



Introducing new measures

New Court Rules Governing the Practice & Procedure of Court Applications under the Data Protection Act

The General Data Protection Regulation (“**GDPR**”) and the Data Protection Act 2018 (“**DPA**”) provide for certain legal actions that can be instituted before the Irish courts arising out of a breach of a data subject’s data protection rights. The practice and procedure around such actions has now been refined with the coming into force of new Circuit Court and Superior Court Rules¹ (the “**2019 Rules**”).

In this note we refer to the types of court applications available under the DPA and their governing procedures, including the provisions around representative actions under the DPA, potentially a form of multi-party litigation.

Multi party litigation in Ireland: Representative action

(i) Background

Multi-party litigation enables a group of individuals to institute proceedings that are intended to deal with that group collectively. In general, under Irish law multi-party litigation can take the form of a “*representative action*” or a “*test case*”.

The representative action is governed by the Rules of the Superior Courts which provides that where “*numerous persons having the same interest or matter, one or more such persons may sue or be sued, or may be authorised by the court to defend, in such cause or matter, on behalf, or for the benefit, of all persons so interested*”².

The traditional representative action however is inflexible in terms of necessary proofs and remedies available³.

(ii) Under GDPR and DPA

Article 80(1) of GDPR makes provision for the representation of data subjects by a *not-for-profit body, organisation or association* (a “**Representative Body**”) that:

- is properly constituted in accordance with the laws of a Member State
- has statutory objectives which are in the public interest
- is active in the protection of data protection

These points will be referred to as the “**Conditions**”.

Article 80(1) was enacted through Section 120 of the DPA, which is discussed below. However, the DPA does not enact the provisions of Article 80(2) of the GDPR under which all affected data subjects are deemed to be represented in a representative action without their authority. The section expressly requires the data subject to “*mandate*” the Representative Body to act on their behalf (a “**Representative Action**”).

Under section 120 of the DPA, a Representative Body can:

- lodge a complaint to the Data Protection Commission (“**DPC**”) on behalf of a data subject that processing of his personal data infringes his rights⁴
- bring a data protection action on behalf of a data subject⁵
- bring an appeal against certain legally binding decisions of the DPC⁶

¹ SI 222/2019 and SI 223/2019

² Order 15, Rule 9 Rules of the Superior Courts

³ For further information, see the Law Reform Commission paper on Multi Paper Litigation (LRC 76-2005)

⁴ Section 119 DPA

⁵ Section 117 and 128 DPA

⁶ Section 150(5) DPA

The 2019 Rules

(i) The Pleadings

The 2019 Rules require that where a data protection action is being taken by a Representative Body mandated by a data subject, under sections 117(7), 120(2) or 150 of the DPA, the pleadings must include an indorsement to that effect.

The pleadings should also confirm that the Representative Body is one which satisfies the Conditions of Article 80.

The Court can order further information to be provided in order to confirm that the plaintiff is a body, organisation or association that satisfies the Conditions.

(ii) Appeals

The 2019 Rules confirm that Section 150 appeals fall within the statutory appeals process already provided for in the Rules of Court. As mentioned above, where a Section 150 Appeal is brought by a Representative Body, the appeal papers must also include an indorsement that the appellant is a Representative Body that satisfies the Conditions.

(iii) Circuit Court – jurisdiction

The 2019 Rules provide that a *data protection* action shall be brought in the County in which the defendant data controller or data processor has an establishment, or where the data subject has his habitual residence.

Application under section 138(4) of the DPA, which requires a data processor or data controller, its employee or agents, to provide records or documents to an authorised officer, shall be brought in the County in which the defendant ordinarily resides, or at his election, in Dublin.

Applications under section 143(1), under which the Court confirms the DPC's decision to impose an administrative fine, shall be made by way of Notice of Motion grounded on Affidavit, and brought in the County where the respondent data controller or data processor has an establishment, or at the respondent's election, in Dublin.

Applications under section 150(7) in respect of which the High Court and Circuit Court have concurrent jurisdiction, and relate to the non-compliance with complaints handling procedures by the DPC, shall be made by Notice of Motion grounded on Affidavit and if brought in the Circuit Court shall be brought in the County in which the complainant resides, or at his election, in Dublin.

Appeals under section 142, which relate to appeals against administrative fines, shall be made by Notice of Motion and Grounding Affidavit and brought in the County in which the appellant data controller or data processor has an establishment, or at the appellant's option, in Dublin.

Section 150 Appeals shall be made by notice of motion grounded on Affidavit and brought in the County in which the appellant data controller or data processor has an establishment, or where the appellant data subject resides, or at his election, in Dublin.

Conclusion

The 2019 Rules facilitate the operation of the DPA. They complement the provisions already set out in the DPA concerning Representative Actions, data protection actions and statutory appeals. A Representative Action under the DPA differs from the traditional representative action in that leave of the court is not required, rather, the data subject must mandate the body to act. Whether the 2019 Rules will have any effect on the number of Representative Actions or data protection actions initiated before the courts remain to be seen.

Rules of Court regulate the court process, and it is important that any applications initiated under the DPA comply with the rules. Attention is drawn in particular to the requirements around indorsements in the pleadings and, where the action is a Circuit Court case, the rules around the correct jurisdiction.

For further information or to discuss any aspect of this briefing in more detail please contact:



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