

Data Protection and Digital Information Bill

AMENDMENTS
TO BE MOVED
IN GRAND COMMITTEE

Clause 14

BARONESS KIDRON
LORD CLEMENT-JONES
BARONESS JONES OF WHITCHURCH
BARONESS HARDING OF WINSCOMBE

Clause 14, page 27, line 34, at end insert –

“5A. The Secretary of State may only amend Article 22A, 22B or 22C provided such amendments do not reduce, minimise or undermine existing standards and protections of children’s data.”

Member's explanatory statement

This amendment ensures that, when exercising their powers, the Secretary of State must uphold the level of protection children are entitled to in DPA 2018.

After Schedule 8

LORD CLEMENT-JONES

After Schedule 8, insert the following new Schedule –

“SCHEDULE

MODIFICATIONS OF COURTS AND TRIBUNALS FUNCTIONS

PART 1

TRANSFER OF FUNCTIONS

- 1 The 2018 Act is amended as follows.
- 2 In section 44(5)(e) (information: controller’s general duties), for “court” substitute “tribunal”.
- 3 In section 45(5)(e) (right of access by the data subject), for “court” substitute “tribunal”.
- 4 In section 48 (rights under sections 46 or 47: supplementary) –

- (a) in subsection (1)(b)(iv) for “court” substitute “tribunal”; and
 - (b) in subsection (4)(d) for “court” substitute “tribunal”.
- 5 In section 51(5) (exercise of rights through the Commissioner), for “court” substitute “tribunal”.
- 6 In section 94 (right of access) –
- (a) in subsection (11), in both instances, for “court” substitute “tribunal”;
 - (b) in subsection (12), for “court” substitute “tribunal”;
 - (c) in subsection (13), for first “court” substitute “tribunal”; and
 - (d) in subsection (13), for “the High Court or, in Scotland, by the Court of Session” substitute “the Upper Tribunal”.
- 7 In section 99 (right to object to processing) –
- (a) in subsection (5), in every instance, for “court” substitute “tribunal”;
 - (b) in subsection (6), for “court” substitute “tribunal”;
 - (c) in subsection (7), for first “court” substitute “tribunal”; and
 - (d) in subsection (7), for “the High Court or, in Scotland, by the Court of Session” substitute “the Upper Tribunal”.
- 8 In section 100 (rights to rectification and erasure) –
- (a) in subsection (1), in both instances, for “court” substitute “tribunal”;
 - (b) in subsection (2), in both instances, for “court” substitute “tribunal”;
 - (c) in subsection (3), for “court” substitute “tribunal”;
 - (d) in subsection (4), in both instances, for “court” substitute “tribunal”;
 - (e) in subsection (5), in both instances, for “court” substitute “tribunal”;
 - (f) in subsection (6), for first “court” substitute “tribunal”; and
 - (g) in subsection (6), for “the High Court or, in Scotland, by the Court of Session” substitute “the Upper Tribunal”.
- 9 In section 145 (information orders) –
- (a) in subsection (1), for “court” substitute “tribunal”; and
 - (b) in subsection (2), in both instances, for “court” substitute “tribunal”.
- 10 In section 152 (enforcement notices: restrictions) –
- (a) in subsection (1)(b), for “court” substitute “tribunal”; and
 - (b) in subsection (2), in both instances, for “court” substitute “tribunal”.
- 11 In section 156 (penalty notices: restrictions) –
- (a) in subsection (1)(b), for “court” substitute “tribunal”; and
 - (b) in subsection (2), in both instances, leave out “court” and insert “tribunal”.
- 12 In section 164 (applications in respect of urgent notices) –
- (a) in subsection (2), for “court” substitute “tribunal”;
 - (b) in subsection (3), for “court” substitute “tribunal”; and
 - (c) in subsection (4), for “court” substitute “tribunal”.
- 13 In the italic heading before section 165 (complaints by data subjects), after “Complaints” insert “and remedies in the tribunal”.

- 14 Omit the italic heading before section 167 (compliance orders).
- 15 In section 167 (compliance orders) –
- (a) in subsection (1), for “court” substitute “tribunal”;
 - (b) in subsection (2), for “court” substitute “tribunal”; and
 - (c) in subsection (5), for “court” substitute “tribunal”.
- 16 In section 168 (compensation for contravention of the UK GDPR) –
- (a) in subsection (2) in both instances, for “court” substitute “tribunal”; and
 - (b) in subsection (3), in both instances, for “court” substitute “tribunal”.
- 17 In section 175 (provision of assistance in special purposes proceedings) –
- (a) in subsection (7), for “rules of court” substitute “Tribunal Procedure Rules”;
 - (b) in subsection (7)(a), for “court” substitute “tribunal”;
 - (c) in subsection (8), for “rules of court” substitute “Tribunal Procedure Rules”; and
 - (d) in subsection (8)(a), for “court” substitute “tribunal”.
- 18 In section 176 (staying special purposes proceedings) –
- (a) in subsection (1), in all instances, for “court” substitute “tribunal”; and
 - (b) in subsection (3), for “court” substitute “tribunal”.
- 19 In section 177(5)(b) (guidance about how to seek redress against media organisations) for “court” substitute “tribunal”.
- 20 In the italic cross heading before section 180 (jurisdiction) for “court” substitute “tribunal”.
- 21 In section 180 (jurisdiction) omit subsection (1) and insert –
- “(1) The jurisdiction conferred on a tribunal by the provisions listed in subsection (2) are exercisable by the First-tier tribunal, subject to subsections (3), (4) and (5).”
- 22 In section 180 (jurisdiction) –
- (a) in subsection (3), for “the High Court or, in Scotland, the Court of Session” substitute “the Upper Tribunal”;
 - (b) in subsection (4), for “the High Court or, in Scotland, the Court of Session” substitute “the Upper Tribunal”; and
 - (c) in subsection (5), for “the High Court or, in Scotland, the Court of Session” substitute “the Upper Tribunal”.
- 23 In section 202 (proceedings in the First-tier Tribunal: contempt), omit subsection (1)(a) and insert –
- “(a) person does something, or fails to do something, in relation to proceedings before the First-tier Tribunal under sections 27, 45, 46, 51, 79, 94, 99, 100, 111, 162, 166, 167, 168, 175, 176, 177, and”

PART 2

CURRENT CASES BEFORE THE COURTS

- 24 This Part applies to all proceedings currently before the courts.
- 25 All proceedings, including claims and appeals, or other proceedings as the case may be that are currently in the High Court or the county court or, in Scotland, the Court of Session or a sheriff, are transferred in pursuance of this Schedule, and the amendments made by this Schedule, to the relevant tribunal.
- 26 It is immaterial the stage of the proceedings in the court before the proceedings are transferred.
- 27 “The relevant tribunal” means—
- (a) if the proceedings are in the County Court, or before a sheriff, the First-tier Tribunal; or
 - (b) if the proceedings are in the High Court, or the Court of Session, the Upper Tribunal.
- 28 The Upper Tribunal may by order transfer any proceedings automatically transferred to it from a court in pursuance of this paragraph to the First-tier Tribunal, if the Upper Tribunal considers it appropriate.
- 29 The Upper Tribunal may by order transfer any proceedings from the First-tier Tribunal to the Upper Tribunal which have been automatically transferred to the First-tier Tribunal from a court in pursuance of this paragraph, if the Upper Tribunal considers it appropriate.
- 30 The First-tier Tribunal may by order transfer any proceedings automatically transferred to it from a court in pursuance of this paragraph to the Upper Tribunal, if the First-tier Tribunal considers it appropriate.
- 31 The decision to transfer proceedings under this paragraph is final and is not liable to be questioned in any court or tribunal.”

Member's explanatory statement

This amendment seeks to address the potential jurisdictional confusion of remedies currently in the Data Protection Act 2018.

After Clause 48

LORD CLEMENT-JONES

After Clause 48, insert the following new Clause—

“Modifications of courts and tribunals functions

- (1) Schedule (“Modifications of courts and tribunals functions”) makes provision about the modification of the jurisdiction of the courts and tribunals in the Data Protection Act 2018; and for other connected purposes.
- (2) In that Schedule—

- (a) Part 1 makes modifications to the Data Protection Act 2018 for the purpose of transferring the functions of courts to tribunals; and
- (b) Part 2 makes transitional provision about Part 1 in relation to proceedings currently before courts under the Data Protection Act 2018, before that Schedule comes into force.”

Member's explanatory statement

This amendment, and the Schedule to which it refers, seeks to address the potential jurisdictional confusion of remedies currently in the Data Protection Act 2018.

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