

## Proposed amendments to the Data Protection Bill 2017

*The following proposed amendments would constitute a new subclause (j) added to the end of Schedule 13, paragraph 1 (Other General Functions of the Information Commissioner), requiring the Information Commissioner to:*

- (j) investigate, keep under review, and as may be appropriate produce and publish written guidance on:
  - (i) the terms upon which enterprises may be entitled to seek consent to the disclosure of personal data of vulnerable adults from such adults or their carers as a pre-condition to providing online or other services: for this purpose a ‘vulnerable adult’ means a person aged 18 or over whose ability to protect himself or herself from physical or psychological harm is significantly impaired through physical or mental disability or illness, through old age or otherwise;

*[Explanatory Notes: Section 153 already deals with the ICO giving more general guidance, and the purpose here is to make provision for the ICO to consider specific topics.*

*In this sub-clause (i) the purpose is to have the ICO consider whether action is needed to forestall such situations as a vulnerable adult or his or her unpaid carer signing up to an online social network service by clicking to accept terms and conditions without appreciating their disadvantageous significance as regards the prospect of exploitative processing of the vulnerable adult’s personal data, for example for the purpose of selling pharmaceutical products.*

*The definition of “vulnerable adult” provided is a common statutory definition of that expression, and would need to be added to the index in section 185.]*

- (ii) the processing of personal data by automated or structured processing as the sole means of determining eligibility for health or social care;

*[Explanatory Notes: Section 13 already provides for safeguards with respect to automatic processing, and the phrase “automated or structured processing” is already defined in section 19(4) for the purposes of sections 19 to 26.*

*The purpose here is to have the ICO give further and specific consideration to whether action is needed to forestall such situations as an adult applicant for social care being unfairly denied it without human intervention by an algorithm in a software program that is far from ‘smart’ misinterpreting or misapplying stored personal data.]*

- (iii) the circumstances in which it may be appropriate to invite the giving of explicit consent to the processing and pooling of personal data for the purposes of health or social care;

*[Explanatory Notes: GDPR Article 9(2), point (h), already contemplates an exception for processing and pooling of personal data for research aimed at improving health, health care or social care (compare the Bill, section 9(1)(c), and Schedule 1, Part 1).*

*The purpose here is to have the ICO consider whether there is a public interest in establishing a standard opt-in tick box for an individual to give explicit consent to personal data being pooled and processed without first being anonymised, and for purposes other than to make a profit.]*

- (iv) steps that should be taken to discourage public bodies from selling or giving away collected personal data or associated software as opposed to licensing use or development.

*[Explanatory Note: The purpose here is to have the ICO consider whether steps ought to be taken, for example, to avoid a constituent body within the NHS giving away a valuable set of collected personal data to a private contractor together with an algorithm, with the result that the private contractor may later be able to sell the set of data or the developed algorithm back to the NHS at a profit; whereas a properly negotiated and drafted licence would enable the NHS to share in the profit from use and development.]*



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