

Data Protection and Digital Information Bill

AMENDMENTS
TO BE MOVED
IN GRAND COMMITTEE

[Supplementary to the Second Marshalled List]

Amendment
No.

Clause 28

LORD CLEMENT-JONES

135A★ Clause 28, page 48, line 35, leave out “required” and insert “necessary and proportionate”

Member's explanatory statement

This amendment would ensure that “proportionality” continues to be considered by competent authorities when they are deciding whether national security exemptions apply to their processing for the purposes of law enforcement.

LORD CLEMENT-JONES

135B★ Clause 28, page 48, line 37, leave out lines 37 and 38

Member's explanatory statement

This amendment probes why competent authorities need to be able to disapply the data protection principles for the purposes of safeguarding national security, given the assurances given during the Data Protection Act 2018 by Government that data held by law enforcement would always abide by the data protection principles.

LORD CLEMENT-JONES

135C★ Clause 28, page 49, line 35, leave out subsection 8 and insert—

“(8) Omit section 79 (national security: certificate) and insert—

“79A National security: certificate

- (1) A Minister of the Crown must apply to a Judicial Commissioner for a certificate if exemptions are sought under section 78A(2) from the specified provisions in relation to any personal data for the purpose of safeguarding national security.
- (2) The decision to issue the certificate must be approved by a Judicial Commissioner.

- (3) In deciding whether to approve an application under subsection (1), a Judicial Commissioner must review the Minister’s conclusions as to the following matters –
 - (a) whether the certificate is necessary, and
 - (b) whether the conduct that would be authorised by the certificate is proportionate, and
 - (c) whether it is necessary and proportionate to exempt all of the provisions specified in the certificate.
- (4) An application for a certificate under subsection (1) –
 - (a) must identify the personal data to which it applies by means of a general description, and
 - (b) may be expressed to have prospective effect.
- (5) Where a Judicial Commissioner refuses to approve a Minister’s application for a certificate under this Chapter, the Judicial Commissioner must give the Minister reasons in writing for the refusal.
- (6) Where a Judicial Commissioner refuses to approve a Minister’s application for a certificate under this Chapter, the Minister may apply to the Commissioner for a review of the decision.
- (7) Any person who believes they are directly affected by a certificate under subsection (1) may appeal to the Tribunal against the certificate.
- (8) If, on an appeal under subsection (7), the Tribunal finds that it was not necessary or proportionate to issue the certificate, the Tribunal may –
 - (a) allow the appeal, and
 - (b) quash the certificate.
- (9) The power to apply for a certificate under subsection (1) is exercisable only by –
 - (a) a Minister who is a member of the Cabinet, or
 - (b) the Attorney General or the Advocate General for Scotland.””

Member’s explanatory statement

This amendment seeks to introduce pre-emptory independent oversight of national security certificates from a judicial commissioner, given the increased scope of data rights, principles and obligations from which competent authorities can be exempted in national security certificates under Clause 28.

LORD CLEMENT-JONES

135D★ Clause 28, page 49, line 41, leave out “required” and insert “necessary and proportionate”

Member’s explanatory statement

This amendment would ensure that “proportionality” continues to be considered by Ministers of the Crown when they are deciding whether to issue a national security certificate.

Clause 29

LORD CLEMENT-JONES

- 135E★** Clause 29, page 52, line 23, leave out “must consult the Commissioner” and insert “must apply to the Commissioner for authorisation of the designation notice on the grounds that it satisfies subsection (1)(b)”

Member's explanatory statement

This amendment seeks to increase independent oversight of designation notices by replacing the requirement to consult the Commissioner with a requirement to seek approval of the Commissioner.

After Clause 51

LORD CLEMENT-JONES

- 174A★** After Clause 51, insert the following new Clause –
- “Consequential amendment to the European Union (Withdrawal) Act 2018 relating to the revival of the fundamental right to the protection of personal data**

In section 5(A4) of the European Union (Withdrawal) Act 2018, at end insert “except insofar as it applies to the fundamental right to the protection of personal data”

Member's explanatory statement

This is a consequential amendment linked to the revival of the general principle of the protection of personal data through the amendments to section 4 of the European Union (Withdrawal) Act 2018.

LORD CLEMENT-JONES

- 174B★** After Clause 51, insert the following new Clause –
- “Consequential amendment to the UK GDPR relating to the revival of the fundamental right to the protection of personal data**

In Article 4 of the UK GDPR for paragraph 28, substitute –

“(28) References to a fundamental right or fundamental freedom (however expressed) are to a fundamental right or fundamental freedom which continued to form part of domestic law on and after IP completion day by virtue of section 4 of the European Union (Withdrawal) Act 2018, as the right or freedom is amended or otherwise modified by domestic law from time to time on or after IP completion day.”

Member's explanatory statement

This is a consequential amendment to the Data Protection Act 2018, related to the revival of the fundamental right to the protection of personal data.

After Clause 149

LORD CLEMENT-JONES

295F★ After Clause 149, insert the following new Clause –**“Enforcement of duties**

- (1) OFCOM may give a notice under this section (a “provisional notice of contravention”) to a person if they consider that there are reasonable grounds for believing that the person has failed, or is failing, to comply with sections (*Duties on developers and persons providing cloud computing platforms*) and (*Service Provider duties*).
- (2) A provisional notice of contravention may specify steps that OFCOM consider the person needs to take in order to –
 - (a) comply with the duty or requirement, or
 - (b) remedy the failure to comply with it.
- (3) A provisional notice of contravention may state that OFCOM propose to impose a prescribed fine on the person, and statement of reasons for that proposal.
- (4) OFCOM will consider any representation provided by a person in response to a provisional notice provided within 28 days starting from the date the provisional notice is served.
- (5) Following the 28 day period in subsection (4), OFCOM may serve a confirmation notice confirming whether the prescribed fine is payable and specifying steps that OFCOM consider the person needs to take in order to –
 - (a) comply with the duty or requirement, or
 - (b) remedy the failure to comply with it.
- (6) A person who fails to comply with a confirmation notice is guilty of an offence.
- (7) Where the person guilty of an offence under subsection (6) is a body corporate, the directors or equivalent of that company will be liable on conviction on indictment to a prescribed fine not exceeding the prescribed sum for the purposes of this section.
- (8) A person convicted summarily of an offence under this section will be liable –
 - (a) to imprisonment for a term not exceeding 1 year, or
 - (b) to a fine not exceeding the prescribed sum for the purposes of this section.
- (9) Nothing in sections (*Duties on developers and persons providing cloud computing platforms*) and (*Service Provider duties*) requires any person to access or otherwise inspect an encrypted file for which the person doesn't have access.
- (10) In this section, the prescribed sum is the greater of –
 - (a) £50,000, or
 - (b) in the case of a body corporate, 2% of the amount shown in that balance sheet as the net book value (or carrying amount) in that body's accounts for the previous financial year.

- (11) A court may direct that a person provide the net book value to allow them to impose a fine under subsection (10)(b).”

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22 March 2024
