

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Second Delegated Legislation Committee

DRAFT DATA PROTECTION (CHARGES
AND INFORMATION) (AMENDMENT)
REGULATIONS 2019

Monday 4 February 2019

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

not later than

Friday 8 February 2019

© Parliamentary Copyright House of Commons 2019

This publication may be reproduced under the terms of the Open Parliament licence, which is published at www.parliament.uk/site-information/copyright/.

The Committee consisted of the following Members:

Chair: MR PETER BONE

Bardell, Hannah (<i>Livingston</i>) (SNP)	† Jones, Mr Marcus (<i>Nuneaton</i>) (Con)
† Brereton, Jack (<i>Stoke-on-Trent South</i>) (Con)	† Kyle, Peter (<i>Hove</i>) (Lab)
† Bryant, Chris (<i>Rhondda</i>) (Lab)	† Latham, Mrs Pauline (<i>Mid Derbyshire</i>) (Con)
† Byrne, Liam (<i>Birmingham, Hodge Hill</i>) (Lab)	† Letwin, Sir Oliver (<i>West Dorset</i>) (Con)
† Cartlidge, James (<i>South Suffolk</i>) (Con)	† Pawsey, Mark (<i>Rugby</i>) (Con)
† Cruddas, Jon (<i>Dagenham and Rainham</i>) (Lab)	† Smeeth, Ruth (<i>Stoke-on-Trent North</i>) (Lab)
† Fletcher, Colleen (<i>Coventry North East</i>) (Lab)	† Stephenson, Andrew (<i>Vice-Chamberlain of Her Majesty's Household</i>)
† Glindon, Mary (<i>North Tyneside</i>) (Lab)	
† Herbert, Nick (<i>Arundel and South Downs</i>) (Con)	Nina Foster, <i>Committee Clerk</i>
† James, Margot (<i>Minister for Digital and the Creative Industries</i>)	† attended the Committee

Second Delegated Legislation Committee

Monday 4 February 2019

[MR PETER BONE *in the Chair*]

Draft Data Protection (Charges and Information) (Amendment) Regulations 2019

4.30 pm

The Minister for Digital and the Creative Industries (Margot James): I beg to move,

That the Committee has considered the draft Data Protection (Charges and Information) (Amendment) Regulations 2019.

It is a pleasure to serve under your chairmanship, Mr Bone.

The purpose of the amendment regulations is to implement a new exemption from the annual data protection charge for elected representatives, candidates for election and Members of the House of Lords. Any individual or organisation that decides what happens with the personal data of others is considered a data controller under the Data Protection Act 2018, and that includes many of us in this room, as we have responsibility for often highly sensitive personal information about our constituents.

This House debated the Data Protection (Charges and Information) Regulations 2018 in March 2018 and they came into force on 25 May 2018. The new charging structure they introduced provides increased funding for the Information Commissioner's Office, which supports the office's vital work in protecting the information and privacy rights of individuals. Individuals' personal data is increasingly becoming a commodity in its own right and it is therefore more important than ever that we have a strong and adequately resourced regulator to investigate any data controllers who fail in their data protection responsibilities.

Under the regulations, all data controllers are required to pay an annual data protection charge, unless a relevant exemption applies. There are three levels of charge: micro-organisations, including individuals, pay £40; small and medium organisations pay £60; and large organisations pay £2,900. It is not always appropriate or fair for data controllers to be subject to a charge, which is why the Government have created a number of exemptions. The exemptions ensure that we maintain a fair and flexible framework and do not impose undue financial burdens on, for example, small and medium-sized businesses.

When the 2018 regulations were debated, the Government committed to holding a public consultation on the exemptions, which included the consideration of a new exemption for elected representatives. The consultation, which took place last summer, also sought views on exempting prospective candidates for election as well as Members of the House of Lords, and the Government response was published in November 2018. The consultation exercise was a success, with the Department receiving 430 responses from the public, private and third sectors, as well as from individuals. The consultation demonstrated that there was public support for the current exemptions. It also demonstrated broad public support for the proposed new exemption for elected representatives, prospective

candidates and Members of the House of Lords, and it is that exemption that is the subject of the amendment regulations before the Committee.

Dealing with personal and often highly sensitive data is central to the role of elected representatives. A vital part of our duties is to help individuals, and that inevitably involves receiving and using personal data. That is applicable not just to those of us who serve in Westminster or the devolved Parliaments, but to local representatives—councillors, police and crime commissioners—and representatives across all tiers of Government. The Government believe that imposing an annual data protection charge on individuals who are fulfilling their democratic duties to the public is wrong and could present a barrier to democracy and disincentivise people from putting themselves forward for election. Similarly, the Government do not think that prospective or nominated candidates for elected offices should be liable to a charge for the processing of personal data undertaken in support of their candidacy. If incumbents would not have to pay the charge, that would be undemocratic and unfair.

The Government also accept the value-for-money concerns raised by hon. Members during last year's debates on introducing the charge structure. Many representatives reclaim the charge, either through the Independent Parliamentary Standards Authority or, in the case of local government, from their local authority. That creates an inefficient and duplicative charge on the public purse and does not represent value for money for taxpayers.

As I have mentioned, there was support for the exemption proposed today in the consultation responses. Some responses recognised that processing personal data was an important function of elected representatives.

Chris Bryant (Rhondda) (Lab): I presume that the Minister will come on to this point, but she keeps on talking about elected representatives, and I do not understand why Members of the House of Lords are included. They do not have responsibility for constituencies and they are not elected. Why are they included?

Margot James: The issue was debated and it was felt that although Lords are clearly not elected, they handle personal data in the course of their work, or they may do so if they are involved in the passage of legislation or a campaign. People may well contact them and reveal personal data in the course of the campaign, or they may reveal their views on particular legislation in which their lordships are engaged.

Some responses to the consultation recognised that processing personal data was an essential function of our work. The regulations therefore propose a new exemption from payment of the data protection charge for the processing of personal data by Members of the House of Lords; elected representatives, as defined in paragraph 23(3) of schedule 1 to the Data Protection Act 2018, where that processing is in connection with the discharge of their respective functions; and candidates—prospective and validly nominated—seeking to become elected representatives.

The proposed exemption only refers to payment of the annual data protection charge. It does not exempt elected representatives and others from adhering to data controller responsibilities under current data protection

legislation. We all have a fundamental duty to uphold and protect the information rights of the individuals whom we serve. The ICO can and will still take enforcement action for non-compliance against any data controller, including those covered by exemptions from charges.

The Government have a duty to ensure that the ICO is adequately funded to deliver on its incredibly important remit. Approximately 18,000 data controllers will fall within the new exemption, which will lead to a loss of approximately £720,000 in the ICO's total income for any given year. However, I am confident that the impact is manageable. The effects will be mitigated by an increase of approximately £18 million in the ICO's income in 2018-19 alone, with further growth predicted for future years.

We have of course engaged with the Information Commissioner and her office on the introduction of the exemption. I can report that the ICO is content that the exemption will not impact on its ability to effectively deliver its remit. The ICO will continue to be a staunch protector of individuals' information rights and continue to provide essential guidance and support to data controllers across the UK. I conclude by assuring the Committee that the Government are committed to maintaining a strong data protection framework, reflecting not only the needs of data controllers and individuals, but also providing a fair and flexible funding model for the important work of our regulator. That includes an exemption structure that ensures that charges are paid only where it is appropriate and proportionate.

4.38 pm

Liam Byrne (Birmingham, Hodge Hill) (Lab): It is a pleasure to serve under your chairmanship, Mr Bone. I am grateful to the Minister for setting out the case for this important exemption. The debate was rehearsed during the passage of the Data Protection Bill and in previous Delegated Legislation Committees, and the regulations enjoy cross-party support.

I want to put two requests to the Minister. The first is for her to underline in guidance to Members of both Houses precisely what their obligations are when it comes to the payment of data processing fees. She will remember that at the back end of last year, the Independent Parliamentary Standards Authority got into a bit of confusion in overstating some of the new responsibilities. In particular, the authority seems to find it difficult to spell out the difference between caseworking data and data collected during the course of canvassing, for example, or other such political campaigning functions. Both are covered by the terms of the Data Protection Act. We, as data processors, can process both kinds of data, but the proximity of a candidate, or Member of Parliament, and a political party working in this field will often lead to some confusion about who precisely is responsible for what, and who therefore pays what. As it happens, political parties, candidates and Members are covered in terms of the data processing obligations, but none the less there remains some confusion overhanging from last year.

The second point of clarity that I seek from the Minister concerns regulation 2(3)(c), which is drafted incredibly broadly in saying that the exemption will be enjoyed by

“a person seeking to become (or remain) an elected representative”

or, indeed,

“a person acting on the instructions”

of someone who is seeking office. In the Minister's remarks, she used the phrase “validly nominated”. That is not the definition used in the regulation. There is nothing about valid nomination in the regulation, which is pretty *de minimis* in that regard; it simply defines the exemption as being for a candidate who is seeking office.

What does that mean? Does that mean someone who is seeking office a long time before an election, or a candidate who is seeking office and has been approved by a relevant political party, because political parties are regulated with all sorts of important regulations? Furthermore, what on earth are the safeguards around a person acting on the instructions of someone who is seeking office? When in the electoral cycle does that particular exemption bite? There was a degree of dissonance between the Minister's remarks and the regulations as drafted. Perhaps she could clear that up before we approve the motion.

4.42 pm

Margot James: I am grateful to the right hon. Gentleman for his questions, and his support for the amendment regulations. With regard to the issues that all Members had with the Independent Parliamentary Standards Authority's guidance last year, in the immediate aftermath of the passage of the legislation, Members were rightly very concerned about the guidance that some of their staff members were receiving from officially sanctioned courses and training. For a period, there seemed to be something of a debacle around that issue, but we were able to clarify it.

I think the problem arose because the courses were designed before the legislation had fully progressed through both Houses, so they did not take account of the various amendments that we debated and passed—notably, the exemption for people in elected office to use the lawful basis of democratic engagement to process personal data. I think we have clarified that.

I was not aware, but the right hon. Gentleman has made me aware, that there was similar confusion about charges. Before we created the exemption, elected officials and all the other categories that we have discussed this afternoon were, strictly speaking, liable in law to pay a charge to the ICO. That is why we have introduced the exemption. We debated the exemption during the passage of the Bill, but we have been able to bring it into law only today.

There should be no further confusion about charges. We, as elected representatives, are data processors. Candidates are also data processors as soon as they start dealing with people's inquiries in their constituencies or wards.

Liam Byrne: The Minister uses the word “candidate”, which elides two important definitions. One is that set out in the regulations:

“a person seeking to become (or remain) an elected representative”.

The second is that of an individual who is in that position and has been nominated by a political party. Most Members present think of a candidate as someone who has been validly nominated, rather than the definition in the regulations.

Margot James: I was going to come to that, because the right hon. Gentleman made that point clearly in his earlier remarks. I will look into the discrepancy in the language. He has raised an important point. I agree that valid nomination is the definition that we want, and if that is not in the amendment regulations, I will look into that and write to him. I should also point out that the Information Commissioner herself is developing a code of practice for political parties regarding their use of data, and this matter may well be something that she touches on during that work.

Liam Byrne: The Minister has sought a test that is not in the regulations, so she is inviting the Committee to approve them using a definition that is not in the regulations, but in her speech. Will she undertake, before she concludes her remarks, to write to me and provide an assurance that she will re-present the regulations if necessary? I am happy to give them our leave this afternoon, but I am also happy for her to re-present them if she thinks the definitions need tidying up to bring them within the definition that she set out in her remarks.

Margot James: I will certainly write to the right hon. Gentleman. Since I last rose to speak, I have been informed that the regulations apply to both prospective

and validly nominated candidates. We have kept it deliberately broad to prevent unfairness between incumbents and those starting out on the democratic process. I think I have already covered that point.

Liam Byrne: I am grateful to the Minister for being very generous and giving way again, but that is not good enough, because anyone could seek to stand for elected office. If she and the Information Commissioner want to avoid a very large number of people seeking those exemptions and destroying the economic base of the ICO, the Minister must act, because otherwise that is what she will get. I think she will have to re-present the regulations, but let us just get something in place now to ensure that there is no lacuna in the law. However, please introduce stronger proposals.

Margot James: I will certainly write to the right hon. Gentleman. If it is clear that we need to tighten the definition up, I am happy to re-present the regulations.

Question put and agreed to.

4.48 pm

Committee rose.

