

LIBERTY

PROTECTING CIVIL LIBERTIES
PROMOTING HUMAN RIGHTS

**Liberty's briefing on the Digital Economy
Bill for Second Reading in the House of
Lords**

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About Liberty

Liberty (The National Council for Civil Liberties) is one of the UK's leading civil liberties and human rights organisations. Liberty works to promote human rights and protect civil liberties through a combination of test case litigation, lobbying, campaigning and research.

Liberty Policy

Liberty provides policy responses to Government consultations on all issues which have implications for human rights and civil liberties. We also submit evidence to Select Committees, Inquiries and other policy fora, and undertake independent, funded research.

Liberty's policy papers are available at
<http://www.liberty-human-rights.org.uk/policy/>

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Introduction

1. Liberty welcomes the opportunity to provide briefing on the Digital Economy Bill at its Second Reading in the House of Lords, scheduled for 13th December 2016.
2. The passage of this Bill overlaps with the passage of a Bill that similarly inflated the State's intrusion into the private lives of all citizens – the Investigatory Powers Act. The Digital Economy Bill seeks to integrate unspecified categories of data across Government departments potentially giving those with access a complete picture of individuals' engagement with the State, public services, and utilities suppliers.
3. If Part 5 of the Digital Economy Bill is passed, the Government will, in effect, create digital identity cards for all – profiles of data for which the subjects neither gave consent nor have access to. The Bill would permit personal data to be shared across Government departments, NHS bodies, and county councils without public transparency.

Recommendation

Liberty recommends that Parliamentarians oppose Part 5 of the Digital Economy Bill.

Part 5

4. It is Liberty's view that in carefully defined circumstances, processes for sharing some data across Government departments is necessary and useful. However, a system by which broad and detailed data is shared in bulk, almost by default, and without individuals' consent, is the wrong approach and demonstrates a lack of legal and ethical consideration in a policy area that is central to successful modern government.
5. Not only does Part 5 fail to meet these basic data protection principles, it would permit personal data to be shared for seemingly intrusive purposes, within and between health services, private utilities companies, councils and Government departments. **Liberty advises that this is plainly a disproportionate intrusion on individuals' Article 8 right to a private life.**

Part 5, Chapter 1: Public service delivery

6. Chapter 1, Part 5 of the Digital Economy Bill seeks to permit mass data sharing between public authorities and private companies such as utilities suppliers.¹ Clause 30 (8) states that information can only be shared for the improvement or targeting of a public service or benefit provided to individuals or households. The stated goal is to "improve public services through better use of data"², for example by enabling utilities companies to provide automatic fuel poverty rebates or "energy saving measures". Other examples provided in the Chapter's accompanying factsheet include TV re-tuning assistance, or to "identify families in need of help" from the Troubled Families Programme which seeks to "put adults in employment (...) and cut youth crime and anti-social behaviour".³
7. Whilst ensuring access to state benefits is a worthy aim, it must be pursued in a proportionate manner and in accordance with data protection law. Critically, this chapter lacks provisions for consent, access to one's data, knowledge of where one's data is held or how and by whom it is used, or indeed any framework for transparency around the data sharing agreements that are made. **Furthermore, using bulk data to "identify" and intervene in the lives of "troubled families"**

¹ Digital Economy Bill, 2016, clause 30

² Digital Economy Bill Factsheet: Better Public Services, Department of Culture, Media and Sport

³ Ibid.

arguably amounts to profiling and is highly likely to breach Chapter 3 of the EU General Data Protection Regulation (GDPR), due to be enforced from May 2018.

8. Nevertheless, the purposes for which data can be shared, as written into this Bill, extend beyond these “public service” schemes to benefit individuals. Subclauses 30 (9) and (10) state that information can also be shared to improve “their physical and mental health”, “emotional well-being”, “the contribution made by them to society”, and “their social and economic well-being”.⁴
9. Although well-intended, **these incredibly permissive purposes for data sharing would enable a new form of intrusion on the private lives of those who are most vulnerable.** Data sharing to evaluate and improve the “contribution” one makes to society plainly risks amplifying the punitive potential of some welfare sanctions, such as work schemes that have adversely impacted those with disabilities and ill health.^{5 6}
10. **Liberty is particularly concerned about the implications of clause 30 on the unconsented sharing of health data.** The ‘specified public authorities’ required to share data, likely in bulk, include NHS bodies, councils, and government departments - some of which, such as the Department for Work and Pensions, hold a high volume of detailed medical information.
11. Clause 33 further extends the applications of data sharing within and between the state and private companies. Clause 33 states that, other than fulfilling the purposes for which the data was ostensibly shared, information can be used to prevent or detect crime or anti-social behaviour, for criminal investigations, for legal proceedings, for “safeguarding vulnerable adults and children”, for HMRC purposes, or as required by EU obligations.⁷ **In effect, personal data could be shared across government departments to investigate, penalise or otherwise intrude on the lives of those in receipt of welfare, pensioners, and some of the country’s most vulnerable people.** This clause negates the claim that data sharing is only permitted for individuals’ benefit and reveals potential applications for administrative and policing purposes.

⁴ Digital Economy Bill, 2016, clause 30, subclauses (9) and (10)

⁵ <https://www.theguardian.com/society/2015/aug/24/benefits-shakeup-aims-to-force-more-disabled-people-into-jobs>

⁶ <https://www.theguardian.com/society/2015/aug/27/thousands-died-after-fit-for-work-assessment-dwp-figures>

⁷ Digital Economy Bill, 2016, clause 33

Chapter 2: Civil registration

12. Chapter 2 permits civil registration officials to disclose any information (e.g. records of births, marriages and deaths) with other civil registration officials or public authorities. This will necessitate the creation of digital records in addition to paper certificates currently used, which is clearly necessary for modern government.
13. However, with too few safeguards and too little transparency as to how and when these records will be accessed and by whom, and with no mechanism for consent to such data sharing either on an individualised basis or in bulk, this Bill fails in an area where Government needs to excel.
14. Furthermore, with the ability to share these documents across Government departments and integrate them with unlimited additional datasets (as provided for in this Bill), **civil registration records will form the backbone of the digital ID card regime potentiated by this Bill.**

Chapters 3 and 4: Debt owed to the public sector, and Fraud against the public sector

15. Chapter 3 permits data sharing between public authorities and companies providing services to public authorities in connection to debt owed to the public sector. The explanatory notes accompanying the Bill state that the purpose is to “create a more informed view of a customer's individual circumstances, and their ability to pay”⁸ via access to a “permissive gateway”⁹ to personal data.
16. The explanatory notes state that the Government intends to make regulations for the powers under chapters 3 and 4 initially for a number of bodies including the Department for Work and Pensions, the Department for Transport, HMRC, and The Student Loans Company, among many others.¹⁰ **This indicates that debts relating to fines, taxes, overpaid benefits and student loans are among those that this “permissive” data sharing gateway will be employed to pursue.**

⁸ Digital Economy Bill: Explanatory Notes, p.11

⁹ Digital Economy Bill: Explanatory Notes, p.31

¹⁰ Digital Economy Bill: Explanatory Notes, p.75

Conclusion

17. **Liberty is concerned that this Bill would authorise unconsented mass data sharing for the administrative and low-level policing functions of government, which is a disproportionate interference with citizens' right to a private life.** The provisions in Chapter 5 echo the overly broad data sharing powers proposed in s152 of the Coroner's and Justice Bill 2009, which parliament removed from the Bill.
18. **Liberty is further concerned that the application of the data sharing powers in this Bill may have a particularly adverse impact on the most vulnerable in society.** Some of the big data processing programmes outlined in documents accompanying the Bill indicate an intention to conduct profiling of vulnerable families, people out of work and in receipt of state welfare, and those in debt to the state.
19. **It is unacceptable that the Bill does not provide adequate safeguards or transparency mechanisms around data sharing between authorities and/or service providers.** Citizens would not be afforded an opportunity to consent to their data being shared or accessed and would have no way of knowing exactly how, when or why their personal information would be used. **Such opaque data sharing could include the sharing of highly sensitive medical data.**
20. Therefore, **Liberty recommends that Parliamentarians oppose Part 5 of the Digital Economy Bill.** Whilst provisions for some modernised information sharing between government departments is necessary, Part 5 of this Bill proposes a highly inappropriate and likely unlawful model for bulk, unconsented, and extremely disproportionate data sharing crossing public and private spheres that lacks fundamental safeguards or transparency mechanisms.