



SEANAD ÉIREANN

**AN BILLE UM CHOSAINN SONRAÍ, 2018
DATA PROTECTION BILL 2018**

**LEASUITHE COISTE
COMMITTEE AMENDMENTS**

SEANAD ÉIREANN

AN BILLE UM CHOSAINN SONRAÍ, 2018 —AN COISTE

DATA PROTECTION BILL 2018 —COMMITTEE STAGE

Leasuithe Amendments

**Government amendments are denoted by an asterisk*

SECTION 2

*1. In page 10, to delete lines 28 to 35 and substitute the following:

“ “public authority” means—

- (a) a Department of State,
- (b) a regional assembly,
- (c) a local authority,
- (d) the office of the Director of Corporate Enforcement,
- (e) the Irish Auditing and Accounting Supervisory Authority,
- (f) any other person established by or under an enactment (other than the Act of 2014 or a former enactment relating to companies within the meaning of section 5 of that Act) other than—
 - (i) a recognised school or board within the meaning of section 2 of the Education Act 1998 but including a recognised school established and maintained by an education and training board and a board of a school so established and maintained, and
 - (ii) a management committee established under section 37(3) of the Education Act 1998,
- (g) a person with whom the Health Service Executive has, under section 38(1) of the Health Act 2004, entered into an arrangement for the provision of a health or personal social service by that person on behalf of the Executive,
- (h) the Garda Síochána;”.

[SECTION 4]

SECTION 4

- *2. In page 12, line 11, to delete “commits an offence and is liable” and substitute “shall be guilty of an offence and shall be liable”.
- *3. In page 12, line 13, to delete “12 months, or both” and substitute “12 months or both”.
- *4. In page 12, line 15, to delete “5 years, or both” and substitute “5 years or both”.

SECTION 27

- *5. In page 22, line 20, to delete “in tort” and substitute “on tort”.

SECTION 29

- *6. In page 22, between lines 30 and 31, to insert the following:

“Child for purposes of application of Data Protection Regulation

29. For the purposes of the application of the Data Protection Regulation in the State, a reference to “child” in the Regulation shall be taken to be a reference to a person under the age of 18 years.”.

- 7. In page 22, line 32, to delete “13 years” and substitute “16 years”.

*—Senators Michael McDowell, Victor Boyhan, Joan Freeman, Brian Ó Domhnaill,
Billy Lawless, Pádraig Ó Céidigh.*

- *8. In page 22, line 33, to delete “The reference in Article 8” and substitute “For the purposes of the application of Article 8 in the State, the reference in that Article”.

- 9. In page 22, after line 34, to insert the following:

“(3) Where the holder of parental responsibility over a child gives consent in relation to an offer of information society services directly to a child, the data controller shall make reasonable efforts to verify such consent.

(4) For the purposes of *subsection (3)*, a data controller may obtain verifiable consent from the holder of parental responsibility through appropriate methods, including by electronic means. Such methods must be sufficient to ensure and/or verify that the person providing consent has parental responsibility over the child concerned.”.

—Senator Lorraine Clifford-Lee.

SECTION 32

- 10. In page 23, line 28, to delete “may” and substitute “shall”.

—Senator Alice-Mary Higgins.

- 11. In page 23, line 29, after “explicit” to insert “informed”.

—Senator Alice-Mary Higgins.

- 12. In page 24, line 24, to delete “may” and substitute “shall”.

—Senator Alice-Mary Higgins.

- 13. In page 24, line 30, to delete “may” and substitute “shall”.

—Senator Alice-Mary Higgins.

[SECTION 32]

14. In page 24, line 33, to delete “may” and substitute “shall”.

—*Senator Alice-Mary Higgins.*

SECTION 34

15. In page 25 to delete lines 29 to 35.

—*Senators Niall Ó Donnghaile, Paul Gavan, Fintan Warfield, Rose Conway-Walsh, Máire Devine, Pádraig Mac Lochlainn.*

Section opposed.

—*Senators Niall Ó Donnghaile, Paul Gavan, Fintan Warfield, Rose Conway-Walsh, Máire Devine, Pádraig Mac Lochlainn, Alice-Mary Higgins, Lynn Ruane.*

SECTION 38

16. In page 28, between lines 12 and 13, to insert the following:

- “38. (1) No application to access data processed for journalistic purposes may be made by any party, including, for the avoidance of doubt, an authorised officer, An Garda Síochána, the Garda Síochána Ombudsman Commissioner, the Revenue Commissioners or the Defence Forces, except by way of application to the High Court by motion and affidavit and on notice to the journalist data processor.
- (2) In determining whether to allow access to data processed for journalistic purposes, the High Court shall have regard to the importance of freedom of expression in a democratic society and to the importance of confidential sources of information to the right of freedom expression.
- (3) The High Court may permit access to data processed for journalistic purposes, including for the purpose of identifying confidential sources of information, only where the journalist processor whose data is sought is the subject of investigation for suspected commission of a serious criminal offence or for unlawful activity which poses a serious threat to the security of the State.
- (4) (a) In exceptional cases, where the security of the State is under immediate threat or where it is suspected that a serious criminal offence is likely to be committed in the immediate future, an application may be made *ex parte* to the High Court for access to data processed for journalistic purposes.
- (b) Where an *ex parte* application under this section is made, the journalist processor whose data is the subject of the application shall be notified of the application by, and given the opportunity to make representations before, the High Court as soon as practicable.
- (5) An appeal shall, by leave of the High Court, lie from a determination of that Court under this section on a question of law to the Court of Appeal.”

—*Senators Niall Ó Donnghaile, Paul Gavan, Fintan Warfield, Rose Conway-Walsh, Máire Devine, Pádraig Mac Lochlainn.*

17. In page 28, between lines 13 and 14, to insert the following:

- “38. (1) No application to access personal data processed for journalistic purposes may be made by any party, including, for the avoidance of doubt, an authorised officer, An

[SECTION 38]

Garda Síochána, the Garda Síochána Ombudsman Commissioner, the Revenue Commissioners or the Defence Forces, except by way of application to the High Court on notice to the data processor.

- (2) In determining whether to allow access to personal data processed for journalistic purposes, the High Court shall have regard to the right of freedom expression and information.
- (3) The High Court may permit access to personal data processed for journalistic purposes, including for the purpose of identifying confidential sources of information, only where the data processor in question is under investigation for suspected commission of a serious criminal offence or for unlawful activity which poses a serious threat to the security of the State.
- (4) (a) In exceptional cases, where the security of the State is under immediate threat or where it is suspected that a serious criminal offence is likely to be committed in the immediate future, an application may be made *ex parte* to the High Court for access to data processed for journalistic purposes.
(b) Where an order is made under *subsection (4)(a)*, the data processor shall be notified of the making of the order and afforded the opportunity of making representations to the High Court as soon as practicable thereafter.”

—*Senator Lorraine Clifford-Lee.*

SECTION 42

18. In page 29, line 10, after “lawful” to insert “where consent is freely given, specific, informed and unambiguous by data subjects and”.

—*Senator Alice-Mary Higgins.*

19. In page 29, to delete lines 13 to 15.

—*Senators Niall Ó Donnghaile, Paul Gavan, Fintan Warfield, Rose Conway-Walsh, Máire Devine, Pádraig Mac Lochlainn, Alice-Mary Higgins.*

20. In page 29, line 16, to delete “a candidate for election to, or”.

—*Senator Alice-Mary Higgins.*

21. In page 29, between lines 16 and 17, to insert the following:

“(2) This section does not permit the sharing or processing of personal data revealing political opinion with or by any private or commercial company, even when that private or commercial company has been contracted by the actors or entities specified under *paragraphs (a), (b) or (c)*.”

—*Senator Alice-Mary Higgins.*

Section opposed.

—*Senators Niall Ó Donnghaile, Paul Gavan, Fintan Warfield, Rose Conway-Walsh, Máire Devine, Pádraig Mac Lochlainn, Alice-Mary Higgins, Lynn Ruane.*

[SECTION 45]

SECTION 45

22. In page 30, line 5, after “necessary” to insert “and proportionate”.

—*Senators Niall Ó Donnghaile, Paul Gavan, Fintan Warfield, Rose Conway-Walsh, Máire Devine, Pádraig Mac Lochlainn.*

23. In page 30, between lines 14 and 15, to insert the following:

- “(4) (a) Such regulations shall be referred to the Data Protection Commissioner before their enactment, who shall conduct an impact assessment, undertaken by the Data Protection Commission.
- (b) The impact assessment shall have the purpose of ascertaining whether the proposed processing of special categories is—
- (i) necessary,
 - (ii) proportionate,
 - (iii) is in compliance with *subsection (4)* of this section, and
 - (iv) is in compliance with the GDPR.
- (c) The impact assessment, shall be returned to the Minister within three months of the Ministers referral, and it shall make recommendations as to whether the proposed processing of special categories is in compliance with the criteria laid out in *paragraph (b)* and shall recommend any changes necessary to the regulation to ensure compliance, or may recommend that the Minister not proceed with the regulation.
- (d) In the event that the Minister does not follow the recommendation of the Commission, the Government shall publish in *Iris Oifigiúil* a reasoned written explanation of the decision of the Government not to follow the recommendation of the Commission.
- (e) In the event that the Minister does not follow the recommendation of the Commission, the Government shall cause to be laid before the Houses of the Oireachtas a statement containing a reasoned written explanation of the decision of the Government not to follow the recommendation of the Commission.”.

—*Senators Niall Ó Donnghaile, Paul Gavan, Fintan Warfield, Rose Conway-Walsh, Máire Devine, Pádraig Mac Lochlainn.*

Section opposed.

—*Senators Niall Ó Donnghaile, Paul Gavan, Fintan Warfield, Rose Conway-Walsh, Máire Devine, Pádraig Mac Lochlainn, Alice-Mary Higgins, Lynn Ruane.*

[SECTION 49]

SECTION 49

- *24. In page 32, line 32, to delete “subject to *subsection (6)*” and substitute “subject to *subsection (5)*”.
- *25. In page 33, line 12, to delete “commits an offence and is liable” and substitute “shall be guilty of an offence and shall be liable”.
- *26. In page 33, line 16, to delete “5 years, or both” and substitute “5 years or both”.

SECTION 51

- 27. In page 34, to delete lines 1 to 7 and substitute the following:

“(b) the effect of that decision is to grant a request of the data subject.”.

—*Senator Alice-Mary Higgins.*

SECTION 52

- *28. In page 34, line 9, to delete “For the purposes of Article 21, the reference to “direct marketing” includes direct mailing” and substitute the following:

“For the purposes of the application of Article 21 in the State, the reference to “direct marketing” includes a reference to direct mailing”.

SECTION 54

- 29. In page 34, to delete lines 28 to 30, and substitute the following:

“12 to 22 are restricted to the extent specified in *subsection (3)*.”.

—*Senator Alice-Mary Higgins.*

- 30. In page 34, to delete lines 34 to 36, and in page 35, to delete lines 1 to 29.

—*Senators Niall Ó Donnghaile, Paul Gavan, Fintan Warfield, Rose Conway-Walsh, Máire Devine, Pádraig Mac Lochlainn.*

- 31. In page 34, line 36, after “necessary” to insert “and proportionate”.

—*Senators Niall Ó Donnghaile, Paul Gavan, Fintan Warfield, Rose Conway-Walsh, Máire Devine, Pádraig Mac Lochlainn.*

- 32. In page 36, to delete lines 1 to 42, and in page 37, to delete lines 1 to 12.

—*Senator Alice-Mary Higgins.*

- 33. In page 36, to delete line 28.

—*Senators Alice-Mary Higgins, Lynn Ruane.*

- 34. In page 37, to delete lines 13 to 17.

—*Senator Alice-Mary Higgins.*

- 35. In page 37, line 25, to delete “the essence of”.

—*Senator Alice-Mary Higgins.*

- 36. In page 37, between lines 28 and 29, to insert the following:

“(11) (a) Any regulations under this section shall be referred to the Data Protection

[SECTION 54]

Commissioner before their enactment, who shall conduct an impact assessment, undertaken by the Data Protection Commission.

- (b) The impact assessment shall have the purpose of ascertaining whether the proposed processing of special categories is—
 - (i) necessary,
 - (ii) proportionate,
 - (iii) is in compliance with *subsection (4)* of this section, and
 - (iv) is in compliance with the GDPR.
- (c) The impact assessment, shall be returned to the Minister within three months of the Ministers referral, and it shall make recommendations as to whether the proposed processing of special categories is in compliance with the criteria laid out in *paragraph (b)* and shall recommend any changes necessary to the regulation to ensure compliance, or may recommend that the minister not proceed with the regulation.
- (d) In the event that the Minister does not follow the recommendation of the Commission, the Government shall publish in *Iris Oifigiúil* a reasoned written explanation of the decision of the Government not to follow the recommendation of the Commission.
- (e) In the event that the Minister does not follow the recommendation of the Commission, the Government shall cause to be laid before the Houses of the Oireachtas a statement containing a reasoned written explanation of the decision of the Government not to follow the recommendation of the Commission.”.

—*Senators Niall Ó Donnghaile, Paul Gavan, Fintan Warfield, Rose Conway-Walsh, Máire Devine, Pádraig Mac Lochlainn.*

Section opposed.

—*Senators Niall Ó Donnghaile, Paul Gavan, Fintan Warfield, Rose Conway-Walsh, Máire Devine, Pádraig Mac Lochlainn, Alice-Mary Higgins, Lynn Ruane.*

SECTION 63

37. In page 44, line 9, to delete “resulting from specific technical processing”.

—*Senator Alice-Mary Higgins.*

***38.** In page 44, to delete line 36, and in page 45, to delete lines 1 to 4 and substitute the following:

“ “genetic data” means personal data relating to the inherited or acquired genetic characteristics of an individual that give unique information about the physiology or the health of the individual and that result, in particular, from an analysis of a biological sample from the individual in question;”.

[SECTION 65]

SECTION 65

- *39. In page 49, line 31, to delete “the purposes of”.
- *40. In page 49, to delete lines 32 to 34 and substitute the following:
- “(a) archiving purposes in the public interest,
 - (b) scientific or historical research purposes, or
 - (c) statistical purposes,”.

- *41. In page 49, line 35, to delete “archiving, research or use” and substitute “processing”.

SECTION 76

- *42. In page 58, to delete lines 35 to 38 and substitute the following:
- “(b) the monitoring by the controller of processing carried out by the controller,
 - (c) the monitoring by the processor of processing carried out by the processor,”.

SECTION 81

43. In page 63, between lines 34 and 35, to insert the following:
- “(9) Should a data subject request information in relation to a personal data breach which affects them they have the right to be provided with all the pertinent information in respect of that breach and nothing in *subsection (2), (4) or (6)* shall place a restriction on their access to that information.”.

—*Senator Alice-Mary Higgins.*

SECTION 83

44. In page 65, between lines 3 and 4, to insert the following:

“Protection of data protection officers

83. (1) The Data Protection Commission, shall provide a protection, whereby data protection officers may seek the assistance of the Data Protection Commissioner, due to the fact that the data protection office is not in a position to carry out their role fully, due to inappropriate interference from the data controller, or duress, harassment or victimisation.
- (2) Where the Commission receives a complaint under *subsection (1)*, it shall, in addition, make a decision—
- (a) as to whether a corrective power should be exercised in respect of the controller or processor concerned, and
 - (b) where it decides to so exercise a corrective power, the corrective power that is to be exercised.
- (3) The Commission, where it makes a decision referred to in *subsection (2)(b)*, shall exercise the corrective power concerned.”.

—*Senators Niall Ó Donnghaile, Paul Gavan, Fintan Warfield, Rose Conway-Walsh, Máire Devine, Pádraig Mac Lochlainn.*

[SECTION 85]

SECTION 85

- *45. In page 66, lines 24 and 25, to delete “for the purposes of archiving in the public interest, scientific or historical research, or for statistical use” and substitute the following:

“for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes”.

SECTION 87

- *46. In page 69, line 6, to delete “and (9),” and substitute “and (9)”.
- *47. In page 69, line 18, to delete “, sections 88(4)(ii) and 89 and” and substitute “and sections 88(4)(ii) and 89”.
- *48. In page 70, line 22, to delete “and”.
- *49. In page 70, to delete lines 23 to 26 and substitute the following:

“(ii) each controller from which the personal data concerned were received, and
(iii) each person to whom the personal data concerned were disclosed,”.

- *50. In page 70, to delete lines 28 to 30.

SECTION 89

51. In page 74, line 30, after “Commission” to insert “and subject to Cabinet approval”.

—*Senator Alice-Mary Higgins.*

52. In page 74, line 33, after “Commission” to insert “and subject to Cabinet approval”.

—*Senator Alice-Mary Higgins.*

53. In page 75, line 2, to delete “the essence of”.

—*Senator Alice-Mary Higgins.*

SECTION 90

- *54. In page 75, between lines 27 and 28, to insert the following:

“(4) Nothing in this section shall require the Commission to disclose to a data subject whether or not a controller has processed, or is processing, personal data relating to him or her.”.

SECTION 93

55. In page 77, line 9, to delete “or” and substitute “and”.

—*Senator Alice-Mary Higgins.*

56. In page 77, line 28, after “Commission” to insert “or any data subject affected by the transfer”.

—*Senator Alice-Mary Higgins.*

[SECTION 100]

SECTION 100

***57.** In page 82, to delete lines 24 and 25 and substitute the following:

“(b) a provision of this Act, or a regulation under this Act, that gives further effect to the Data Protection Regulation;”.

***58.** In page 82, to delete lines 26 to 28 and substitute the following:

“ “relevant provision” means a provision of this Act, or a regulation under this Act, that gives effect to the Directive;”.

***59.** In page 83, line 3, to delete “obtained in the course of the inquiry by” and substitute “obtained, in the course of the inquiry, by”.

SECTION 104

60. In page 84, lines 27 to 30, to delete all words from and including “shall” in line 27 down to and including line 30 and substitute the following:

“shall investigate the complaint, having regard to the nature and circumstances of the complaint, unless the Commission considers the complaint to be frivolous or vexatious.”.

—*Senator Alice-Mary Higgins.*

61. In page 84, line 31, after “Commission,” to insert “with the consent of the parties concerned,”.

—*Senator Alice-Mary Higgins.*

62. In page 85, line 6, to delete “rejection of the complaint” and substitute “reject the complaint if the Commission considers it to be frivolous or vexatious”.

—*Senator Alice-Mary Higgins.*

63. In page 85, line 7, to delete “dismissal of the complaint” and substitute “dismiss the complaint if the Commission is of the opinion that an infringement of a relevant enactment has not taken place”.

—*Senator Alice-Mary Higgins.*

***64.** In page 85, to delete lines 16 to 18 and substitute the following:

“(iii) rectify or erase personal data or restrict processing pursuant to Article 16, 17 or 18, and, in respect of that action, to comply with Article 19 and, where applicable, Article 17(2);”.

65. In page 85, line 25, after “taken” to insert “and rationale for said action”.

—*Senator Alice-Mary Higgins.*

SECTION 108

***66.** In page 87, to delete lines 32 to 34 and substitute the following:

“(iii) rectify or erase personal data or restrict processing pursuant to Article 16, 17 or 18, and, in respect of that action, to comply with Article 19 and, where applicable, Article 17(2);”.

[SECTION 115]

SECTION 115

*67. In page 91, line 36, to delete “behalf—” and substitute “behalf.”.

*68. In page 92, line 1, to delete “*section 114,*” and substitute “*section 114;*”.

SECTION 122

*69. In page 95, line 4, to delete “*sections 119 and 120*” and substitute “*sections 119(3) and 120(3)*”.

SECTION 125

*70. In page 97, line 31, after “held,” to insert “or”.

*71. In page 99, line 26, to delete “12 months, or both” and substitute “12 months or both”.

*72. In page 99, line 28, to delete “5 years, or both” and substitute “5 years or both”.

SECTION 127

*73. In page 101, line 31, to delete “12 months, or both” and substitute “12 months or both”.

*74. In page 101, line 33, to delete “5 years, or both” and substitute “5 years or both”.

SECTION 128

*75. In page 103, line 33, to delete “12 months, or both” and substitute “12 months or both”.

*76. In page 103, line 35, to delete “5 years, or both” and substitute “5 years or both”.

SECTION 130

*77. In page 107, line 31, to delete “12 months, or both” and substitute “12 months or both”.

*78. In page 107, line 33, to delete “5 years, or both” and substitute “5 years or both”.

SECTION 131

*79. In page 107, lines 35 to 38, to delete all words from and including “(1) The” in line 35 down to and including line 38 and substitute the following:

“(1) Where *Part 5* applies to a controller or processor, the Commission may carry out or cause to be carried out such examination in the form of an audit as it considers appropriate in order to determine whether the practices and procedures of the controller or processor are in compliance with that Part and regulations made under it.”.

SECTION 132

80. In page 108, line 27, after “circumstances” to insert “where such a limitation can be clearly justified”.

—*Senator Alice-Mary Higgins.*

SECTION 133

*81. In page 110, line 36, to delete “5 years, or both” and substitute “5 years or both”.

SECTION 134

82. In page 111, line 13, after “the” where it firstly occurs to insert “complainant and the”.

—*Senator Alice-Mary Higgins.*

83. In page 111, line 16, after “the” to insert “complainant and the”.

—*Senator Alice-Mary Higgins.*

[SECTION 134]

- *84. In page 111, to delete line 23 and substitute “*subsection (1)(ii)*, and”.

SECTION 136

85. In page 113, between lines 10 and 11, to insert the following:

“(3) The Commission may decide to impose an administrative fine on a controller or processor that is a public authority or body.”.

—*Senators Niall Ó Donnghaile, Paul Gavan, Fintan Warfield, Rose Conway-Walsh, Máire Devine, Pádraig Mac Lochlainn.*

86. In page 113, to delete lines 11 to 13.

—*Senators Niall Ó Donnghaile, Paul Gavan, Fintan Warfield, Rose Conway-Walsh, Máire Devine, Pádraig Mac Lochlainn, Alice-Mary Higgins, Lynn Ruane.*

SECTION 139

- *87. In page 114, line 22, to delete “5 years, or both” and substitute “5 years or both”.

SECTION 140

- *88. In page 115, line 4, to delete “5 years, or both” and substitute “5 years or both”.

- *89. In page 115, line 10, to delete “5 years, or both” and substitute “5 years or both”.

SECTION 144

90. In page 116, between lines 25 and 26, to insert the following:

“(2) (a) In addition to the publication requirements contained in *section 144(1)*, the Commission shall publish details of public authorities or public bodies that have been found to have contravened the Act.

(b) *Subsection (2)(a)* shall not apply to a public authority or body where the authority or body was acting as an undertaking within the meaning of the Competition Act 2002.

(c) The publications under *subsection (2)(a)* shall be in at least one national newspaper and in a publication circulating in the area in which the public authority or public body guilty of the contravention is situated and/or operates from.”.

—*Senator Lorraine Clifford-Lee.*

SECTION 148

- *91. In page 120, line 29, to delete “personal data,” and substitute “personal data, and”.

SECTION 155

- *92. In page 123, line 7, to delete “advisers,” and substitute “advisers, or”.