The Data Protection and Digital Information (No. 2) Bill and the consequences of lowering UK data protection standards by *Eleonor Duhs, Barrister, Partner and Head of Privacy at Bates Wells* (10th May 2023)

The free flow of personal data across borders is essential to the modern economy. Finance, banking, retail and hospitality all depend on the free flow of personal data. 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 business up to £1.6bn, and 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, which would kick in if the UK lost the free flow of data from the EU (see Article 71),** would 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 is 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 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.

MPs are urged to use the first day of the Committee stage of the Data Protection and Digital Information (No. 2) Bill to point out that the provisions of the Bill could risk the free flow of data between the EU and the UK through:

- **Undermining the Information Commissioner's independence** (for example clause 31 of the Data Protection and Digital Information (No. 2) Bill requires the Commissioner to seek approval from the Secretary of State when issuing codes of practice);

- **Conferring powers on Ministers to remove fundamental protections which exist under the current regime** such as the right not to be subject to solely automated decision-making (see clause 11 of the Data Protection and Digital Information (No. 2) Bill and the regulation-making power in new Article 22D). This power could be used to remove protections as recommended by the Taskforce on Growth and Regulatory Reform (see paragraph 225). This would risk lowering the UK's standard of protection of personal data below that set out in modernised international standards by the Council of Europe (see Article 9(1)(a)).

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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