

DATA PROTECTION BILL
AMENDMENTS TO BE MOVED AT REPORT STAGE

Schedule 7, page 170, line 5, leave out “42. A Procurator Fiscal”

Schedule 7, page 170, line 10 ,leave out “47. The Crown Agent”

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Effect

These amendments would together remove Procurator Fiscal and Crown Office as competent authorities within the meaning of Schedule 7 as they apply to clause 28 of the Bill.

Reason

As currently drafted, the Bill includes references to the Lord Advocate, a Procurator Fiscal and Crown Agent. That seems not correctly to refer to the Scottish prosecution service, the Crown Office and Procurator Fiscal Service (COPFS).

COPFS is solely responsible for prosecution of crime in Scotland by means of public prosecution. The Lord Advocate prosecutes crime in the public interest, assisted by the Solicitor General, Advocates Depute, and Procurators Fiscal, who are the local agents of, and appointed by the Lord Advocate. The Crown Agent is the principal legal advisor to the Lord Advocate on prosecution matters and the Chief Executive of COPFS. Prosecutions do not run in his/her name and it is not therefore to include the Crown Agent under Schedule 7.

The Lord Advocate and Solicitor General are the senior legal advisers to the government in Scotland; they are political appointments and change with the Government of the day; both are Ministers in the Scottish Government. Although the Lord Advocate is not a member of the Cabinet, he/she does attend Cabinet meetings. The Lord Advocate is in charge of the prosecution of crime and the investigation of deaths in Scotland; in this role the Lord Advocate acts independently of the Scottish Government.

The suggested amendments would reflect the fact that prosecution, although instigated by COPFS would be run in the name of the Lord Advocate and deleting the reference to Crown Agent which is not necessary.