



Isle of Man

Ellan Vannin

AT 2 of 2002

DATA PROTECTION ACT 2002



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DATA PROTECTION ACT 2002

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AN ACT to make new provision for the regulation of the processing of information relating to individuals, including the obtaining, holding, use or disclosure of such information.

PART 1 [REPEALED]¹

PART 2 [REPEALED]²

PART 3 NOTIFICATION BY DATA CONTROLLERS

13 Preliminary

[P1998/29/16]

- (1) In this Part “**the registrable particulars**”, in relation to a data controller, means —
- (a) his name and address,
 - (b) if he has nominated a representative for the purposes of this Act, the name and address of the representative,
 - (c) a description of the personal data being or to be processed by or on behalf of the data controller and of the category or categories of data subject to which they relate,
 - (d) a description of the purpose or purposes for which the data are being or are to be processed,
 - (e) a description of any recipient or recipients to whom the data controller intends or may wish to disclose the data, and
 - (f) the names, or a description of, any countries or territories outside the Island to which the data controller directly or indirectly

transfers, or intends or may wish directly or indirectly to transfer, the data.

(2) In this Part —

“**fees regulations**” means regulations made by the Treasury under section 15(5) or 16(4) or (7);

“**notification regulations**” means regulations made by the Council of Ministers under the other provisions of this Part;

“**prescribed**”, except where used in relation to fees regulations, means prescribed by notification regulations.

(3) For the purposes of this Part, so far as it relates to the addresses of data controllers —

(a) the address of a registered company is that of its registered office, and

(b) the address of a person (other than a registered company) carrying on a business is that of his principal place of business in the Island.

14 Prohibition on processing without registration

[P1998/29/17]

(4) Subject to the following provisions of this section, personal data must not be processed unless an entry in respect of the data controller is included in the register maintained by the Information Commissioner under section 16 (or is treated by notification regulations made by virtue of section 16(3) as being so included).³

(5) Except where the processing is assessable processing for the purposes of section 19, subsection (1) does not apply in relation to personal data consisting of information which falls within neither paragraph (a) nor paragraph (b) of the definition of “data” in section 1(1).

(6) If it appears to the Council of Ministers that processing of a particular description is unlikely to prejudice the rights and freedoms of data subjects, notification regulations may provide that, in such cases as may be prescribed, subsection (1) is not to apply in relation to processing of that description.

(7) Subsection (1) does not apply in relation to any processing whose sole purpose is the maintenance of a public register.

15 Notification by data controllers

[P1998/29/18]

(8) Any data controller who wishes to be included in the register maintained under section 16 shall give a notification to the Information Commissioner under this section.⁴

- (9) A notification under this section must specify in accordance with notification regulations –
 - (a) the registrable particulars, and
 - (b) a general description of measures to be taken for the purpose of complying with the seventh data protection principle (measures against misuse and loss of data).
- (10) Notification regulations made by virtue of subsection (2) may provide for the determination by the Information Commissioner, in accordance with any requirements of the regulations, of the form in which the registrable particulars and the description mentioned in subsection (2)(b) are to be specified, including in particular the detail required for the purposes of section 13(1)(c), (d), (e) and (f) and subsection (2)(b).⁵
- (11) Notification regulations may make provision as to the giving of notification –
 - (a) by partnerships, or
 - (b) in other cases where 2 or more persons are the data controllers in respect of any personal data.
- (12) The notification must be accompanied by such fee as may be prescribed by fees regulations.
- (13) Notification regulations may provide for any fee paid under subsection (5) or section 16(4) to be refunded in prescribed circumstances.

16 Register of notifications

[P1998/29/19]

- (14) The Information Commissioner shall –
 - (a) maintain a register of persons who have given notification under section 15, and
 - (b) make an entry in the register in pursuance of each notification received by him under that section from a person in respect of whom no entry as data controller was for the time being included in the register.⁶
- (15) Each entry in the register shall consist of –
 - (a) the registrable particulars notified under section 15 or, as the case requires, those particulars as amended in pursuance of section 17(4), and
 - (b) such other information as the Information Commissioner may be authorised or required by notification regulations to include in the register.⁷

- (16) Notification regulations may make provision as to the time as from which any entry in respect of a data controller is to be treated for the purposes of section 14 as having been made in the register.
- (17) No entry shall be retained in the register for more than the relevant time except on payment of such fee as may be prescribed by fees regulations.
- (18) In subsection (4) “the relevant time” means 12 months or such other period as may be prescribed by notification regulations.
- (19) The Information Commissioner –
 - (a) shall provide facilities for making the information contained in the entries in the register available for inspection (in visible and legible form) by members of the public at all reasonable hours and free of charge, and
 - (b) may provide such other facilities for making the information contained in those entries available to the public free of charge as he considers appropriate.⁸
- (20) The Information Commissioner shall, on payment of such fee, if any, as may be prescribed by fees regulations, supply any member of the public with a duly certified copy in writing of the particulars contained in any entry made in the register.⁹

17 Duty to notify changes

[P1989/29/20]

- (21) For the purpose specified in subsection (2), notification regulations shall include provision imposing on every person in respect of whom an entry as a data controller is for the time being included in the register maintained under section 16 a duty to notify to the Information Commissioner, in such circumstances and at such time or times and in such form as may be prescribed, such matters relating to the registrable particulars and measures taken as mentioned in section 15(2)(b) as may be prescribed.¹⁰
- (22) The purpose referred to in subsection (1) is that of ensuring, so far as practicable, that at any time –
 - (a) the entries in the register maintained under section 16 contain current names and addresses and describe the current practice or intentions of the data controller with respect to the processing of personal data, and
 - (b) the Information Commissioner is provided with a general description of measures currently being taken as mentioned in section 15(2)(b).¹¹
- (23) Section 15(3) has effect in relation to notification regulations made by virtue of subsection (1) as it has effect in relation to notification regulations made by virtue of section 15(2).

- (24) On receiving any notification under notification regulations made by virtue of subsection (1), the Information Commissioner shall make such amendments of the relevant entry in the register maintained under section 16 as are necessary to take account of the notification.¹²

18 Offences

[P1998/29/21]

- (25) If section 14(1) is contravened, the data controller is guilty of an offence.
- (26) Any person who fails to comply with the duty imposed by notification regulations made by virtue of section 17(1) is guilty of an offence.
- (27) It shall be a defence for a person charged with an offence under subsection (2) to show that he exercised all due diligence to comply with the duty.

19 Preliminary assessment by Information Commissioner¹³

[P1998/29/22]

- (28) In this section “assessable processing” means processing which is of a description specified in an order made by the Council of Ministers as appearing to it to be particularly likely –
- (a) to cause substantial damage or substantial distress to data subjects, or
 - (b) otherwise significantly to prejudice the rights and freedoms of data subjects.
- (29) On receiving notification from any data controller under section 15 or under notification regulations made by virtue of section 17 the Information Commissioner shall consider –
- (a) whether any of the processing to which the notification relates is assessable processing, and
 - (b) if so, whether the assessable processing is likely to comply with the provisions of this Act.¹⁴
- (30) Subject to subsection (4), the Information Commissioner shall, within the period of 28 days beginning with the day on which he receives a notification which relates to assessable processing, give a notice to the data controller stating the extent to which the Information Commissioner is of the opinion that the processing is likely or unlikely to comply with the provisions of this Act.¹⁵
- (31) Before the end of the period referred to in subsection (3) the Information Commissioner may, by reason of special circumstances, extend that period on one occasion only by notice to the data controller by such further period not exceeding 14 days as the Information Commissioner may specify in the notice.¹⁶

- (32) No assessable processing in respect of which a notification has been given to the Information Commissioner as mentioned in subsection (2) shall be carried on unless either –
- (a) the period of 28 days beginning with the day on which the notification is received by the Information Commissioner (or, in a case falling within subsection (4), that period as extended under that subsection) has elapsed, or¹⁷
 - (b) before the end of that period (or that period as so extended) the data controller has received a notice from the Information Commissioner under subsection (3) in respect of the processing.¹⁸
- 19
- (33) Where subsection (5) is contravened, the data controller is guilty of an offence.
- (34) The Council of Ministers may by order amend subsections (3), (4) and (5) by substituting for the number of days for the time being specified there a different number specified in the order.

20 Reference of notification to Tribunal

- (35) If it appears to the Information Commissioner that any processing of personal data by a data controller in accordance with registrable particulars notified under section 15 or under notification regulations made by virtue of section 17 would contravene any of the data protection principles, he may refer the notification to the Tribunal, specifying the data protection principle or principles which the Information Commissioner considers would be contravened and his reasons for doing so.²⁰
- (36) In deciding whether to make a reference under this section, the Information Commissioner shall consider whether the processing in question has caused or is likely to cause any person damage or distress.²¹
- (37) Where on a reference under this section the Tribunal is satisfied that the processing in question would contravene any of the data protection principles, it may direct the Information Commissioner –
- (a) to cancel the relevant entry in the register, or
 - (b) to vary that entry to such extent as the Tribunal considers appropriate to avoid or prevent any such contravention.²²
- (38) Schedule 6 shall have effect in relation to references under this section and the proceedings of the Tribunal in respect of any such reference.
- (39) Any party to a reference under this section may appeal from the decision of the Tribunal on a point of law to the High Court.

21 Power to make provision for appointment of data supervisors

[P1998/29/23]

- (40) The Council of Ministers may by order —
- (a) make provision under which a data controller may appoint a person to act as a data supervisor responsible in particular for monitoring in an independent manner the data controller's compliance with the provisions of this Act, and
 - (b) provide that, in relation to any data controller who has appointed a data supervisor in accordance with the provisions of the order and who complies with such conditions as may be specified in the order, the provisions of this Part are to have effect subject to such exemptions or other modifications as may be specified in the order.
- (41) An order under this section may —
- (a) impose duties on data supervisors in relation to the Information Commissioner, and²³
 - (b) confer functions on the Information Commissioner in relation to data supervisors.²⁴

22 Duty of certain data controllers to make certain information available

[P1998/29/24]

- (42) Subject to subsection (3), where personal data are processed in a case where —
- (a) by virtue of section 14(2) or (3), section 14(1) does not apply to the processing, and
 - (b) the data controller has not notified the relevant particulars in respect of that processing under section 15,
- the data controller must, within 21 days of receiving a written request from any person, make the relevant particulars available to that person in writing free of charge.
- (43) In this section “the relevant particulars” means the particulars referred to in paragraphs (a) to (f) of section 13(1).
- (44) This section has effect subject to any exemption conferred for the purposes of this section by notification regulations.
- (45) Any data controller who fails to comply with the duty imposed by subsection (1) is guilty of an offence.
- (46) It shall be a defence for a person charged with an offence under subsection (4) to show that he exercised all due diligence to comply with the duty.

PART 4 [REPEALED]²⁵

PART 5 [REPEALED]²⁶

PART 6 [REPEALED]²⁷

67 Short title and commencement

(47) This Act may be cited as the Data Protection Act 2002.

(48) This Act, except the following provisions —

- (a) section 1,
- (b) sections 61 to 63,
- (c) this section,
- (d) paragraph 18 of Schedule 11, and
- (e) so much of any other provision of this Act as confers any power to make orders, rules or regulations,

shall come into operation on such day or days as the Council of Ministers may by order appoint.²⁸

Schedule 1²⁹

Schedule 2³⁰

Schedule 3³¹

Schedule 4³²

Schedule 5³³

Schedule 6**APPEALS AND REFERENCES**

Sections 20(4), 24(10) and 44(5)

Interpretation

1. In this Schedule —
“**appeal**” means an appeal under section 24 or 44;
“**reference**” means a reference under section 20.

Hearing of appeals

2. For the purpose of hearing and determining appeals or references or any matter preliminary or incidental to an appeal or reference the Tribunal shall sit at such times and in such places as the chairman or deputy chairman may direct.

Constitution of Tribunal

3. Subject to paragraph 4 and to any rules under paragraph 5, the Tribunal shall be duly constituted for the purpose of any proceedings if it consists of —
 - (a) the chairman or deputy chairman (who shall preside), and
 - (b) one or more other members.

Ex parte proceedings

4. Subject to any rules under paragraph 5, the jurisdiction of the Tribunal in respect of an appeal under section 24 may be exercised ex parte by the chairman or deputy chairman sitting alone.

Rules of procedure

5. (1) The Council of Ministers may make rules for regulating the exercise of the rights of appeal conferred by section 24(4) or (7) and section 44, references and the practice and procedure of the Tribunal.
 - (2) Rules under this paragraph may in particular make provision —
 - (a) with respect to the period within which an appeal can be brought or a reference made and the burden of proof on an appeal or reference,
 - (b) for the summoning of witnesses and the administration of oaths,
 - (c) for securing the production of documents and material used for the processing of personal data,

- (d) for the inspection, examination, operation and testing of any equipment or material used in connection with the processing of personal data,
- (e) for the hearing of an appeal or reference wholly or partly in camera,
- (f) for hearing an appeal in the absence of the appellant or for determining an appeal without a hearing,
- (g) for hearing a reference in the absence of the respondent or for determining a reference without a hearing,
- (h) for enabling an appeal under section 44(1) against an information notice to be determined by the chairman or deputy chairman,
 - (i) for enabling any matter preliminary or incidental to an appeal or reference to be dealt with by the chairman or deputy chairman,
- (j) for the awarding of costs,
- (k) for the publication of reports of the Tribunal's decisions, and
- (l) for conferring on the Tribunal such ancillary powers as the Council of Ministers thinks necessary for the proper discharge of its functions.

(3) In making rules under this paragraph which relate to appeals under section 24(4) or (7) the Council of Ministers shall have regard, in particular, to the need to secure that information is not disclosed contrary to the public interest.

Obstruction etc.

6. Obstruction etc

(1) If any person is guilty of any act or omission in relation to proceedings before the Tribunal which, if those proceedings were proceedings before the High Court, would constitute contempt of court, the Tribunal may certify the matter to the High Court.

(2) Where a matter is so certified, the High Court may inquire into it and, after hearing any witness who may be produced against or on behalf of the person charged with the matter, and after hearing any statement that may be offered in defence, deal with him in any manner in which it could deal with him or her if the act or omission had occurred in relation to the court.³⁴

Schedule 7³⁵

Schedule 8³⁶

Schedule 9³⁷

Schedule 10³⁸

Schedule 11³⁹

Schedule 12⁴⁰

Schedule 13⁴¹

ENDNOTES

Table of Endnote References

- ¹ Part 1 repealed by SD2018/0143 on the coming into operation of SD2018/0145.
- ² Part 2 repealed by SD2018/0143 on the coming into operation of SD2018/0145.
- ³ Subs (1) amended by Freedom of Information Act 2015 Sch 4.
- ⁴ Subs (1) amended by Freedom of Information Act 2015 Sch 4.
- ⁵ Subs (3) amended by Freedom of Information Act 2015 Sch 4.
- ⁶ Subs (1) amended by Freedom of Information Act 2015 Sch 4.
- ⁷ Para (b) amended by Freedom of Information Act 2015 Sch 4.
- ⁸ Subs (6) amended by Freedom of Information Act 2015 Sch 4.
- ⁹ Subs (7) amended by Freedom of Information Act 2015 Sch 4.
- ¹⁰ Subs (1) amended by Freedom of Information Act 2015 Sch 4.
- ¹¹ Para (b) amended by Freedom of Information Act 2015 Sch 4.
- ¹² Subs (4) amended by Freedom of Information Act 2015 Sch 4.
- ¹³ S 19 heading amended by Freedom of Information Act 2015 Sch 4.
- ¹⁴ Subs (2) amended by Freedom of Information Act 2015 Sch 4.
- ¹⁵ Subs (3) amended by Freedom of Information Act 2015 Sch 4.
- ¹⁶ Subs (4) amended by Freedom of Information Act 2015 Sch 4.
- ¹⁷ Para (a) amended by Freedom of Information Act 2015 Sch 4.
- ¹⁸ Para (b) amended by Freedom of Information Act 2015 Sch 4.
- ¹⁹ Subs (5) amended by Freedom of Information Act 2015 Sch 4.
- ²⁰ Subs (1) amended by Freedom of Information Act 2015 Sch 4.
- ²¹ Subs (2) amended by Freedom of Information Act 2015 Sch 4.
- ²² Subs (3) amended by Freedom of Information Act 2015 Sch 4.
- ²³ Para (a) amended by Freedom of Information Act 2015 Sch 4.
- ²⁴ Para (b) amended by Freedom of Information Act 2015 Sch 4.
- ²⁵ Part 4 repealed by SD2018/0143 on the coming into operation of SD2018/0145.
- ²⁶ Part 5 repealed by SD2018/0143 on the coming into operation of SD2018/0145.
- ²⁷ Part 6 repealed by SD2018/0143 on the coming into operation of SD2018/0145.
- ²⁸ ADO (whole Act except provisions specified in s 67(2)(a) to (e), ss 51 and 57 and Sch 9) 1/4/2003 (SD15/03); (s 57 and Sch 9) 1/1/2004 (SD701/03).
- ²⁹ Sch 1 repealed by SD2018/0143 on the coming into operation of SD2018/0145.
- ³⁰ Sch 2 repealed by SD2018/0143 on the coming into operation of SD2018/0145.
- ³¹ Sch 3 repealed by SD2018/0143 on the coming into operation of SD2018/0145.
- ³² Sch 4 repealed by SD2018/0143 on the coming into operation of SD2018/0145.
- ³³ Sch 5 repealed by SD2018/0143 on the coming into operation of SD2018/0145.
- ³⁴ Para 6 substituted by Legislation Act 2015 s 99.
- ³⁵ Sch 7 repealed by SD2018/0143 on the coming into operation of SD2018/0145.
- ³⁶ Sch 8 repealed by SD2018/0143 on the coming into operation of SD2018/0145.
- ³⁷ Sch 9 repealed by SD2018/0143 on the coming into operation of SD2018/0145.

³⁸ Sch 10 repealed by SD2018/0143 on the coming into operation of SD2018/0145.

³⁹ Sch 11 repealed by SD2018/0143 on the coming into operation of SD2018/0145.

⁴⁰ Sch 12 repealed by SD2018/0143 on the coming into operation of SD2018/0145.

⁴¹ Sch 13 repealed by SD2018/0143 on the coming into operation of SD2018/0145.