to a recognised regulatory body to do so by providing a financial inducement of the most "blunt instrument" kind.

I have here a document from the House of Commons Library; for the record, I emphasise that the House of Commons Library is neutral. The document discusses why section 40 of the Crime and Courts Act 2013 was introduced. The Library says that it was intended to

"coerce or incentivise publishers to become members of a recognised regulator".

That is language that we should be worried about. The reason we should be more worried about what section 40 will do—it is pretty straightforward—is that if a member of the public brings a defamation action against a newspaper, it goes to court and the newspaper wins the case, that media organisation is still financially liable to pay the costs of both sides.

Quite simply, that will encourage a lot of entirely superfluous and vexatious legal actions to be brought by people who just have some kind of beef against the media and pockets bulging with cash that allows them to do so. When, as will inevitably happen, the media

wins the case, because it was built on sand, the media organisations concerned will be put out of business by the requirement to pay the legal costs on both sides.

Liam Byrne: The Minister is cheering on the hon. Member, but will he for complete clarity remind the Committee who proposed this architecture in the first place? From memory, it was his right hon. Friends the Members for West Dorset (Sir Oliver Letwin) and for Basingstoke (Mrs Miller).

Peter Heaton-Jones: I was not in Parliament at the time. I have only been here for two and a half years. We go back to the point that I made in relation to the previous clause. The ground has shifted. We now know what the effect will be. The other place debated this in some detail; the arguments were put extremely strongly, and by a narrow majority their lordships, as is their right, passed the amendment and asked us to consider it. It is perfectly right that they are asking us to consider it. It is perfectly right that we say: "Up with this we will not put." Section 40 will have precisely the opposite effect to what probably anyone listening would hope it to have. It will be an extraordinarily damaging measure for the future of the freedom of the press in this country. It will have the effect of preventing publication of material which is in the public interest and which is true, legitimate, and fair, because newspaper proprietors will not be able to afford the risk of going to a court case which they win but still have to pay the costs. It will be an incredible impediment to the free press in this country. For that reason more than any other we must reject the amendments that come from the other place.

The Chair: One or two colleagues have caught my eye because I was not clear enough in my introduction to this section. I invite Mr Liam Byrne to readdress the Committee in relation to these clauses.

Liam Byrne: I am grateful to you, Mr Streeter, for setting that out so clearly. I want to speak in defence of clauses 167 and 168.

I am clearly an innocent abroad in a world that is not innocent. I struggle to follow the argument made by the hon. Member for North Devon. On the one hand he was pretty insistent that malpractice continued, but then invited us to believe that somehow the world had changed comprehensively. Either the world has changed or it has not. I fear that the world has changed a bit, but not enough, so there is still a need for an effective means of offering justice to those who have been maligned by newspapers.

The architecture set up by the right honourable Members for West Dorset and for Basingstoke was complicated. We have a fine tradition of a free press, going back to the restoration. One of the reasons why the industrial and scientific revolutions flourished in this country was that we had a culture of free speech—something that Voltaire admired greatly when he spent time in London. However, the reality is that bad behaviour by the press has destroyed people's reputations without any real chance of recovery. In a world of social media, when reputations are destroyed, the smears stick to people like tar. They do not go away; they stay with people and scar them for life.

2.45 pm

That underlines the reality that there needs to be some kind of low-cost, readily accessible form of arbitration and settlement when the press, so help them, get things wrong. People make mistakes; to err is human, so we have to ensure that human institutions have a means of fixing things when mistakes are made. Many of the victims who suffer at the hands of the press may be poor people, not rich people, who do not have access to expensive lawyers who can file emergency injunctions to stop publication overnight, as we know many celebrities have.

The challenge that confronted the previous Prime Minister and the right hon. Members for West Dorset and for Basingstoke was how to ensure that we sustain a free press, which is so important to the culture of free speech in this country, and deliver justice to those who have been maligned—how to ensure that justice is accessible to them. The proposal that was constructed was fairly elegant. It sought to ensure two things: first, that there was an independent code of practice and secondly, that there a low-cost form of arbitration. As it happens, the only regulator that has come forward with those mechanisms and been recognised is IMPRESS.

IMPRESS is bedevilled by well-known problems, but the only current alternative is the Independent Press Standards Organisation. The challenge with IPSO is that it is not independent and it operates a code based on the old editors' code, which is subject to changes on a whim. Although it has just about put in place a low-cost arbitration scheme, it has never been tested in anger, so we do not know whether it will work.

Conscious of that, the previous Prime Minister decided that the best way to balance the difficult things that we needed to balance and to make progress was to accept Sir Brian Leveson's recommendation that there be some sort of fiscal incentive for people to do the right thing and create a regulator that does the business for justice for people who are maligned by the press. That is why the architecture was constructed in that way.

In 14 years, I have never heard of such a comprehensive volte-face by a Government as casting away a policy of which they were the architects. They were the architects of the policy. They worked hard to get cross-party consensus. They made promises to the victims of press injustice that the policy would be carried through. Now, the Conservative party decides to put all those promises, those policies and that delicate balance in the bin. That is unwise. The British public have some right to, not perfect consistency, but a degree of consistency from a governing party.

We have heard that the world has not changed, and we have heard that there was a history of police collusion with newspapers. I do not think that turning a blind eye is the way to remedy historic injustice or to perfect public policy for the years to come. The British public deserve a degree of consistency in the delivery of the scheme that the previous Prime Minister set out with all his customary eloquence just a couple of years ago. That is why these amendments are important. They will be retabled on Report if the Government succeed in defeating them here.

I accept the arguments made by the hon. Member for Argyll and Bute about the need to perfect the amendment, but the problem is not going away. If the hon. Member

for North Devon is right, there are many further landmines along the road. Having worked with the police over the last 14 years in my role as a constituency MP, the one thing I know about police officers is that they hate bad apples, so they are frustrated when bad apples are allowed to continue in the organisation. We should be casting those individuals out root and branch.

We should also reflect on past misdemeanours to satisfy ourselves that we have good systems, good policy and good laws in place to guard against that kind of malpractice in the future. That is how we improve the country: by reflecting on past mistakes and making corrections. Turning a blind eye never, ever works. That is why these amendments and clauses are so important.

Matt Warman (Boston and Skegness) (Con): I shall be mercifully brief. As a print journalist for 15 years, I start by saying that the entire industry was genuinely horrified to learn of the extent and the offences that had been committed by organisations that, in the main and over many centuries, worked genuinely in the public interest. We should not forget that journalists who work in the media today, and were doing so while that was going on, are in the main trying to do the kind of public service that we would all defend. We should not underestimate the horror with which the industry greeted the stories of what happened to the Dowler family and many others, be they celebrities or other victims. I hope we would agree across the House that the media in the main have fulfilled that remit. I should also say, as did my hon. Friend the Member for North Devon, that I have a great deal of sympathy with the amendments proposed by the Scottish National party. We should prize consistency above all else in this area.

The right hon. Member for Birmingham, Hodge Hill said that he was surprised to learn that the Government did not seek to proceed with the second part of the Leveson inquiry. It was in our manifesto, so his surprise is surprising. I can only conclude that he did not read the Conservative manifesto. Perhaps he read the Labour manifesto and was so horrified he could not face reading another one.

Liam Byrne: I just could not understand it.

Matt Warman: The Labour one? Quite right. We should bear in mind the two things used in favour of the position taken by the Conservative party and the Government in the manifesto. The first, as my hon. Friend the Member for North Devon said, is that the world has indisputably moved on. Even Sir Brian Leveson agrees that the world has moved on. The challenges that face our modern media are not the challenges that would have been subject to the Leveson inquiry. The more important point is that, where there are legitimate concerns about the media and how people are treated, the solution to that is effective and independent regulation, and that is what we have now more than ever.

Liam Byrne: The hon. Gentleman served on *The Daily Telegraph* long enough to know that the IPSO code today bears a striking resemblance to the old editors' code. Perhaps he could give us the benefit of his experience and tell us whether he is satisfied that the IPSO code meets the tests set out by Sir Brian Leveson and agreed in all parts of the House.

Matt Warman: I will say two things. I had a mercifully limited engagement with what was then the Press Complaints Commission, although we did have to deal with some complaints in my small bit of the paper. Although we took it seriously, it is in no way comparable with the seriousness that IPSO is now taken. That might be down to the fact that the scale of the apology that can be demanded by IPSO, and has to be given, is exponentially greater. That is a crucial deterrent when it comes to the work done by journalists in the newsroom, who sometimes regard their editors as figures of great fear as much as great role models.

The other side is that we have a crucial low-cost arbitration system that allows people who are not of the means that the right hon. Gentleman described to bring cases against the media and get the redress they deserve when people make mistakes. Those are the two crucial differences between the PCC and IPSO. The latter is a fundamentally more powerful, very different regulator, but it has the credibility and independence that IMPRESS will simply never have.

Liam Byrne: Would the hon. Gentleman give way?

Matt Warman: I thought the right hon. Gentleman might want to come in.

Liam Byrne: The hon. Gentleman was an experienced and respected journalist and has a track record on which to draw in his reflections. He did not quite answer the question whether he thought the code of conduct that IPSO regulates meets the tests set out by Sir Brian Leveson and agreed on both sides of the House. Will he reflect on whether the code of conduct is prone to changes driven through by newspaper editors? There is no guarantee that newspaper editors cannot influence that code, and its shape and bite, in the years to come.

Matt Warman: The right hon. Gentleman is right that there is a continuous thread to the sensible key principles of press regulation, and for journalists to have a role in shaping those is not entirely illegitimate. None the less, we must bear in mind that those principles should serve the public before they serve the press. That is what is in the principles that Sir Brian Leveson sought to suggest. The right hon. Gentleman is right that we agree on those on both sides of the House, and that IPSO strikes the right balance. The sense that both the world and the regulator have changed should reassure both Opposition Members and members of the public who would like the Government to secure a free but sensibly regulated press that serves all of us.

Colin Clark (Gordon) (Con): Surely my hon. Friend shares my concern, and more to the point the public's concern, that state interference smacks of all the wrong things the Government do and undermines the free press, on which we depend on a national and a local scale.

Matt Warman: I agree, which is why IPSO rather than IMPRESS strikes the right balance between the two. The right hon. Member for Birmingham, Hodge Hill made great play of David Cameron promising IPSO, but I would make great play of Government

delivering on the manifesto pledges they made when they fought an election in 2017. Not doing what he set out also delivers on a promise—the more recent promise should take precedence.

My hon. Friend the Member for North Devon powerfully made the case against section 40, which seeks to punish the victim. That would obviously have a clear chilling effect not only on our local newspapers, which are often on the brink of bankruptcy, but on the broader media. We can look at fantastic pieces of journalism even today, such as the one about Cambridge Analytica. *The Guardian* itself says, "Please, we would like your donations so we can keep our valuable journalism free"—the paper has had to fight off three pieces of legal action by Cambridge Analytica and one from Facebook. Those huge corporations seek to shut down legitimate investigation, and the right hon. Member for Birmingham, Hodge Hill suggests that if they were to bring and win cases, *The Guardian* should pay for them. That is an extraordinary position to take.

Liam Byrne *rose—*

Matt Warman: I am sure the right hon. Gentleman is about to assure me that he is not taking that position.

Liam Byrne: Let us be real about this. The idea that companies such as Facebook or Cambridge Analytica will desist from legal action to shut down stories that they do not like—the idea that that will not happen at any time in the future, even under the existing regimes—is for the birds. The argument that is better made by some of the hon. Gentleman's colleagues is to do with the risk to local newspapers, most of which are now owned by Trinity Mirror, which makes tens of millions of pounds in profit, or the Johnston Press. The point is that vexatious claims can be shut down and thrown out at any one of three stages by the regulator or, before the case goes to arbitration, by the arbitrator or by a judge, so the incidence of costs arising will not be on the scale the hon. Gentleman anticipates. Equally, he must accept that, without a form of low-cost arbitration, justice is denied to people who are maligned by newspapers.

Matt Warman: I enjoyed the right hon. Gentleman's speech, but I disagree with him profoundly. I worked for a newspaper that had, by comparison with our local papers, an enormous budget. The threat of having to pay the legal bills of Facebook and Cambridge Analytica would have a profoundly chilling effect, even at the very highest level of journalism.

Mike Wood (Dudley South) (Con): Is my hon. Friend as concerned as I am that *The Times* journalist who uncovered the Rotherham child abuse scandal said that it would have been inconceivable—that is the word he used—for the newspaper to have run that story on its front page had section 40 been in place? How would that have damaged the investigation?

Matt Warman: Exactly—there are a number of such examples. Opposition Members might wish to imagine that the so-called Fleet Street media has money to burn and could not care less about paying all sorts of legal costs. However, we all know that these businesses have to mind every penny, whether they are profitable or not. It is legitimate for them to do that. If every single investigative journalist was constantly living under the threat of their piece of work costing their newspaper and their boss tens of thousands of pounds, they simply would not get hired, never mind allowed into print.

3 pm

Liam Byrne: Finally and very briefly, the hon. Gentleman is making an eloquent argument. Why, then, was that proposed by the right hon. Members for West Dorset and for Basingstoke? How did they get it so profoundly wrong?

Matt Warman: That is a fascinating philosophical question, but I can only tell the right hon. Gentleman that I would not have voted for it. I appreciate that he will say that it is easy for me to say that now, but the idea that people in this place would be convinced that it is the best possible model is simply not plausible after the statements that my hon. Friend the Member for North Devon and I have made today. Surely we need a set of press regulations that preserves the independence of the media, and their ability to invest in journalism at local and national level, which we all want if we are to hold the powerful to account. We also need regulations that allow hon. Members to say with a clear conscience that we have done nothing that puts those businesses in serious jeopardy.

It does not seem to me that a costly Leveson 2 is the best use of public money, or that the threat of section 40 will ever be the best use of private money, putting legitimate local and national media out of business. Those arguments seem to me like a powerful case for IPSO, and for a sensible look at the sustainability of the press, as the Prime Minister has set about doing. They do not under any circumstances seem to me like a good reason to vote for the amendments.

Margot James: I will set out the Government's position on clauses 142, 168, 169 and 205, before returning to the amendments in the name of the hon. Member for Argyll and Bute.

As we have heard, clause 142 requires the Government to establish an inquiry with terms of reference similar to those contained in part 2 of the Leveson inquiry, but in relation to data protection only. The Government set out our intention not to reopen the Leveson inquiry in our response to the consultation on the future of the inquiry on 1 March. I will not repeat the arguments in full, but I will say that the Government's firm focus is on the problems faced by the media right now.

The Government recognise that there is a great deal of feeling on both sides of the debate. We have listened to all views, including those of victims, in reaching a decision. No one seeks to excuse the past behaviour of individual media organisations, nor to legitimise it. As the right hon. Member for Birmingham, Hodge Hill said, some of the stories we heard at the beginning of the Leveson inquiry were horrific. The Government have a duty, however, to make decisions that are proportionate and in the public interest. In the light of all the evidence available, it is apparent that part 2 of the inquiry is no longer appropriate or proportionate.

Part 1 of the inquiry lasted over a year, and heard evidence from more than 300 people, including journalists, editors and victims. Since then, the majority of the Leveson recommendations have been implemented. Three

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major police investigations examining a wide range of offences have been completed. More than 40 people were convicted, some of whom were sent to prison. There have also been extensive reforms to policing practices, and significant changes to press self-regulation.

As a result, the terms of reference for part 2 have largely been met, and the culture that allowed phone hacking to become the norm has changed. Meanwhile, the media are facing critical challenges that threaten their sustainability, including fake news, declining circulations and gaining revenue from online content. Free and vibrant media are vital to democratic discourse, and we need to tackle those challenges urgently. Holding a costly and time-consuming public inquiry looking predominantly backwards is not the right way to go.

The Government are committed to addressing these issues, and we are developing a digital charter to ensure that new technologies work for the benefit of everyone, with rules and protections in place to keep people safe online and to ensure that personal information is used appropriately. As part of that, we are also undertaking work to ensure that there are sustainable business models for high-quality media online. The media landscape is different and the threats are different, too. Issues such as fake news mean there is a need to protect the reliability and objectivity of information.

Likewise, clauses 168 and 169 are similar to the provisions contained in sections 40 and 42 of the Crime and Courts Act 2013, but apply to breaches of data protection law only. The Government do not believe that introducing a provision similar to section 40 of the 2013 Act into the Bill is appropriate, but in relation to data protection only. That is particularly so given our decision earlier this month to repeal section 40 when there is a suitable legislative vehicle. In coming to that decision, we considered all the available evidence, including the views of respondents to the public consultation that we undertook last year. Many respondents cited concerns about the chilling effect that section 40 would have on the freedom of the press, which was so ably summed up by my hon. Friend the Member for Boston and Skegness.

Liam Byrne: Will the Minister tell the Committee why she supported it when it came to a vote last time?

Margot James: The right hon. Gentleman has made great play of the former Prime Minister's statement. I remind him that that statement was given six years ago. Much has changed since. My hon. Friend the Member for North Devon tried to make the point that, although we cannot rule out that egregious conduct is still going on in the press, as I imagine there is in virtually every other sector of society, we can agree that much has changed and improved. That is why the Government have changed their direction. I hope that satisfies the right hon. Gentleman.

Gareth Snell (Stoke-on-Trent Central) (Lab/Co-op): It is a pleasure to serve under your chairmanship, Mr Streeter.

On that point, the Minister accepts that egregious activity could be taking place across the industry but does not think that the proposal is the appropriate vehicle for dealing with it. She believes that the digital charter is the appropriate vehicle, but what evidence is she using to ensure that that addresses the egregious activity?

Margot James: I want to correct one thing that the hon. Gentleman said: I did not say that that activity was taking place across the industry; I said that it was still taking place. Indeed, we have heard the horrendous allegations made by John Ford, albeit referring to behaviour that predates 2011. He alleges that it is still going on. I am not denying that it probably is still carrying on in pockets, but I would not say that it is widespread.

Press self-regulation has changed significantly in recent years with the establishment of IPSO, which follows many of the principles set out in the Leveson report. As so few publishers have joined a regulator recognised under the royal charter, commencement of section 40 would have a chilling effect on investigative journalism, which is so important to a well-functioning democracy.

Daniel Zeichner (Cambridge) (Lab): It is a pleasure to serve under your chairmanship, Mr Streeter. We keep hearing about the chilling effect—it is well rehearsed—but could the Minister confirm that it could be entirely avoided if newspapers sign up to an appropriate regulator, which does not have to be IMPRESS? It is not a difficult thing to do.

Margot James: Currently, IMPRESS is the only regulator recognised under the royal charter. I cannot speak for the press. There was a heated debate when the legislation went through Parliament. The press decided as one not to join what they perceived as a state-backed regulator. IPSO now does the job, albeit the *Financial Times* and *The Guardian* alone among the broadsheets have not joined IPSO.

The media landscape has changed. As I noted earlier, high-quality journalism is under threat from the rise of clickbait and fake news, from difficulties in generating revenue online to replace the revenue that used to flow from printed sources, and from the dramatic, continued rise of largely unregulated social media. If implemented, section 40 could impose further financial burdens on publishers, particularly at local level—200 local papers have closed in the last decade.

On top of that, the amendments made in the other place undermine our Scotland and Northern Ireland devolution settlements—that point was ably made by the hon. Member for Argyll and Bute. The proposed new clauses seek to legislate on a UK-wide basis despite press regulation being a reserved matter for the devolved Administrations, which brings me to amendments 137, 138 and 139 in the name of the hon. Gentleman.

The Government are sympathetic to the hon. Gentleman's arguments for reasons I have set out. We will nevertheless push instead for the removal of those clauses from the Bill in their entirety. Similarly, while we agree with the sentiment of amendment 137, which seeks to require the Government to obtain the Scottish Government's consent before establishing an inquiry under clause 142, we note that there is already a consultation requirement to that effect in the Inquiries Act 2005. Such an amendment is therefore unnecessary.

To conclude, high-quality news provision is vital to our society and democracy. I know there is shared interest across the House in safeguarding its future, and the Government are passionate about and working to

deliver it. We believe that the clauses would work against those aims and cut across the work we are doing to help strengthen the future of high-quality journalism, and will therefore oppose their continued inclusion in the Bill.

Brendan O'Hara: I take on board what the Government say and appreciate that they have accepted the principle of the amendment, but I still intend to push it to the vote. It is essential that the devolution settlement is protected in as broad and deep a way as possible. I understand that they would seek to remove the entire clause, but if the clause is passed and de-amended, it has serious consequences for the devolution settlement. For that reason we will be pushing it to the vote.

Question put, That the amendment be made.

The Committee divided: Ayes 9, Noes 10.

Division No. 10]

AYES

Byrne, rh Liam	Murray, Ian
Elmore, Chris	O'Hara, Brendan
Haigh, Louise	Snell, Gareth
Jones, Darren	Zeichner, Daniel
McDonald, Stuart C.	

NOES

Adams, Nigel	Jack, Mr Alister
Atkins, Victoria	James, Margot
Clark, Colin	Lopez, Julia
Heaton-Jones, Peter	Warman, Matt
Huddleston, Nigel	Wood, Mike

Question accordingly negatived.

Question put, That the clause stand part of the Bill.

The Committee divided: Ayes 9, Noes 10.

Division No. 11]

AYES

Byrne, rh Liam	Murray, Ian
Elmore, Chris	O'Hara, Brendan
Haigh, Louise	Snell, Gareth
Jones, Darren	Zeichner, Daniel
McDonald, Stuart C.	

NOES

Adams, Nigel	Jack, Mr Alister
Atkins, Victoria	James, Margot
Clark, Colin	Lopez, Julia
Heaton-Jones, Peter	Warman, Matt
Huddleston, Nigel	Wood, Mike

Question accordingly negatived.

Clause 142 disagreed to.

Clause 143

Information notices

3.15 pm

Margot James: I beg to move amendment 51, in clause 143, page 77, line 37, after "notice")" insert "—

(a) ".

See the explanatory statement for Amendment 52.

The Chair: With this it will be convenient to discuss Government amendments 52, 54, 126 and 58.

Margot James: The Information Commissioner has a breadth of corrective powers at her disposal to investigate breaches of data protection legislation. One such power is the ability to issue an information notice on a data controller requesting that they provide the commissioner with specified information. Article 2 of the general data protection regulation states that certain types of processing of personal data, including purely personal or household activities, are exempt from the provisions of the GDPR. That includes the list of all those hon. Members who deserve a Christmas card this year.

Although such processing is exempt, it is important that in certain situations the Information Commissioner is able to verify that the processing actually meets this test and does not fly under the radar of GDPR requirements unduly. Government amendments 51 and 52 will ensure that the Information Commissioner is able to issue an information notice, in order to determine whether the process is genuinely being undertaken in the course of a purely personal or household activity.

Government amendment 54 is a consequential amendment. It ensures that the reference to processing of personal data in the subsection added by Government amendment 52 means any type of processing, pulling on the definitions provided in subsections (2) and (4) of clause 3, rather than those under parts 2, 3 or 4, none of which apply to processing in the course of purely personal or household activities.

Government amendments 58 and 126 make further consequential changes to clause 159 and paragraph 9 of schedule 16. The amendments ensure that certain safeguards for controllers and processors in the context of enforcement action extend to all persons, since their exact status may in fact be the source of dispute.

All in all, this is a common sense set of changes that enjoy the full support of the Information Commissioner's Office.

Amendment 51 agreed to.

Amendments made: 52, in clause 143, page 77, line 40, at end insert ", or

(b) require any person to provide the Commissioner with information that the Commissioner reasonably requires for the purposes of determining whether the processing of personal data is carried out by an individual in the course of a purely personal or household activity."

This amendment and Amendments 51 and 54 enable the Information Commissioner to obtain information in order to work out whether processing is carried out in the course of purely personal or household activities. Such processing is not subject to the GDPR or the applied GDPR (see Article 2(2)(c) of the GDPR and Clause 21(3)).

Amendment 53, in clause 143, page 78, line 23, leave out

"with the day on which"

and insert "when".

This amendment is consequential on Amendment 71.

Amendment 54, in clause 143, page 78, line 30, at end insert—

"(10) Section 3(14)(b) does not apply to the reference to the processing of personal data in subsection (1)(b)."—*(Margot James.)*

This amendment secures that the reference to "processing" in the new paragraph (b) inserted by Amendment 52 includes all types of processing of personal data. It disapplies Clause 3(14)(b), which

[Margot James]

provides that references to processing in Parts 5 to 7 of the bill are usually to processing to which Chapter 2 or 3 of Part 2, Part 3 or Part 4 applies.

Question proposed, That the clause, as amended, stand part of the Bill.

Louise Haigh (Sheffield, Heeley) (Lab): In this of all weeks, it is particularly relevant that we debate this clause, which relates to information notices, and the powers and enforcement sanctions available to the Information Commissioner, given the horrendous breaches of our data regulation that have been exposed by Channel 4 and *The Guardian.*

The Secretary of State for Digital, Culture, Media and Sport told the House yesterday that the Information Commissioner was seeking further powers to compel compliance with information notices, testimony from other individuals in complex investigations, such as that into Cambridge Analytica, and criminal sanctions for breaches of information notices.

Under the current data protection legislation, breach of information notice is a criminal offence that carries a custodial sentence. The maximum sentence under this Bill is only a fine. That is a significant weakening of the data protection regime and its sanctions. Indeed, in her own evidence, the Information Commissioner said:

> "The new approach in the Bill of failure to comply with an"

information notice

> "no longer being a criminal offence but punishable by a monetary penalty issued by the ICO is likely to be less of a deterrent, as data controllers with deep pockets might be inclined to pay the fine, rather than disclose the information being requested."

I would be grateful if the Minister could set out exactly why the Government have decided to weaken the powers given to the Information Commissioner and the sanctions available to her.

Crucially, the Information Commissioner has requested the power to compel compliance with information notices. As things stand, it is an offence not to deliver information, but the Information Commissioner does not have the power to demand compliance with information notices. She has said that that puts us out of step with our closest EU member state neighbour, Ireland, which has a much stronger data protection regime, with much tougher sanctions and, indeed, powers to compel compliance with an information notice.

That gap in the Information Commissioner's enforcement powers has not caused significant problems up to now, because formal action has largely centred on security breaches or contraventions of the privacy and electronic communications regulations. In such cases, the commissioner rarely needs to use her information notice powers, because the evidence of a contravention is usually clear and in the public domain.

Where the Information Commissioner has used her enforcement powers against a data controller for contraventions of the data protection principles under the Data Protection Act, she has generally found data controllers to be co-operative because, under the current framework, financial penalties are reserved only for the most serious contraventions of the law. However, as investigations become more complex—and as we are seeing this week—the Commissioner will be unable to obtain the information she needs.

The Minister has said that the Government are considering potential amendments to the Bill, as laid out by the Secretary of State yesterday. It is baffling, however, that those amendments have not already been tabled, given that the Information Commissioner suggested them in her written evidence earlier in the process. The provisions represent a serious weakening of the existing regime and a failure of the Government to step up to the plate on the matter of the complex investigations conducted by the Information Commissioner.

Margot James: I do not accept that this Bill represents a reduction in the powers of the Information Commissioner, and I do not think that that is her view either. Obviously, I accept what she said in response to questioning from Select Committee on Digital, Culture, Media and Sport. As I have already said, my right hon. Friend the Secretary of State is considering her request, and we are working on the areas where she feels there is a shortfall.

I reassure the Committee that the Bill strengthens ICO's overall powers. The hon. Member for Sheffield, Heeley has mentioned fines. There are fines of up to 4% of global turnover, or £17 million, both for malpractice itself and for blocking investigations and inquiries mounted by the ICO.

Liam Byrne: One way in which the Government could row in behind a frustrated Information Commission would be to deny Government contracts to companies that are behaving badly. I understand that Cambridge Analytica has Government contracts with both the Foreign Office and the Ministry of Defence. Are they under review?

Margot James: I cannot speak for either of those Departments. We are debating the powers of the ICO rather than contractual matters between private companies and Government Departments. I accept that that is a moot point, but it is not the purpose of this Bill Committee to go into those details.

To return to the points raised by the hon. Member for Sheffield, Heeley, we are strengthening the powers of the Commissioner. We are extending her current power to serve assessment notices on data controllers in public sector bodies to all data controllers across the private sector as well. Those assessment notices will require them to provide evidence of their compliance with the law, and there is now the power to enforce assessment notices by obtaining a warrant to exercise search and seizure powers on behalf of the ICO. The Bill also creates a criminal offence for obstructing a warrant, which is subject to both fines and a criminal record. We are strengthening in those areas and also increasing fines substantially.

Liam Byrne: I understand that the Minister cannot answer the detailed question about Government contracts with, for example, Cambridge Analytica, but does she think, philosophically, that a Government would and should reconsider contracts with companies that are not complying with a reasonable request made by the Information Commissioner?

Margot James: The right hon. Gentleman makes an entirely reasonable point. As I said earlier, I cannot go into it in a debate on this particular Bill, other than to say that he makes a reasonable point.

Clause 143 provides the commissioner with the power to issue an information notice. This is a type of notice that requires a controller or processor to provide the commissioner with specified information within a certain time period.

Question put and agreed to.

Clause 143, as amended, accordingly ordered to stand part of the Bill.

Clause 144 ordered to stand part of the Bill.

Clause 145

False statements made in response to an information notice

Question proposed, That the clause stand part of the Bill.

Liam Byrne: The operation of clause 145 is a matter of great public concern this week, because of the revelations that an app that sat on Facebook collected data for a particular purpose, but they were then re-used by Cambridge Analytica for an entirely different purpose, to bend the outcome of particular elections and, quite possibly, referendums too. Facebook had made a statement that the matter had been resolved a couple of years ago and that the relevant data in question had been deleted. The story has developed over the past 24 hours and former Facebook employees are now alleging that it was not simply 50 million records that were collected for one purpose and re-used for another; there may have been hundreds of millions of records collected for one purpose and used for another.

How will clause 145 bite on a company such as Facebook that may be responding to an information notice issued by the Information Commissioner? The company may have told the Information Commissioner that it was all fine, the data was all deleted and everyone was perfectly satisfied, but a couple of years later it transpires that that is not the case. What would then happen to a company such as Facebook? Is the Minister satisfied that the proposed sanctions and penalties are strong enough? It is not clear to me, given what we now know, that these sanctions are strong enough at all.

Margot James: We are debating a suite of powers as part of the overall powers with which the Bill reinforces the Information Commissioner's Office. It is not just about clause 145. If a company discloses information unlawfully, there is also a separate offence in clause 170. We are not relying on one clause alone.

3.30 pm

The case to which the right hon. Member for Birmingham, Hodge Hill is referring is developing and ongoing as we debate the Bill, but the Information Commissioner is investigating whether the Facebook data that he referred to was illegally acquired and used. The investigation will focus on establishing what information was accessed and what measures were in place to protect that information, if any, in relation to Facebook users in the UK.

Question put and agreed to.

Clause 145 accordingly ordered to stand part of the Bill.

Clause 146

Assessment notices

Amendment made: 55, in clause 146, page 81, line 3, leave out

"with the day on which"

and insert "when".—*(Margot James.)*

This amendment is consequential on Amendment 71.

Clause 146, as amended, ordered to stand part of the Bill.

Clause 147 ordered to stand part of the Bill.

Clause 148

Enforcement notices

Question proposed, That the clause stand part of the Bill.

Louise Haigh: Earlier, we debated the requirement for law enforcement agencies to conduct data protection impact assessments ahead of developing or using any new filing system, and we debated several examples of what those filing systems or methods of data collection could be, including automated facial recognition software, automatic number plate recognition and the use of algorithms to determine decisions made in the criminal justice system.

In relation to the clause, the Information Commissioner has requested that she be given the power to impose corrective measures where necessary, when a data protection impact assessment has revealed that the processing of that personal data is of high risk to individuals and where there are no measures to mitigate that risk in relation to law enforcement processing, as she has for other processing. She maintains that a different approach to law enforcement is not justified and might lead to adverse consequences in an important area affecting individuals. That is important because it gives weight to the important aspects raised earlier that require law enforcement agencies to conduct that DPIA. There is little point asking organisations and data controllers to conduct impact assessments and then, even when they are falling short dramatically, to let them carry on conducting assessments and collecting data in that way.

In evidence, the Information Commissioner has said that part 3 of the Bill

"requires these types of assessment to be undertaken"

and provides

"for requirements to consult the Commissioner where such a high risk is present but measures cannot be put in place to mitigate these. They also provide requirements for the Commissioner to use her corrective powers in relation to GDPR but the way the Bill is drafted these corrective powers will not be available in relation to concerns arising from a DIPA involving law enforcement processing. Nor are there any powers available to ensure that the Information Commissioner can take action if a DIPA for law enforcement processing is not carried out when required."

Not only are there no enforcement powers if the DPIA is conducted and falls short, but the Information Commissioner is not provided with any powers under this legislation to compel a DPIA to take place. Given, as we discussed earlier, the serious threats not just to data rights, but to prevention with respect to an individual's rights to liberty and freedom, it is very serious indeed if

[Louise Haigh]

law enforcement agencies will be able to carry out impact assessments without any adherence to the provisions in the Bill.

The Information Commissioner says:

"Having the ability to issue corrective measures based upon the DPIA or indeed requiring a DPIA to be undertaken when it should have been, is an important measure which is missing in relation to law enforcement processing".

The commissioner has raised her concerns with the Government and suggested drafting solutions. Will the Minister clarify why those were not introduced in Committee?

Margot James: The clause gives the commissioner the power to issue an enforcement notice, which requires a person to take steps or refrain from taking steps specified in the notice. For example, the commissioner can use an enforcement notice to compel a data controller to give effect to a data subject if they have otherwise failed to do so. Section 40 of the Data Protection Act 1998 made similar provision. In respect of the hon. Lady's questions concerning the law enforcement aspects of the clause and the need for impact assessments, and the powers that the ICO might need to ensure that those impact assessments are done and are appropriate, I will have to write to her on the details of those latter points.

Question put and agreed to.

Clause 148 accordingly ordered to stand part of the Bill.

Clause 149

ENFORCEMENT NOTICES: SUPPLEMENTARY

Amendment made: 56, in clause 149, page 83, line 36, leave out "with the day on which" and insert "when".—*(Margot James.)*

This amendment is consequential on Amendment 71.

Clause 149, as amended, ordered to stand part of the Bill.

Clause 150

ENFORCEMENT NOTICES: RECTIFICATION AND ERASURE OF PERSONAL DATA ETC

Question proposed, That the clause stand part of the Bill.

Liam Byrne: The clause bites on the question of individuals' rights to the erasure of personal data and rectification. I want to give the Minister an opportunity to update the Committee on her conversations with media, culture and other organisations about how she is going to balance the implementation of clause 150 with the ambitions of those organisations to protect archives—not just archives of very large sets of artefacts, such as the Natural History Museum, but those that are run by News UK or Trinity Mirror or the BBC.

The risk that is obviously posed by those organisations is that they often rely on very good, detailed and often quite old archives of news information. The scenario that was put to us last night by lawyers representing a number of those organisations that wanted to give us their views about clauses 168 and 169 was that successful journalism—whether *The Daily Telegraph* or the *Swindon Advertiser*—will often rely on excellent archives.

If rich individuals are seeking to create a different truth and a different history, and to exercise their rights under the clause, a risk will be created for those media organisations. I am more worried about the media organisations' rights than I am about the Natural History Museum and the BBC, because I think the Minister's Department will do a good job of working out where to put that grey line round what should be protected and what is up for grabs. The example put to us last night was of rich individuals seeking to create a different kind of history—a different kind of past—to bend deliberately the future of reporting by eradicating a record that might be true. The risk that was put to us is that, very often, newspaper legal directors—the poor things often have to advise on this decision—will sometimes conclude that the game is just not worth it and therefore give in to the rich individual to avoid damaging and expensive legal action and delete the records from their archives.

This is a difficult area, where balances have to be struck, but it is a form of litigation that will doubtless continue into the future. We might have just decided to deny access to ordinary people to correct media malpractice, but rich individuals will continue to bring their cases. Will the Minister tell us how the balance will play out in practice? How do we protect the rights of news organisations to run good archives for the benefit of public interest journalism in the future?

Margot James: The clause makes additional provision for enforcement notices where the subject matter of the notice relates to the controller or processor's failure to comply with the data protection principle of ensuring accuracy. The clause may also apply where a controller or processor has failed to comply with the data subject's rights on rectification, erasure or restriction of processing under articles 16 to 18 of the general data protection regulation.

We touched on the issue of archives in one of the Committee sittings last week. I explained to the Committee that there is protection for archives under the GDPR, whether they be those of news organisations or of academic sources. We are aware of the concerns expressed by organisations representing archives, and I agree with the right hon. Gentleman that quality journalism often depends on the use of such archives. However, I assure him that my Department will defend the rights of journalists and the press as tenaciously as we would defend the rights of archivists in the great museums of our country against the distortions that he gave as examples of people perhaps wanting to use the right to be forgotten in an excessive manner and in a bid to rewrite history. We are aware of such individuals, and we are comfortable that the GDPR prevents those abuses.

Question put and agreed to.

Clause 150 accordingly ordered to stand part of the Bill.

Clauses 151 and 152 ordered to stand part of the Bill.

Clause 153

POWERS OF ENTRY AND INSPECTION

Question proposed, That the clause stand part of the Bill.

Liam Byrne: Again, on this point, we would benefit from some clarification from the Minister. The story that broke this morning was that the Information

Commissioner had, in effect, to go to court to get her warrant to investigate what Cambridge Analytica was up to. There was some speculation as to why Facebook was able to exercise some contractual rights and turn up at the offices of Cambridge Analytica to conduct an inspection. The reports are that, as the situation played out, the Information Commissioner had to tell Facebook legal officers to stand down and to stop what they were doing. As it happened, Facebook wisely decided to follow the Information Commissioner's orders.

A matter of great concern is that the Information Commissioner has to go through what sounds like a laborious process to get the warrant needed to conduct an investigation that is obviously in the public interest. When we secure, for example, emergency injunctions to stop the publication of material that people do not want published, or when magistrates issue search warrants, most of us with experience of this at a local level would observe that such warrants are often issued in a much faster and less high-profile way than the process the Information Commissioner appears to have to go through.

In effect, Cambridge Analytica has had 48 hours' notice of the Information Commissioner's concerns—*[Interruption.]* I am sorry, but I do not know whether the Minister wants to intervene on that—

The Chair: Order. There is confusion on the Front Bench. Please continue, Mr Byrne.

Liam Byrne: I am sorry, Mr Hanson. I was not sure whether the Home Office Minister wanted to clarify that point. We know that warrants have to be sought and judicial oversight is important, but the process appears slightly cumbersome. I wonder whether the Minister can tell us whether she is satisfied that the process and the powers that we will equip the Information Commissioner with are as smooth and slick as the new enforcement environment requires.

3.45 pm

Margot James: I remind the right hon. Gentleman that, in this case, the Information Commissioner is acting under the existing powers in the Data Protection Act 1998, but she is pursuing warrants where she has to get them to continue her investigation. She has issued 12 information notices—I might have said this earlier—pertaining to Cambridge Analytica, and she plans to issue another six this week. One of those notices has been challenged, but she is now issuing a demand for access and she is getting where she needs to get. She was very surprised to read that Facebook had decided to plough into the offices of Cambridge Analytica when it was itself under investigation. She must have thought that an extraordinary course of action, but as soon as she intervened, Facebook desisted and removed itself from the offices of Cambridge Analytica to enable her to undertake her inquiries.

That is of course all happening under the existing legislation. The Bill will provide new powers, including the ability to serve assessment notices, backed up by warrants if they are not complied with.

Question put and agreed to.

Clause 153 accordingly ordered to stand part of the Bill.

Schedule 15 agreed to.

Clause 154

PENALTY NOTICES

Margot James: I beg to move amendment 179, in clause 154, page 85, line 39, leave out from the beginning to "when" and insert "Subject to subsection (3A),".

This amendment and amendment 180 provide that the requirement in clause 154(2) and (3) for the Commissioner to have regard to listed matters when deciding whether to give a penalty notice, and determining the amount of a penalty, applies not only in the case of failures described in clause 148(2), (3) or (4) but also in the case of failures to comply with an information notice, an assessment notice or an enforcement notice.

The Chair: With this it will be convenient to discuss Government amendments 57 and 180.

Margot James: As part of the Information Commissioner's suite of corrective powers, she can issue penalty notices to data controllers requiring them to pay a fine. Fines can be issued where a controller has failed to comply with a previous notice or where significant breaches of data protection legislation have taken place. Members will be aware from our debate this afternoon that the maximum such penalty will increase from £0.5 million to £17 million, or 4% of global turnover, for the most serious breaches.

When imposing a penalty for breaches of the GDPR, the commissioner must follow the procedures set out in article 83 of the GDPR, which include acting on a case-by-case basis; ensuring that the fine is effective, proportionate and dissuasive; and taking into account various factors. Because law enforcement and intelligence services processing falls outside the scope of the GDPR, the clause makes parallel provision in respect of breaches of those parts of the Bill, including by listing matters that the commissioner must take into account when deciding whether to issue a fine for that type of processing and when determining the magnitude of that fine.

Government amendments 179 and 180 make it clear that, when considering a person's failure to comply with notices—an information notice, for example—the commissioner is to have regard to the matters listed in article 83(2) of the GDPR and, in relation to law enforcement processing and intelligence processing, to clause 154(3) and (4) of the Bill. Clause 154 prescribes such requirements only for decisions regarding the issuing of a monetary penalty notice in relation to certain failings. The commissioner has powers to prepare guidance on how she uses her enforcement powers, so she could decide, as a matter of policy, to have regard to those matters in relation to other failings. However, the Government's view is that there should be a requirement for her to do so in the Bill.

Government amendment 57 makes an addition to clause 154(3)(c) to ensure that the Information Commissioner takes into account any actions the controller has taken to mitigate not only damages, but distress suffered by the data subject. The amendment will bring the clause into line with other similar clauses in the Bill, where the Information Commissioner must take into account damage or distress caused. They include clause 149 regarding enforcement notices, where the Information Commissioner must take into account the magnitude of the damage or distress caused by the controller. I am

[Margot James]

sure right hon. and hon. Members will agree that providing consistency across the Bill is important; the amendment is a step to ensure that that is provided.

Amendment 179 agreed to.

Amendments made: 57, in clause 154, page 86, line 10, at end insert "or distress".

This amendment is for consistency with Clause 149(2). It requires the Commissioner, when deciding whether to give a penalty notice to a person in respect of a failure to which the GDPR does not apply and when determining the amount of the penalty, to have regard to any action taken by the controller or processor to mitigate the distress suffered by data subjects as a result of the failure.

Amendment 180, in clause 154, page 86, line 28, at end insert—

"(3A) Subsections (2) and (3) do not apply in the case of a decision or determination relating to a failure described in section 148(5)." *—(Margot James.)*

See the explanatory statement for amendment 179.

Question proposed, That the clause, as amended, stand part of the Bill.

Louise Haigh: I am sorry to labour the point; it is pertinent to the clause but also relates to the debate that we just had on information notices. The Minister has failed to set out why the Government have removed the custodial sentence as an enforcement power of the Information Commissioner when data controllers or processors breach information notices. The Minister said earlier that she does not accept that it is the Information Commissioner's view that that weakens the existing data protection regime, but the commissioner explicitly set that out in her written evidence to the Committee:

"The new approach in the Bill of failure to comply with an IN no longer being a criminal offence but punishable by a monetary penalty issued by the ICO is likely to be less of a deterrent".

We very much welcome the increased penalty as a sanction by the Information Commissioner, but the Minister has so far failed to set out why she has removed that custodial sentence, which, as the Information Commissioner has laid out, is a serious deterrent. That could weaken her abilities to investigate complex situations and, as I mentioned earlier, it is in direct contrast to the Irish Government's approach, which carries a fine but also a custodial sentence of up to five years' imprisonment if the data controller fails to comply with an information notice.

In written evidence, again, the Information Commission suggests that the Government's approach pales in comparison to that taken by Ireland. Will the Minister take this opportunity to explain why she has so significantly weakened the Information Commissioner's important powers?

Margot James: The clause replicates section 55(a) of the 1998 Act, which gives the commissioner a power to serve a monetary penalty, requiring the data controller to pay the commissioner an amount determined by the commissioner. The maximum penalty is specified in clause 156. Before the commissioner can issue a penalty notice, she must be satisfied that a person has failed to comply with certain provisions of the GDPR or the Bill, or has failed to comply with an information notice, assessment notice or enforcement notice.

Clearly, it is up to the commissioner to decide whether a penalty notice is appropriate. She has stated:

"It's about putting the…citizen first. We can't lose sight of that…It's true we'll have the power to impose fines much bigger than the £500,000 limit the DPA allows us."

Daniel Zeichner: For reasons that are entirely understandable, my constituents in Cambridge take a particularly close interest in some of the things that have been happening with Cambridge Analytica this week. They will be astonished that the Minister does not seem to be answering the question raised by my hon. Friend the Member for Sheffield, Heeley. Financial penalties, yes, but criminal proceedings surely should be uppermost when we have seen these dreadful things that have been going on.

Margot James: I was coming on to answer the hon. Member for Sheffield, Heeley, but as the hon. Member for Cambridge has raised her question again, I will jump to it. We are not removing all criminal powers under this new legislation. Under paragraph 2 of schedule 15, the commissioner may enforce assessment notices. That power includes the new offence of obstructing a warrant, which is a criminal offence, so criminal offences do remain. As I said, we are looking at the commissioner's desire for stronger powers in certain areas, but under the current law there is a criminal sanction only for non-compliance with a notice, and that offence is not used. A civil penalty is a better way forward and is provided as the appropriate sanction by the GDPR itself.

Louise Haigh: The Minister has just confirmed that under the existing arrangements a custodial sentence is the maximum penalty if an individual fails to comply with an information notice. She has not given a coherent reason why she is removing that through the Bill. Is she really arguing that criminal sanctions are less of a deterrent than civil? That is a direct contradiction of the Information Commissioner's evidence.

Margot James: I have just been advised that the existing law is non-custodial criminal sanctions. I have referred to the criminal sanctions with respect to assessment notices, and I will get back to the hon. Lady on the question of the sanctions on the information notices that she has asked about. I am told what I am told; the existing law is non-custodial.

Question put and agreed to.

Clause 154, as amended, accordingly ordered to stand part of the Bill.

Schedule 16

PENALTIES

Amendments made: 123, page 203, line 26, leave out "with the day after" and insert "when".

This amendment is consequential on Amendment 71.

124, page 204, line 10, leave out "with the day on which" and insert "when".

This amendment is consequential on Amendment 71.

125, page 205, line 5, leave out "with the day after the day on which" and insert "when".

This amendment is consequential on Amendment 71.

126, page 205, line 37, leave out "controller or processor" and insert "person to whom the penalty notice was given".*—(Margot James.)*

This amendment is consequential on Amendment 52.

Schedule 16, as amended, agreed to.

Clause 155 ordered to stand part of the Bill.

Clause 156

MAXIMUM AMOUNT OF PENALTY

Question proposed, That the clause stand part of the Bill.

Liam Byrne: I think we could all do with a bit of clarity, which did not quite emerge in the last debate. My hon. Friend the Member for Sheffield, Heeley, makes an important point: in light of this week's news, there is real concern that the maximum possible sentences should be on the books to punish people who try to get in the way of investigations by the Information Commissioner. Can the Minister say whether the Information Commissioner is currently able to prosecute people for getting in her way, and whether they could go to jail? That would be clarification No. 1. Clarification No. 2 would be whether, under the Bill the Minister is asking us to agree, that custodial sentence would still remain.

Margot James: I understand that under the current law there are no custodial sentencing provisions, so therefore I cannot argue that they will remain. That does not seem logical at all. The existing DPA offences are for fines only, according to section 60 of the Data Protection Act 1998.

Question put and agreed to.

Clause 156 accordingly ordered to stand part of the Bill.

Clause 157

FIXED PENALTIES FOR NON-COMPLIANCE WITH CHARGES REGULATIONS

Question proposed, That the clause stand part of the Bill.

Liam Byrne: Given the clarity that the Minister has now furnished for the Committee, and given the scale of wrongdoing that is alleged about Cambridge Analytica and potentially Facebook this week, the question on clause 157 is whether she is satisfied that financial penalties are going to do the job in the years to come. Otherwise, is this a clause on which we need to reflect on Report if not now so that if custodial sentences are not currently available, we might consider introducing them for people who appear determined to move heaven and earth to get in the way and obstruct an Information Commissioner inquiry? Could we perhaps come back to that on Report, rather than simply rely on sanctions such as fixed penalty notices?

4 pm

Margot James: I have mentioned before to the right hon. Gentleman that there are criminal offences set out in the Bill, such as an offence of obstructing a warrant, which would enable the ICO to go in and exercise search and seizure powers. Although obstruction carries potential fines and a criminal record, I do not believe that it carries the threat of a custodial sentence, which is no change from the current situation.

As I have said before, and as my right hon. Friend the Secretary of State said yesterday, we are reviewing the enforcement powers of the ICO, and we are working with the commissioner to ensure that we get the whole suite absolutely right. I cannot say any more than I already have on that point.

Question put and agreed to.

Clause 157 accordingly ordered to stand part of the Bill.

Clause 158 ordered to stand part of the Bill.

Clause 159

GUIDANCE ABOUT REGULATORY ACTION

Amendment made: 58, in clause 159, page 89, line 37, leave out from "a" to end of line 38 and insert

"person to make oral representations about the Commissioner's intention to give the person a penalty notice;"—*(Margot James.)*

This amendment is consequential on Amendment 52.

Clause 159, as amended, ordered to stand part of the Bill.

Clauses 160 to 163 ordered to stand part of the Bill.

Clause 164

ORDERS TO PROGRESS COMPLAINTS

Amendment made: 59, in clause 164, page 93, line 4, leave out "with the day on which" and insert "when"

This amendment is consequential on Amendment 71.—(Margot James.)

Clause 164, as amended, ordered to stand part of the Bill.

Clauses 165 to 167 ordered to stand part of the Bill.

Clause 168

PUBLISHERS OF NEWS-RELATED MATERIAL: DAMAGES AND COSTS

Question put, That the clause stand part of the Bill.

The Committee divided: Ayes 7, Noes 10.

Division No. 12]

AYES

Byrne, rh Liam	Murray, Ian
Elmore, Chris	Snell, Gareth
Haigh, Louise	
Jones, Darren	Zeichner, Daniel

NOES

Adams, Nigel	Jack, Mr Alister
Atkins, Victoria	James, Margot
Clark, Colin	Lopez, Julia
Heaton-Jones, Peter	Warman, Matt
Huddleston, Nigel	Wood, Mike

Question accordingly negatived.

Clause 169

PUBLISHERS OF NEWS-RELATED MATERIAL: INTERPRETIVE PROVISIONS

Question put, That the clause stand part of the Bill.

The Committee divided: Ayes 7, Noes 10.

Division No. 13]

AYES

Byrne, rh Liam	Murray, Ian
Elmore, Chris	Snell, Gareth
Haigh, Louise	
Jones, Darren	Zeichner, Daniel

NOES

Adams, Nigel	Jack, Mr Alister
Atkins, Victoria	James, Margot
Clark, Colin	Lopez, Julia
Heaton-Jones, Peter	Warman, Matt
Huddleston, Nigel	Wood, Mike

Question accordingly negatived.

Clause 170

UNLAWFUL OBTAINING ETC OF PERSONAL DATA

Liam Byrne: I beg to move amendment 157, in clause 170, page 96, line 25, at end insert—

"or

(d) was done in the process of making a protected disclosure for any of the purposes of the Employment Rights Act 1996 or the Employment Rights (Northern Ireland) Order 1996 (SI 1996/1919 (NI 16)).".

This amendment seeks to ensure that the offences listed in the offences of the Bill do not infringe on a worker's ability to raise public interest concerns about wrongdoing, risk or malpractice.

The Chair: With this it will be convenient to discuss amendment 158, in clause 171, page 97, line 28, at end insert—

"or

(d) was done in the process of making a protected disclosure for any of the purposes of the Employment Rights Act 1996 or the Employment Rights (Northern Ireland) Order 1996 (SI 1996/1919 (NI 16)).".

This amendment seeks to ensure that the offences listed in the offences of the Bill do not infringe on a worker's ability to raise public interest concerns about wrongdoing, risk or malpractice.

Liam Byrne: I am grateful to my hon. Friend the Member for Edinburgh South for keeping me warm and enthused.

The amendment is important. None of us wants to damage the right and power of whistleblowers to bring important information into the public domain, sometimes to the attention of regulators, sometimes to the attention of organisations, such as the Health and Safety Executive, and sometimes to the attention of Members. Over the years, we have put in place a good regime in order to ensure that whistleblowers are afforded protections that allow them to come forward with information that is in the public interest.

The reason we have to consider that now is that data protection legislation is being strengthened by the incorporation of GDPR into British law. However, the risk is that the ambiguities that frame the protection of whistleblowers in the Bill are such that many are concerned that whistleblowers will not be given the right protection against data protection legislation.

The Government recognise that it is important to protect whistleblowers. There is a protection in clause 170 for whistleblowers bringing forward information that is

"justified as being in the public interest."

The argument put to us by Public Concern at Work and others is that that approach is unlikely to be effective. We are told that there will be a new test in law, which will therefore require guidance from the courts. Until that time, the precise meaning will obviously be a bit moot, and the scope of the situations that the Government seek to protect will remain a little uncertain. That uncertainty and ambiguity will jeopardise an individual who might have something important to bring to the attention of the outside world.

Exceptions to violations in personal data confidentiality were recently considered by the Government in section 58 of the Digital Economy Act 2017, which provided a far more comprehensive list of exceptions. Where there is overlap between the Bill and the Digital Economy Act, it appears that the Act deals much more satisfactorily with whistleblowers.

I remind the Committee that section 58 of the Act says that the offence does not apply to a disclosure

"which is a protected disclosure for any of the purposes of the Employment Rights Act 1996 or the Employment Rights (Northern Ireland) Order 1996".

We therefore have a pretty well established and grounded definition of exceptions. Indeed, it was so well defined and grounded that the Government decided to use that definition in the 2017 Act. It is not clear why the Bill seeks to create alternative definitions and therefore the need for alternative tests and guidance in the courts when we have a definition we can rely on.

The Opposition amendment would return us to what we think was sensible drafting in the Digital Economy Act. That Act is not ancient history—it was only 12 months ago. Otherwise, the risk is that the Government, employers, courts and trade unions will get into an awful muddle as they try to understand which legislation protects whistleblowers in new circumstances. None of us wants to create a situation of uncertainty and ambiguity that stops whistleblowers from coming forward with important information.

I therefore hope we can have a useful debate about why the Government have chosen to introduce new definitions when it is not clear that they are improvements on well-established employment law that dates back to the Employment Rights Act 1996. Let us hear what the Minister has to say, but I hope the Government reflect on the arguments we rehearse this afternoon and introduce further enhancements and perfections on Report.

Stuart C. McDonald (Cumbernauld, Kilsyth and Kirkintilloch East) (SNP): The right hon. Gentleman is correct: it is essential that we do not create an offence in the clause that will snare whistleblowers. I am sure the Committee shares that goal. Indeed, if we created such an offence, whistleblowers would no longer be whistleblowers—a qualifying disclosure would no longer be a qualifying disclosure if it were an offence under different legislation, including the Bill.

We will listen carefully to what the Minister says, but, to come at it from a slightly different angle, as I understand it, the Employment Rights Act currently requires a

"reasonable belief" by the worker making the whistleblowing disclosure that it is in the public interest to disclose that information. That seems a slightly easier test than the one contained in a defence in subsection (2) of the clause, which requires not a "reasonable belief"—those words do not appear—but proof that disclosure was justified in the public interest. There is also a contrast with subsection (3), where a reasonable belief test is applied to a defence but only in circumstances of publication of either journalistic, artistic or literary material.

It is not clear to me why there is a reasonable belief test in subsection (3) but not in subsection (2). I am interested to hear what the Minister has to say about that distinction.

Margot James: The amendments concern offences relating to personal data provided for by part 6 of the Bill. Hon. Members will be aware that the offence of unlawful obtaining of personal data has been carried over and updated from the 1998 Act to include the unlawful retention of personal data without the controller's consent. By contrast, the offence of re-identification of de-identified personal data is new to data protection legislation, underlining our intention to bring data protection laws up to date with the digital age.

Amendment 157 would add an additional defence to clause 170 where the conduct is in the process of a disclosure by an employee raising public interest concerns about wrongdoing or malpractice to the extent that such disclosures would be protected by the Employment Rights Act 1996 and equivalent legislation for Northern Ireland. Amendment 158 adds the same defence to clause 171.

I share the sentiment of the amendments, but believe they are unnecessary. Clauses 170 and 171 provide defences in cases where the processing is necessary for the prevention or detection of crime or can be justified as being in the public interest. We believe that the crime prevention defence would cover a disclosure by an employee who suspected that an offence had been committed, and that the flexible public interest defence would encapsulate the other non-criminal activities envisaged by the amendments. In particular, as set out in section 43B of the Employment Rights Act 1996 and article 67B of the Employment Rights (Northern Ireland) Order 1996, a disclosure is protected in the first place only if the disclosing worker reasonably believes the disclosure to be in the public interest.

4.15 pm

Stuart C. McDonald: This is a narrow question that I raised in my speech. There is a "reasonable belief" test in the 1996 Act. It is easier for someone to prove that they had a reasonable belief that a disclosure was in the public interest than to prove that it was in the public interest. That slight difference in wording may be significant. There are in fact two different tests in the clause, so I wonder whether the Minister might look at that again.

Margot James: I referred to the public interest defence as a flexible defence that would encapsulate non-criminal activities. I do not know whether that satisfies the hon. Gentleman, but a flexible public interest defence is indeed required.

For those reasons, I reassure hon. Members that a further defence providing for whistleblowing is unnecessary. It is telling that there is no such defence in section 55 of the 1998 Act, and we are not aware of any problems with its operation. Hon. Members mentioned section 58 of the Digital Economy Act 2017. That is a difficult comparison. Unlike clauses 170 and 171, section 58 does not contain a straightforward public interest defence, so, unlike the offences in the Bill, there may be no alternative protection for such disclosures. I hope I have given hon. Members sufficient reassurance that they feel confident withdrawing their amendments.

Liam Byrne: I am grateful to the Minister for that reply. She says that she wants to try to update the legislation. I understand what she is trying to do and why she does not accept that there is a complete parallel with the Digital Economy Act. None the less, the new definition will need to be tested in court, new guidance will need to be issued and new ambiguity will therefore be created, which brings with it the risk that important whistleblowers will be dissuaded from bringing forward information that is in our interest and letting it see the light of day.

I hope the Minister reflects on that further. She seeks to create an extension in law to ensure that there is a public interest definition in the round—I can see the enlargement that she is trying to make—but I hope she reflects before Report stage on the challenge that new definitions will have to be tested in court, which will create ambiguity and risk. I do not think she wants to create that risk, but the strategy she sets out does not completely delete it and it remains a concern. I will happily withdraw the amendment, but I ask the Minister to reflect on that point before Report.

Margot James: I am happy to reflect on what the right hon. Gentleman proposes. The last thing we want is to have any chilling effect on would-be whistleblowers.

Liam Byrne: I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 170 ordered to stand part of the Bill.

Clause 171

RE-IDENTIFICATION OF DE-IDENTIFIED PERSONAL DATA

Question proposed, That the clause stand part of the Bill.

Darren Jones: It is a pleasure to serve under your chairmanship this afternoon, Mr Streeter. I want to pursue the debate on the re-identification of de-identified personal data because, as the Minister pointed out, under the general data protection regulation, the idea of pseudonymised data comes into the law for the first time. For example, if my name, as my personal data, is turned into #365, it has been pseudonymised, and the question is whether #365 can be unlocked to identify the name "Darren Jones". Pseudonymising is distinct from anonymising, which cannot be unlocked.

[Darren Jones]

The question has come up a lot in the Select Committee on Science and Technology, in various contexts. I had a conversation with the Minister and her officials in the Select Committee about one scenario—the use of genetic data in the health service, where lots of data from individuals is pooled together for the purpose of learning about trends. It may be re-applied to the individual in the delivery of care. Another example might involve Facebook clients being able to upload customer lists on to the Facebook advertising profile. Each name would be hashed—pseudonymised—but ultimately targeted advertising could be pushed through to the individual's profile.

Both those scenarios raise a policy question about the end of the process, when it comes back to the individual—the information has been personally identifiable, then is pseudonymised in a pooled way, and is then re-identified. Will those issues give rise to an offence under the part of the Bill that we are considering, and should consent be different, with the potential for pseudonymised data to be re-identified made clear to the end user? The reason I have not tabled any amendments to deal with the point is that I do not know the answer, but I should welcome the Minister's views, and perhaps a commitment to have a conversation either with the Information Commissioner or the new data and artificial intelligence ethics unit about different types of consent where data is pseudonymised and then re-identified, either for health purposes or targeted advertising.

The Chair: I hope the Minister understood all that.

Margot James: I am sure you did, Mr Streeter.

Clause 171 creates a new offence of knowingly or recklessly re-identifying information that has been de-identified without the consent of the controller who de-identified the data. It is a response to concerns about the security of de-identified data held in online files. For example, recommendations in the review of data security, consent and opt-outs by the National Data Guardian for Health and Care call for the Government to introduce stronger sanctions to protect de-identified patient data, to which I think the hon. Member for Bristol North West was referring.

Subsection (3) provides the defendant with a defence if he or she can prove that re-identification was necessary for the purposes of preventing crime or complying with a legal obligation, or that it was justified in the public interest. Subsection (4) provides further defences where the defendant can prove they reasonably believed that they had or would have had the consent of the data subjects to whom the information relates or of the data controller responsible for de-identifying the information, or that they acted for the special purposes, with a view to publication, and the re-identification was reasonably believed to be justified in the public interest, or if the effectiveness testing conditions in clause 172 were met.

I have perhaps strayed rather far into the matter of defences in answering the hon. Gentleman, and may not have entirely satisfied him as to his question. If he is agreeable I will write to him, and get from my officials the latest as to the oversight of the important questions he raises.

Louise Haigh: My hon. Friend the Member for Bristol North West has raised important questions about social media providers. Before I entered this place, I worked in the insurance industry. Will the Minister confirm whether insurers would be covered by the clause if they re-identified individuals from datasets to inform the pricing of risk? That is potentially serious when considering the implications of loyalty card, bank or shopping information for health insurance.

Margot James: I will have to write to the hon. Lady on that. I do not think it would provide cover for insurance companies in those circumstances, but I would like to double-check before I give a definitive answer to her question.

Question put and agreed to.

Clause 171 accordingly ordered to stand part of the Bill.

Clauses 172 to 176 ordered to stand part of the Bill.

Clause 177

Jurisdiction

Darren Jones (Bristol North West) (Lab): I beg to move amendment 151, in clause 177, page 102, line 13, at end insert—

"(4) Notwithstanding any provision in section 6 of the European Union (Withdrawal) Act 2018, a court or tribunal shall have regard to decisions made by the European Court after exit day so far as they relate to any provision under this Act.".

For fear of sounding like a broken record, my arguments in favour of the amendment are broadly similar to those for amendment 152—in seeking to assist the Government in our shared aim of getting a decision of adequacy with the European Commission, it would be helpful to set out in the Bill our commitment to tracking and implementing European jurisprudence in the area of data protection. Members will remember that amendment 152 dealt with the European data protection board. Amendment 151 makes the same argument, but in respect of the European Court.

I appreciate that there may be some political challenges in stating the aim that the UK will mirror the European Court's jurisdiction, but the reality is that developing European data protection law, either directly from the courts or through the European data protection board, will in essence come from the application of European law at the European Court of Justice. The amendment does not seek to cause political problems for the Government, but merely says that we ought to have regard to European case law in UK courts, in order to provide the obligation to our learned friends in the judiciary to have regard to European legal decision making and debates in applying European-derived law in the United Kingdom. This short amendment seeks merely to put that into the Bill, to assist the Government in their negotiations on adequacy with the European Commission.

Liam Byrne: I would like to say a word in support of this important amendment. We had a rich and unsatisfactory debate on the incorporation of article 8 of the European charter of fundamental rights into British law. We think that that would have helped the Government considerably in ensuring that there is no divergence between the European data protection regime

and our own. If the Government are successful, they will operate on different constitutional bases, and there is therefore a real risk of divergence over the years to come. I think that everyone on the Committee is now pretty well versed in the damage that that would do to British exports, many of which are digitally enabled. This is a really helpful amendment. It tries to tighten to lockstep that we have to maintain with European data protection regimes, which will be good for exports, services and the British economy, and the Government should accept it.

Margot James: When we leave the European Union, the direct jurisdiction of the Court of Justice of the European Union in the UK will come to an end. Clause 6 of the European Union (Withdrawal) Bill gives effect to that and takes a clear and logical approach to how our domestic courts should approach the case law of the CJEU as a result. In short, where a judgment precedes our exit, it is binding on courts below the Supreme Court. Where a judgment post-dates our exit, our courts may have regard to it if they consider it appropriate, but EU law and the decisions of the ECJ will continue to affect us. The ECJ determines whether agreements that the EU has struck are legal under the EU's own law. If, as part of our future partnership, Parliament passes an identical law to an EU law, it may make sense for our courts to look at the appropriate ECJ judgments so that we interpret those laws consistently, but our Parliament would ultimately remain sovereign.

4.30 pm

If we agree that the UK should continue to participate in an EU body or agency such as the European Data Protection Board, the UK would of course have to respect the remit of the ECJ in that specific regard, but our Parliament would remain ultimately sovereign. It could, for example, decide not to accept those rules, but with consequences inevitably for our membership of the relevant agency and linked market access rights.

The approach is sensible and realistic. Opposition Members have suggested that if the UK is to achieve the future relationship with the EU on data protection that we seek, we must follow the jurisprudence of the ECJ post-Brexit in respect of data protection. We do not believe this to be the case. There are a number of existing precedents where the EU has reached agreements with third countries that provide for a close co-operative relationship without the CJEU having direct jurisdiction over those countries. It is worth quoting directly from the European Union (Withdrawal) Bill, which states:

"A court or tribunal need not have regard to anything done on or after exit day by the European Court, another EU entity or the EU but may do so if it considers it appropriate to do so."

I should make it clear that the provision does not seek to legislate for the content of a withdrawal agreement or implementation period. If there is a role for the CJEU as part of the agreement, as has been set out in the joint report in relation to citizens' rights, it would be legislated for under the separate withdrawal agreement and implementation period, but it would not be right to try to legislate now in anticipation of a final legal text agreed with the EU on the terms of our withdrawal from the EU.

The position in the European Union (Withdrawal) Bill reflects the reality that in leaving the EU we will be ending the direct jurisdiction of the CJEU over our domestic courts while also allowing judges to take account of post-exit CJEU judgments. This is similar to how the UK courts can currently take into account judgments made by courts from other jurisdictions, although of course we recognise that as the text of our law and EU law will at the outset be the same or substantially similar in many cases, it is highly likely in practice that our courts may find it helpful to look at the CJEU judgments, and it is perfectly legitimate and sensible for them to do so.

Ian Murray (Edinburgh South) (Lab): The Prime Minister said in her Mansion House speech earlier this month that as a country we may have to stay under the jurisdiction of the ECJ for the purposes of organisations such as Euratom and other EU-wide organisations that the UK may wish to remain part of. Is the Minister saying that that is a possibility with regard to data protection laws in this legislation?

Margot James: The future of our membership of the European Data Protection Board will be subject to negotiations. I cannot prejudge how those negotiations will develop and finalise in respect of our membership of that important body.

Ian Murray: Am I right in saying that the Minister is not ruling it out as part of the legislation?

Margot James: I would not rule it out, but the negotiations are between two parties, so however much we may wish to maintain our membership of the European data protection board, that might not be something that the EU will grant us. As I say, it is a matter for negotiation and I am sure things will become clearer over the next 12 months. To take an approach now that would require our courts to follow future case law of the CJEU, even if only in some areas, would place limitations on the discretion and independence of our courts.

Liam Byrne: The Minister is trying to protect a discretion that sounds like the defence of a right to depart from EU case law to such an extent that we might jeopardise an adequacy agreement. Surely the point of this amendment is to keep us in lockstep, to de-risk that adequacy agreement for the years to come. That surely must be an object of her Government's policy.

Margot James: The Government are absolutely committed to getting an adequacy agreement. The Prime Minister has said she wishes to go beyond adequacy in the negotiations. I would like to reassure the right hon. Gentleman that the very opposite is the case. Our courts can have regard to, and that is good enough. There is no reason for this to be different in the area of data protection from what it might be in any other area.

The provision has been discussed at length and agreed to by the House. Hon. Members will be aware that the other place is now scrutinising the EU (Withdrawal) Bill and has focused on this very matter. There is broad agreement that we need to consider how best to ensure that the Bill achieves the policy aim with sufficient clarity. We want to reach agreement on a proposition that commands the greatest possible support. We should, however, be wary of seeking to provide for something

[Margot James]

that alters the underlying policy in a way that binds or steers our courts towards a particular outcome, for example, by saying that they must have regard in only certain areas of law.

Liam Byrne: I do not quite follow the Minister's argument. On the one hand, she says that it is the object of Government policy to secure an adequacy agreement and presumably keep that adequacy agreement, if not, indeed, go beyond it. She is now seeking to defend a flexibility that would allow some kind of departure from European norms. I cannot understand how she can quite want her cake and eat it.

Margot James: Courts will be allowed to follow the jurisprudence of the ECJ in this area of data protection. Nothing I am saying is prompting a departure from that position. We see the amendment as going further than we would like to go. By contrast, the Government's proposed approach to CJEU oversight respects the referendum result and is clear, consistent and achievable.

Darren Jones: The Minister gave a full answer, largely in agreement with the points I made.

Margot James: Not much; not with those.

Darren Jones: I agree. I would therefore invite the Government to reconsider their position and support the amendment, because it reflects what is in the EU (Withdrawal) Bill, it talks about having regard to ECJ jurisprudence in future and, as the Minister pointed out, Government policy and the Government's intention are that we are going to end up in that position anyway. By putting that in the Bill, we would put it into law and give a very clear signal to our colleagues in the European Union that that is our intention and we will stand by it.

The Minister's arguments do not seem to stack up. If I were saying in the amendment that we must apply ECJ case law directly and that the UK courts had no power to disregard EU jurisprudence I would probably agree, but that is not what it seeks to do. I am not convinced it goes beyond the Government's policy position nor what is said in the EU (Withdrawal) Bill. I merely seek to help the Government by making this simple amendment to the Bill. With your permission, Mr Streeter, I will push it to a vote.

Question put, That the amendment be made.

The Committee divided: Ayes 9, Noes 10.

Division No. 14]

AYES

Byrne, rh Liam	Murray, Ian
Elmore, Chris	O'Hara, Brendan
Haigh, Louise	Snell, Gareth
Jones, Darren	Zeichner, Daniel
McDonald, Stuart C.	

NOES

Adams, Nigel	Jack, Mr Alister
Atkins, Victoria	James, Margot
Clark, Colin	Lopez, Julia
Heaton-Jones, Peter	Warman, Matt
Huddleston, Nigel	Wood, Mike

Question accordingly negatived.

Clause 177 ordered to stand part of the Bill.

Clause 178 ordered to stand part of the Bill.

Clause 179

REGULATIONS AND CONSULTATION

Amendment made: 62, in clause 179, page 103, line 35, at end insert—

"( ) If a draft of a statutory instrument containing regulations under section 7 would, apart from this subsection, be treated for the purposes of the standing orders of either House of Parliament as a hybrid instrument, it is to proceed in that House as if it were not such an instrument."—*(Margot James.)*

This amendment disapplies the procedure for hybrid instruments in the House of Lords (and any similar procedure that may be introduced in the House of Commons) in relation to regulations under Clause 7 (meaning of "public authority" and "public body" for the purposes of the GDPR).

Clause 179, as amended, ordered to stand part of the Bill.

Clauses 180 to 181 ordered to stand part of the Bill.

Ordered, That further consideration be now adjourned. —*(Nigel Adams.)*

4.41 pm

Adjourned till Thursday 22 March at half-past Eleven o'clock.

Written evidence reported to the House

DPB 38 Robin Makin (Chapter 4 part 4)

DPB 39 Lewis Silkin LLP

DPB 40 Society of Editors

DPB 41 Institute of Health Records and Information Management (IHRIM)

DPB 42 ISACA

DPB 43 National Pharmacy Association

DPB 44 Bates Wells Braithwaite

DPB 45 Media Lawyers Association

DPB 46 Information Commissioner's Office supplementary written evidence

DPB 47 Global Witness

DPB 48 Evening Standard and Independent

DPB 49 Association for UK Interactive Entertainment