



BRIEFING: Your chance to create a world-leading data watchdog

Briefing to the House of Lords Second reading for the Data Protection and Digital Information Bill.

The Government has denied any meaningful scrutiny of the Data Protection and Digital Information Bill. On November 29, the House of Commons was pushed to debate and approve more than 150 pages of amendments, tabled only a few days before the debate, which introduced radical changes to the text of Bill as it was scrutinised at Committee stage.

Members of Parliament were not given a fair chance to scrutinise this Bill effectively—indeed, some MPs admitted that they had no idea of what they voted for, but voted in favour anyway.¹ This is the last straw for this Bill, which was presented after a lopsided consultation process² and the Government repeated failures to address the widespread concerns the Bill has raised³ since it was presented. The Bill also lacked scrutiny from the Joint Committee on Human Rights, despite the significant impact it would have on the rights of British citizens and residents.

Law making needs to be upheld by due process and integrity, both of which have been noticeably lacking: as the Government denied the House of Commons a fair chance to exercise their role, it is up to the House of Lords to intervene, hold the Government accountable, and introduce radical and much needed changes to this Bill. ORG has a number of concerns around how the bill weakens our data rights. Here however we want to explain why effort needs to be made to ensure the Information Commissioner's Office becomes an effective regulator.

¹ See MP Flick Drummond, as reported by Silkie Carlo, at: https://x.com/silkiecarlo/status/1731797160604176846?s=20/TA-9-2023-0436_EN.html

² See *Data Reform Bill consultation 'rigged' say civil rights groups*, at: https://techmonitor.ai/policy/privacy-and-data-protection/data-reform-bill-consultation-dcms-nadine-dorries/1731797160604176846?s=20/TA-9-2023-0436_EN.html

³ See *Open letter to Rt Hon Michelle Donelan MP*, at: <https://www.openrightsgroup.org/app/uploads/2023/03/DPDI-Bill-UK-civil-society-letter.pdf>

The Information Commissioner's Office has a poor track record on enforcement: during the 2021-22 period the ICO secured no enforcement notices or criminal prosecutions and issued only 4 GDPR fines totalling just £633k.⁴ During the Covid pandemic, the ICO underperformed in their regulatory function when compared to other UK regulators, such as the Financial Conduct Authority (FCA), and other European data protection agencies.⁵ Increased political pressure is casting doubts over the ability of the ICO to operate independently from the Government. Significant shortcomings have arisen in practice in how the ICO handles complaint and the mechanism available to individual to promote accountability over the ICO regulatory action.

If Parliament does not take action, all these issues will be heightened by provisions in the Data Protection and Digital Information Bill. To avoid this outcome, Open Rights Group is proposing the bill is amended to:

- Clarify the statutory objective of the new Information Commission.
- Ensure its an independent arms-length body from Government.
- Allow effective judicial scrutiny of the new Information Commission regulatory function.
- Allow not-for-profit organisations, charities and trade unions to lodge representative complaints.
- Retain the Office of the Biometrics and Surveillance Camera Commissioner.
- Empower the Equality and Human Rights Commission to scrutinise the new Information Commission.

A stronger ICO would mitigate digital harms that can have a devastating impact on the most vulnerable within our society, and help ensure the UK has a world-leading watchdog to strengthen trust in our digital economy.

⁴ See David Erdos, University of Cambridge, *Towards Effective Supervisory Oversight? Analysing UK Regulatory Enforcement of Data Protection and Electronic Privacy Rights and the Government's Statutory Reform Plans*, at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4284602

⁵ See Open Rights Group, *Data privacy and the Information Commissioner's Office during a crisis: Lessons learned from the Covid-19 pandemic*, at: <https://www.openrightsgroup.org/publications/data-privacy-and-the-information-commissioners-office-during-a-crisis-lessons-learned-from-the-covid-19-pandemic/>

The effective supervision and enforcement of data protection, and the investigation and detection of offenders, are crucial to achieve deterrence, prevent violations, maintain transparency, control and options for redress against data misuse. Since Artificial Intelligence very often processes personal data, the ICO regulatory function is also pivotal for reaping the benefits of Artificial Intelligence while mitigating risks for individuals—be them patients, residents, employees or customers.

Further, these changes would address concerns over the impact of the DPDI Bill on the UK adequacy decision. The European Commission has already stated that the new powers of the Secretary of State to interfere with the objective and impartial functioning of the Information Commissioner may result in the withdrawal of the UK adequacy decision,⁶ which allows the free flow of personal data from and to the European Union. Likewise, the report adopted by the European Parliament on the implementation of the EU-UK Trade and Cooperation Agreement warned against changes that would threaten the independence of the ICO and widen its discretion to refuse to act on complaints, against its already notorious poor track record of enforcement.⁷ This would cost over 1.2bn pounds to UK businesses in administrative costs alone,⁸ and would disrupt trade relationship as well as the UK cooperation with the EU on law enforcement and research.

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About Open Rights Group (ORG): Founded in 2005, Open Rights Group (ORG) is a UK-based digital campaigning organisation working to protect individuals' rights to privacy and free speech online. ORG has been following the UK government's proposed reforms to data protection since their inception.

⁶ See *Answer given by Mr Reynders on behalf of the European Commission*, at: https://www.europarl.europa.eu/doceo/document/E-9-2023-001790-ASW_EN.html

⁷ See *European Parliament resolution of 23 November 2023 on the implementation of the EU-UK Trade and Cooperation Agreement*, paragraphs 177 and 118, at: https://www.europarl.europa.eu/doceo/document/TA-9-2023-0436_EN.html

⁸ See *The cost of data inadequacy* at: <https://neweconomics.org/2020/11/the-cost-of-data-inadequacy>