

The Data Protection and Digital Information Bill and the Consequences of Lowering UK Data Protection Standards by *Eleonor Duhs, Barrister, Partner and Head of Privacy at Bates Wells, and Jess Whitehead, Associate, Data & Privacy team, Bates Wells* (19th March 2024)

The free flow of personal data across borders is essential to the modern economy. Finance, banking, retail and hospitality all depend on it. The free flow of data between the UK and its biggest trading partner, the EU, is therefore of crucial importance. **Reforms to the UK's data protection frameworks could put EU-UK data flows at risk. [A lack of free flow of personal data from the EU to the UK could cost UK businesses up to £1.6bn](#).** It could also lead to the **suspension of the law enforcement cooperation mechanisms in the [EU-UK Trade and Cooperation Agreement](#) (see Article 693)**, thereby making citizens on both sides of the Channel less safe. **[Provisions of the EU-UK Withdrawal Agreement will kick in if the UK loses the free flow of data from the EU](#) (see Article 71)** and will also **create operational headaches for UK businesses. These obligations would require UK businesses to navigate different data protection standards, depending on where the data they are processing originated.**

Currently, there is a free flow of data from the EU to the UK for [both general and law enforcement data processing](#). This is because the EU has [assessed the UK's frameworks](#) as providing an essentially equivalent level of protection of personal data to that in the EU. The basis for this assessment is that the UK's current data protection regime (the UK GDPR and the Data Protection Act 2018) mirror and adhere to the standards set out in the EU's data protection frameworks.

Peers are urged to support amendments which uphold current, high data protection standards by:

- **Opposing Clause 5 which creates a new legal basis of “recognised legitimate interests”.** The legitimate interests legal basis is already very flexible and **this new provision is not necessary.** Further, the power to add new “recognised legitimate interests” has been [criticised by the DPRRC](#), who state that powers enabling Ministers to use secondary legislation to amend provisions which “go to the heart of the data protection legislation” are inappropriate.
- **Opposing Clause 8 and Schedule 1 which make it easier for political parties to target children** as young as 14 during election campaigns. This is contrary to fundamental principles of data protection law because children cannot vote until they are 16 or 18.
- **Opposing Clause 14, which waters down protections from solely automated decision-making.** These protections are crucial in the age of AI. The power in new Article 22D could be used to reduce protections further, as recommended by the Taskforce on Innovation, Growth and Regulatory Reform (see paragraphs 225 - 7).

Lowering of data protection standards could **operate to the detriment of the UK's ability to trade with its closest partners and to share vital information to keep our citizens safe.** Failing to adhere to international standards on the protection of personal data could **undermine the UK's ambition to be a [global leader in technology and innovation](#).** Personal data is the “energy” which powers new technologies. **[Low standards of protection result in fewer people agreeing to their personal data being shared, thereby hampering digital growth.](#)**

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