



# Data Protection Act 1998

## 1998 CHAPTER 29

### PART VI

#### MISCELLANEOUS AND GENERAL

##### *General*

#### **63 Application to Crown**

- (1) This Act binds the Crown.
- (2) For the purposes of this Act each government department shall be treated as a person separate from any other government department.
- (3) Where the purposes for which and the manner in which any personal data are, or are to be, processed are determined by any person acting on behalf of the Royal Household, the Duchy of Lancaster or the Duchy of Cornwall, the data controller in respect of those data for the purposes of this Act shall be—
  - (a) in relation to the Royal Household, the Keeper of the Privy Purse,
  - (b) in relation to the Duchy of Lancaster, such person as the Chancellor of the Duchy appoints, and
  - (c) in relation to the Duchy of Cornwall, such person as the Duke of Cornwall, or the possessor for the time being of the Duchy of Cornwall, appoints.
- (4) Different persons may be appointed under subsection (3)(b) or (c) for different purposes.
- (5) Neither a government department nor a person who is a data controller by virtue of subsection (3) shall be liable to prosecution under this Act, but section 55 and paragraph 12 of Schedule 9 shall apply to a person in the service of the Crown as they apply to any other person.

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#### **64 Transmission of notices etc. by electronic or other means**

- (1) This section applies to—
- (a) a notice or request under any provision of Part II,
  - (b) a notice under subsection (1) of section 24 or particulars made available under that subsection, or
  - (c) an application under section 41(2),
- but does not apply to anything which is required to be served in accordance with rules of court.
- (2) The requirement that any notice, request, particulars or application to which this section applies should be in writing is satisfied where the text of the notice, request, particulars or application—
- (a) is transmitted by electronic means,
  - (b) is received in legible form, and
  - (c) is capable of being used for subsequent reference.
- (3) The Secretary of State may by regulations provide that any requirement that any notice, request, particulars or application to which this section applies should be in writing is not to apply in such circumstances as may be prescribed by the regulations.

#### **65 Service of notices by Commissioner**

- (1) Any notice authorised or required by this Act to be served on or given to any person by the Commissioner may—
- (a) if that person is an individual, be served on him—
    - (i) by delivering it to him, or
    - (ii) by sending it to him by post addressed to him at his usual or last-known place of residence or business, or
    - (iii) by leaving it for him at that place;
  - (b) if that person is a body corporate or unincorporate, be served on that body—
    - (i) by sending it by post to the proper officer of the body at its principal office, or
    - (ii) by addressing it to the proper officer of the body and leaving it at that office;
  - (c) if that person is a partnership in Scotland, be served on that partnership—
    - (i) by sending it by post to the principal office of the partnership, or
    - (ii) by addressing it to that partnership and leaving it at that office.
- (2) In subsection (1)(b) “principal office”, in relation to a registered company, means its registered office and “proper officer”, in relation to any body, means the secretary or other executive officer charged with the conduct of its general affairs.
- (3) This section is without prejudice to any other lawful method of serving or giving a notice.

#### **66 Exercise of rights in Scotland by children**

- (1) Where a question falls to be determined in Scotland as to the legal capacity of a person under the age of sixteen years to exercise any right conferred by any provision

of this Act, that person shall be taken to have that capacity where he has a general understanding of what it means to exercise that right.

- (2) Without prejudice to the generality of subsection (1), a person of twelve years of age or more shall be presumed to be of sufficient age and maturity to have such understanding as is mentioned in that subsection.

## **67 Orders, regulations and rules**

- (1) Any power conferred by this Act on the Secretary of State to make an order, regulations or rules shall be exercisable by statutory instrument.

- (2) Any order, regulations or rules made by the Secretary of State under this Act may—
- (a) make different provision for different cases, and
  - (b) make such supplemental, incidental, consequential or transitional provision or savings as the Secretary of State considers appropriate;
- and nothing in section 7(11), 19(5), 26(1) or 30(4) limits the generality of paragraph (a).

- (3) Before making—
- (a) an order under any provision of this Act other than section 75(3),
  - (b) any regulations under this Act other than notification regulations (as defined by section 16(2)),

the Secretary of State shall consult the Commissioner.

- (4) A statutory instrument containing (whether alone or with other provisions) an order under—

section 10(2)(b),  
section 12(5)(b),  
section 22(1),  
section 30,  
section 32(3),  
section 38,  
section 56(8),  
paragraph 10 of Schedule 3, or  
paragraph 4 of Schedule 7,

shall not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

- (5) A statutory instrument which contains (whether alone or with other provisions)—

- (a) an order under—
  - section 22(7),
  - section 23,
  - section 51(3),
  - section 54(2), (3) or (4),
  - paragraph 3, 4 or 14 of Part II of Schedule 1,
  - paragraph 6 of Schedule 2,
  - paragraph 2, 7 or 9 of Schedule 3,
  - paragraph 4 of Schedule 4,
  - paragraph 6 of Schedule 7,

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- (b) regulations under section 7 which—
  - (i) prescribe cases for the purposes of subsection (2)(b),
  - (ii) are made by virtue of subsection (7), or
  - (iii) relate to the definition of “the prescribed period”,
- (c) regulations under section 8(1) or 9(3),
- (d) regulations under section 64,
- (e) notification regulations (as defined by section 16(2)), or
- (f) rules under paragraph 7 of Schedule 6,

and which is not subject to the requirement in subsection (4) that a draft of the instrument be laid before and approved by a resolution of each House of Parliament, shall be subject to annulment in pursuance of a resolution of either House of Parliament.

- (6) A statutory instrument which contains only—
  - (a) regulations prescribing fees for the purposes of any provision of this Act, or
  - (b) regulations under section 7 prescribing fees for the purposes of any other enactment,
 shall be laid before Parliament after being made.

## **68 Meaning of “accessible record”**

- (1) In this Act “accessible record” means—
  - (a) a health record as defined by subsection (2),
  - (b) an educational record as defined by Schedule 11, or
  - (c) an accessible public record as defined by Schedule 12.
- (2) In subsection (1)(a) “health record” means any record which—
  - (a) consists of information relating to the physical or mental health or condition of an individual, and
  - (b) has been made by or on behalf of a health professional in connection with the care of that individual.

## **69 Meaning of “health professional”**

- (1) In this Act “health professional” means any of the following—
  - (a) a registered medical practitioner,
  - (b) a registered dentist as defined by section 53(1) of the Dentists Act 1984,
  - (c) a registered optician as defined by section 36(1) of the Opticians Act 1989,
  - (d) a registered pharmaceutical chemist as defined by section 24(1) of the Pharmacy Act 1954 or a registered person as defined by Article 2(2) of the Pharmacy (Northern Ireland) Order 1976,
  - (e) a registered nurse, midwife or health visitor,
  - (f) a registered osteopath as defined by section 41 of the Osteopaths Act 1993,
  - (g) a registered chiropractor as defined by section 43 of the Chiropractors Act 1994,
  - (h) any person who is registered as a member of a profession to which the Professions Supplementary to Medicine Act 1960 for the time being extends,
  - (i) a clinical psychologist, child psychotherapist or speech therapist,

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- (j) a music therapist employed by a health service body, and
  - (k) a scientist employed by such a body as head of a department.
- (2) In subsection (1)(a) “registered medical practitioner” includes any person who is provisionally registered under section 15 or 21 of the Medical Act 1983 and is engaged in such employment as is mentioned in subsection (3) of that section.
- (3) In subsection (1) “health service body” means—
- (a) a Health Authority established under section 8 of the National Health Service Act 1977,
  - (b) a Special Health Authority established under section 11 of that Act,
  - (c) a Health Board within the meaning of the National Health Service (Scotland) Act 1978,
  - (d) a Special Health Board within the meaning of that Act,
  - (e) the managers of a State Hospital provided under section 102 of that Act,
  - (f) a National Health Service trust first established under section 5 of the National Health Service and Community Care Act 1990 or section 12A of the National Health Service (Scotland) Act 1978,
  - (g) a Health and Social Services Board established under Article 16 of the Health and Personal Social Services (Northern Ireland) Order 1972,
  - (h) a special health and social services agency established under the Health and Personal Social Services (Special Agencies) (Northern Ireland) Order 1990, or
  - (i) a Health and Social Services trust established under Article 10 of the Health and Personal Social Services (Northern Ireland) Order 1991.

## **70 Supplementary definitions**

- (1) In this Act, unless the context otherwise requires—
- “business” includes any trade or profession;
  - “the Commissioner” means the Data Protection Commissioner;
  - “credit reference agency” has the same meaning as in the Consumer Credit Act 1974;
  - “the Data Protection Directive” means Directive [95/46/EC](#) on the protection of individuals with regard to the processing of personal data and on the free movement of such data;
  - “EEA State” means a State which is a contracting party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17th March 1993;
  - “enactment” includes an enactment passed after this Act;
  - “government department” includes a Northern Ireland department and any body or authority exercising statutory functions on behalf of the Crown;
  - “Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975;
  - “public register” means any register which pursuant to a requirement imposed—
    - (a) by or under any enactment, or
    - (b) in pursuance of any international agreement,

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is open to public inspection or open to inspection by any person having a legitimate interest;

“pupil”—

- (a) in relation to a school in England and Wales, means a registered pupil within the meaning of the Education Act 1996,
- (b) in relation to a school in Scotland, means a pupil within the meaning of the Education (Scotland) Act 1980, and
- (c) in relation to a school in Northern Ireland, means a registered pupil within the meaning of the Education and Libraries (Northern Ireland) Order 1986;

“recipient”, in relation to any personal data, means any person to whom the data are disclosed, including any person (such as an employee or agent of the data controller, a data processor or an employee or agent of a data processor) to whom they are disclosed in the course of processing the data for the data controller, but does not include any person to whom disclosure is or may be made as a result of, or with a view to, a particular inquiry by or on behalf of that person made in the exercise of any power conferred by law;

“registered company” means a company registered under the enactments relating to companies for the time being in force in the United Kingdom;

“school”—

- (a) in relation to England and Wales, has the same meaning as in the Education Act 1996,
- (b) in relation to Scotland, has the same meaning as in the Education (Scotland) Act 1980, and
- (c) in relation to Northern Ireland, has the same meaning as in the Education and Libraries (Northern Ireland) Order 1986;

“teacher” includes—

- (a) in Great Britain, head teacher, and
- (b) in Northern Ireland, the principal of a school;

“third party”, in relation to personal data, means any person other than—

- (a) the data subject,
- (b) the data controller, or
- (c) any data processor or other person authorised to process data for the data controller or processor;

“the Tribunal” means the Data Protection Tribunal.

- (2) For the purposes of this Act data are inaccurate if they are incorrect or misleading as to any matter of fact.

## 71 Index of defined expressions

The following Table shows provisions defining or otherwise explaining expressions used in this Act (other than provisions defining or explaining an expression only used in the same section or Schedule)—

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accessible record	section 68
address (in Part III)	section 16(3)
business	section 70(1)

the Commissioner	section 70(1)
credit reference agency	section 70(1)
data	section 1(1)
data controller	sections 1(1) and (4) and 63(3)
data processor	section 1(1)
the Data Protection Directive	section 70(1)
data protection principles	section 4 and Schedule 1
data subject	section 1(1)
disclosing (of personal data)	section 1(2)(b)
EEA State	section 70(1)
enactment	section 70(1)
enforcement notice	section 40(1)
fees regulations (in Part III)	section 16(2)
government department	section 70(1)
health professional	section 69
inaccurate (in relation to data)	section 70(2)
information notice	section 43(1)
Minister of the Crown	section 70(1)
the non-disclosure provisions (in Part IV)	section 27(3)
notification regulations (in Part III)	section 16(2)
obtaining (of personal data)	section 1(2)(a)
personal data	section 1(1)
prescribed (in Part III)	section 16(2)
processing (of information or data)	section 1(1) and paragraph 5 of Schedule 8
public register	section 70(1)
publish (in relation to journalistic, literary or artistic material)	section 32(6)
pupil (in relation to a school)	section 70(1)
recipient (in relation to personal data)	section 70(1)
recording (of personal data)	section 1(2)(a)
registered company	section 70(1)
registrable particulars (in Part III)	section 16(1)
relevant filing system	section 1(1)
school	section 70(1)
sensitive personal data	section 2

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special information notice	section 44(1)
the special purposes	section 3
the subject information provisions (in Part IV)	section 27(2)
teacher	section 70(1)
third party (in relation to processing of personal data)	section 70(1)
the Tribunal	section 70(1)
using (of personal data)	section 1(2)(b).

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## **72 Modifications of Act**

During the period beginning with the commencement of this section and ending with 23rd October 2007, the provisions of this Act shall have effect subject to the modifications set out in Schedule 13.

## **73 Transitional provisions and savings**

Schedule 14 (which contains transitional provisions and savings) has effect.

## **74 Minor and consequential amendments and repeals and revocations**

- (1) Schedule 15 (which contains minor and consequential amendments) has effect.
- (2) The enactments and instruments specified in Schedule 16 are repealed or revoked to the extent specified.

## **75 Short title, commencement and extent**

- (1) This Act may be cited as the Data Protection Act 1998.
- (2) The following provisions of this Act—
  - (a) sections 1 to 3,
  - (b) section 25(1) and (4),
  - (c) section 26,
  - (d) sections 67 to 71,
  - (e) this section,
  - (f) paragraph 17 of Schedule 5,
  - (g) Schedule 11,
  - (h) Schedule 12, and
  - (i) so much of any other provision of this Act as confers any power to make subordinate legislation,
 shall come into force on the day on which this Act is passed.
- (3) The remaining provisions of this Act shall come into force on such day as the Secretary of State may by order appoint; and different days may be appointed for different purposes.



- (4) The day appointed under subsection (3) for the coming into force of section 56 must not be earlier than the first day on which sections 112, 113 and 115 of the Police Act 1997 (which provide for the issue by the Secretary of State of criminal conviction certificates, criminal record certificates and enhanced criminal record certificates) are all in force.
- (5) Subject to subsection (6), this Act extends to Northern Ireland.
- (6) Any amendment, repeal or revocation made by Schedule 15 or 16 has the same extent as that of the enactment or instrument to which it relates.