

Written evidence from defenddigitalme (PCS0398)

Six recommendations

- 1. Remove the new powers in Part 2, Chapter 1, Clause 15¹ *Disclosure of information* and Clause 16 *Supply of information to local policing bodies*. These powers are unnecessary given existing UK data protection law written explicitly for Law Enforcement in 2018.**
 - 2. Amend Part 2, clauses 36-42 and Schedule 3 relating to the extraction of information from electronic devices. If unchanged, combined with increased powers on Stop-and-Search these powers on mobile phone data extraction will inevitably be detrimental to children. Amendment is needed so that a child must only be able to consent in the presence and with the support of a known, trusted adult, not a stranger, when consent is the lawful basis used for mobile phone data extraction.**

 - 3. Recommend a review to address inconsistencies in the Bill in the age definitions of a child, to be aligned with the UNCRC definition of anyone under age 18, except where provided for with safeguards in law, or the age of majority is reached earlier in law.**

 - 4. A new amendment to make the age of criminal responsibility consistent across the UK, raising it from 10 in England. The UNCRC defines a child as anyone under 18. A compromise proposed by civil society would be age 14.**

 - 5. Create a duty on the Minister to commission, publish and respect the recommendations of a Child Rights Impact Assessment (CRIA) of the Bill, before the Bill could enter into effect. This would create a framework to protect, respect and provide remedy for children's rights, significantly affected by the Bill.**
 - 6. A new amendment to protect families from the abuse of deceased children's identities and personal data by (undercover) police officers (banning the practice).**
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Summary

If the UK government starts criminalising 'nuisance' noise, children will be caught up while exercising their right to peaceful protest such as Fridays-for-Future, or exam protests outside the DfE in the summer of 2020. The unusually low age of criminal responsibility in England in the UK compared with our peers, will mean more children policed or brought into the criminal justice system who are still of school age.

¹ The Police Crime Sentencing and Courts Bill <https://bills.parliament.uk/bills/2839/publications>

The proposed powers on consensual digital extractions from children's mobile phones, are excessive and fail to account for the power imbalance between police and children. Adults are permitted to decline so-called "digital strip searches" (but not applicable for suspects in crime for example). The Bill will expand existing discriminations through its expansion of powers on Stop-and-Search, the Prevent Programme, and measures targeted at the Traveller community. This has impact on discrimination and equality rights, and a wide range of children's rights such as the Right to freedom of speech, thought conscience and religion, the Right to Participation, and the Right to be Heard. The Bill takes a punitive approach to processes for children and fails to address children as rights 'holders. Considering the scope of these effects, a child rights impact assessment is necessary.

1. Remove the new powers in Part 2, Chapter 1, Clause 15 Disclosure of information and Clause 16 Supply of information to local policing bodies

Clauses 15 and 16 are unnecessary. The question to ask is: What does this aim to do that is not already lawful today? If a request would contravene data protection law, the new duty is to be taken into account. Clause 16(6) is tantamount to a get-out-of-jail-free-card for police to breach data protection law. The Law Enforcement Part 3 of UK Data Protection Law² only came into effect in 2018, with ample permissions specifically for law enforcement that do not need workarounds.

2) Amend Part 2, clauses 36-42 and Schedule 3 relating to the extraction of information from electronic devices. (mobile phone contents extraction)

As the Rt Hon Theresa May commented, the Bill has likely "unintended consequences" for discrimination and "*the position of girls being further exacerbated*":³

Most often police will not need to use consent as the lawful basis for a mobile phone data extraction. For example, it would not apply to investigation of anyone accused of crime. But where police have no other lawful basis, they will ask an adult for their permission. Adults may choose whether or not to consent to a mobile phone search where consent is the lawful basis being used by police. But for a child, the power imbalance between them and the police is more significant. The Bill is written so that the individual who may 'consent' on behalf of a child, need not be known to the child. This is wrong and must be changed.

We refer to the Bill accompanying factsheets⁴ and echo concerns set out by Privacy International.⁵ and the critical ICO 2020 report⁶.

² Part 3, UK Data Protection Law 2018 <https://www.legislation.gov.uk/ukpga/2018/12/part3/enacted>

³ Hansard (March 15, 2021) col.78 <https://hansard.parliament.uk/commons/2021-03-15/debates/3F59B66E-E7A1-484B-86E3-E78E71D0FE0F/PoliceCrimeSentencingAndCourtsBill#contribution-BCA82DA8-CBDE-4992-A08F-187E8A20C038>

⁴ PCSC Bill 2021: data extraction factsheet

<https://www.gov.uk/government/publications/police-crime-sentencing-and-courts-bill-2021-factsheets/police-crime-sentencing-and-courts-bill-2021-data-extraction-factsheet>

⁵ Policing Bill fails to provide sufficient safeguards around extraction of victims' data. (2021) <https://privacyinternational.org/news-analysis/4465/new-policing-bill-fails-provide-sufficient-safeguards-around-extraction-victims>

⁶ Mobile phone data extraction by police (The ICO) 2020 <https://ico.org.uk/about-the-ico/what-we-do/mobile-phone-data-extraction-by-police-forces-in-england-and-wales/>

3) Recommend review for consistency in the definition of a child throughout the Bill, aligned with the UNCRC to be anyone under age 18.⁷

4) Amendment to create a UK-wide consistent age of criminal responsibility.

England has an exceptionally low age of criminal responsibility (age 10). This should be consistent across the UK. Bringing England and Wales into line with Scotland (age 12) would be progress, but both should be raised to be aligned with best practice elsewhere in the world. This has been raised in the UNCRC⁸ Review of the UK now underway by the UN Committee on the Rights of the Child. The review proposal made by civil society is age 14. Reference Section 2, I (31). Even 14 does not take into account that for almost anything else where a child is defined as a person up to age eighteen except where the age of majority is younger, set in law. See CRIN: Criminalising children.⁹

5) Create a duty on the Minister to commission, publish and action the recommendations of an independent Child Rights Impact Assessment¹⁰ (CRIA) of the Bill, before the Bill could enter into effect.

In March 2021 Scotland became the first country in the UK to incorporate the UN Convention on the Rights of the Child into domestic law. (Five days after this Bill *Memorandum on Human Rights* omitted to mention this fact in para 270¹¹). Obligations include making assessment of the impact on children in developing new public policy ensuring *the best interests of the child shall be a primary consideration*. (Article 3)¹²

The Bill will have serious implications for children's right to protest, for Travellers, and the extraction of information from electronic devices will also affect children in Scotland.

A Child Rights Impact Assessment would realise a framework to protect, respect and offer remedy for children's rights across the wide ranging implications of the outcomes of the Bill.

6) Protection from abuse of deceased children's personal data and identities by (undercover) police.¹³

⁷ UNCRC art. 1.a child means every human being below 18 **unless under the law majority is attained earlier**.

⁸ UK Civil Society submission to the United Nations Committee on the Rights of the Child (2020) <http://www.crae.org.uk/publications-resources/civil-society-loipr-submission-to-the-un-committee-on-the-rights-of-the-child/>

⁹ Juvenile Justice: Stop Making Children Criminals (CRIN)

<https://archive.crin.org/en/library/publications/juvenile-justice-stop-making-children-criminals.html>

¹⁰ 5Rights (2021) Realising a better digital environment for children: Child Rights Impact Assessment as a tool

<https://digitalfuturescommission.org.uk/blog/realising-a-better-digital-environment-for-children-child-rights-impact-assessment-cria-as-a-tool/>

¹¹ Memorandum for the Joint Committee on Human Rights (March 11, 2021) <https://bills.parliament.uk/bills/2839/publications>

¹² The UNCRC (Children's Commissioner Scotland website copy) ref: Article 3 <https://cypcs.org.uk/rights/uncrc/full-uncrc/>

¹³ Met faces legal action over spies' use of dead children's identities (The Guardian) December 2020 <https://www.theguardian.com/uk-news/2020/dec/07/met-police-legal-action-spies-use-dead-childrens-identities>

UK Data Protection law only applies to **living** persons, so the practice of using dead children's identities without the knowledge or permission of parents might continue unless explicitly made unlawful. Practice causes harm and distress to relatives and must end. The protection of deceased children's identity from police misuse must be written into law.

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