

Dear

KONP is a non-party political organisation campaigning against the underfunding and privatisation of the NHS, including the privatisation of NHS data.

We are writing to you to express our concerns about the Data Protection and Digital Information Bill scheduled that is being rushed through Parliament, with its second reading on 5th September.

The Bill raises many concerns. For example, if passed, the Bill will have grave implications for **human rights** – such as increasing the extent to which citizens' personal data can be shared with the State and law enforcement authorities. It will also **undermine the independence of the Information Commissioner's Office**, allowing for example, the Secretary of State to appoint the watchdog's Board, veto its guidance and set the ICO's priorities, with a new duty to promote "economic growth, innovation and competition" as part of its role.

Our particular concerns relate to:

a) The threat to Parliamentary scrutiny

The Bill introduces a substantial number of Henry VIII clauses allowing ministers to change primary legislation without proper consideration by Parliament. Resort to this type of delegated power can have serious constitutional implications and has been described by the House of Lords Delegated Powers and Regulatory Reform Committee as "an abuse of power and an abuse of democracy".¹

b) The threat to personal health data

The Bill will remove many existing protections for personal data, such as:

i) Reduced protection for our personal data

- *giving data controllers discretion* to decide when personal data can be classified as 'anonymous' and so falls beyond data protection law
- *amending the definition of 'scientific research'*, so extending commercial access to personal data and the pursuit of profit rather than the public good
- *extending the concept of consent for scientific research*, allowing an individual's consent for the processing of their health data to be taken as consent for data re-use, even for studies that were unforeseen at the time that the original consent was given

ii) Reduced controls on data collection and processing

- *abolishing the statutory requirement* for organisations that process data to have an independent Data Protection Officer. Instead, a senior employee, potentially without the relevant

¹ <https://publications.parliament.uk/pa/ld5802/ldselect/lddelreg/106/106.pdf>

- expert knowledge and at risk of a conflict of interest, will be designated to oversee an organisation's compliance with data protection rules
- *introducing a new, flexible accountability regime* that allows businesses to decide on the extent to which they will be compliant, based on the scale and their perceived risks of their operations
- *allowing personal data to be transferred to other countries* where standards of protection may be lower and where data may be available for purchase by transnational companies
- *removing the requirement for organisations to obtain 'opt-in' consent* from people before placing non-essential cookies on their devices

iii) Reduced rights for individuals

- *providing data controllers with more leeway to dispense with carrying out a 'balancing test' to ensure they have a legitimate interest in using data.* The test requires an organisation to weigh up whether in processing an individual's data, the data subject's rights are being overridden by the interests of the organisation. Although the list of recognised legitimate interests is limited (e.g. in emergencies), the Bill allows the Secretary of State scope to amend this list in future
- *Only requiring human oversight of the decisions taken by AI systems when these are considered to be 'significant'.* How 'significant' should be interpreted remains unclear
- *Expanding the grounds on which organisations can refuse to respond to individual's requests* to know what information the organisation holds on them (Subject Access Requests). These grounds include whether or not the request may be considered 'vexatious' or 'excessive' (e.g. made in bad faith, meant to cause harm, or an abuse of process)

Further information

This letter draws on an analysis of the Bill and its Explanatory Notes, focusing on the Clauses we believe to be of particular concern. If you wish to see this analysis, please see the full briefing at <https://keepournhspublic.com/wp-content/uploads/2022/09/MPs-Briefing-DataProtectionandDigitalInformationBill-Part-One.pdf>.

Further, more detailed information on the Clauses substantiating our analysis can be found at <https://keepournhspublic.com/wp-content/uploads/2022/09/Data-Protection-and-Digital-Info-Bill-Part-2-detail.pdf>.

We urge you to take every opportunity to oppose this Bill and vote against it.

Yours sincerely