



# Criminal Justice and Immigration Act 2008

## 2008 CHAPTER 4

### PART 11

#### MISCELLANEOUS

##### *Penalties for serious contraventions of data protection principles*

#### **144 Power to require data controllers to pay monetary penalty**

(1) After section 55 of the Data Protection Act 1998 (c. 29) insert—

##### *“Monetary penalties*

#### **55A Power of Commissioner to impose monetary penalty**

- (1) The Commissioner may serve a data controller with a monetary penalty notice if the Commissioner is satisfied that—
- (a) there has been a serious contravention of section 4(4) by the data controller,
  - (b) the contravention was of a kind likely to cause substantial damage or substantial distress, and
  - (c) subsection (2) or (3) applies.
- (2) This subsection applies if the contravention was deliberate.
- (3) This subsection applies if the data controller—
- (a) knew or ought to have known —
    - (i) that there was a risk that the contravention would occur, and
    - (ii) that such a contravention would be of a kind likely to cause substantial damage or substantial distress, but

- (b) failed to take reasonable steps to prevent the contravention.
- (4) A monetary penalty notice is a notice requiring the data controller to pay to the Commissioner a monetary penalty of an amount determined by the Commissioner and specified in the notice.
- (5) The amount determined by the Commissioner must not exceed the prescribed amount.
- (6) The monetary penalty must be paid to the Commissioner within the period specified in the notice.
- (7) The notice must contain such information as may be prescribed.
- (8) Any sum received by the Commissioner by virtue of this section must be paid into the Consolidated Fund.
- (9) In this section—
  - “data controller” does not include the Crown Estate Commissioners or a person who is a data controller by virtue of section 63(3);
  - “prescribed” means prescribed by regulations made by the Secretary of State.

#### **55B Monetary penalty notices: procedural rights**

- (1) Before serving a monetary penalty notice, the Commissioner must serve the data controller with a notice of intent.
- (2) A notice of intent is a notice that the Commissioner proposes to serve a monetary penalty notice.
- (3) A notice of intent must—
  - (a) inform the data controller that he may make written representations in relation to the Commissioner’s proposal within a period specified in the notice, and
  - (b) contain such other information as may be prescribed.
- (4) The Commissioner may not serve a monetary penalty notice until the time within which the data controller may make representations has expired.
- (5) A person on whom a monetary penalty notice is served may appeal to the Tribunal against—
  - (a) the issue of the monetary penalty notice;
  - (b) the amount of the penalty specified in the notice.
- (6) In this section, “prescribed” means prescribed by regulations made by the Secretary of State.

#### **55C Guidance about monetary penalty notices**

- (1) The Commissioner must prepare and issue guidance on how he proposes to exercise his functions under sections 55A and 55B.
- (2) The guidance must, in particular, deal with—

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- (a) the circumstances in which he would consider it appropriate to issue a monetary penalty notice, and
  - (b) how he will determine the amount of the penalty.
- (3) The Commissioner may alter or replace the guidance.
- (4) If the guidance is altered or replaced, the Commissioner must issue the altered or replacement guidance.
- (5) The Commissioner may not issue guidance under this section without the approval of the Secretary of State.
- (6) The Commissioner must lay any guidance issued under this section before each House of Parliament.
- (7) The Commissioner must arrange for the publication of any guidance issued under this section in such form and manner as he considers appropriate.
- (8) In subsections (5) to (7), “guidance” includes altered or replacement guidance.

#### **55D Monetary penalty notices: enforcement**

- (1) This section applies in relation to any penalty payable to the Commissioner by virtue of section 55A.
- (2) In England and Wales, the penalty is recoverable—
  - (a) if a county court so orders, as if it were payable under an order of that court;
  - (b) if the High Court so orders, as if it were payable under an order of that court.
- (3) In Scotland, the penalty may be enforced in the same manner as an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.
- (4) In Northern Ireland, the penalty is recoverable—
  - (a) if a county court so orders, as if it were payable under an order of that court;
  - (b) if the High Court so orders, as if it were payable under an order of that court.

#### **55E Notices under sections 55A and 55B: supplemental**

- (1) The Secretary of State may by order make further provision in connection with monetary penalty notices and notices of intent.
- (2) An order under this section may in particular—
  - (a) provide that a monetary penalty notice may not be served on a data controller with respect to the processing of personal data for the special purposes except in circumstances specified in the order;
  - (b) make provision for the cancellation or variation of monetary penalty notices;

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- (c) confer rights of appeal to the Tribunal against decisions of the Commissioner in relation to the cancellation or variation of such notices;
  - (d) make provision for the proceedings of the Tribunal in respect of appeals under section 55B(5) or appeals made by virtue of paragraph (c);
  - (e) make provision for the determination of such appeals;
  - (f) confer rights of appeal against any decision of the Tribunal in relation to monetary penalty notices or their cancellation or variation.
- (3) An order under this section may apply any provision of this Act with such modifications as may be specified in the order.
- (4) An order under this section may amend this Act.”
- (2) In section 67 of that Act (orders, regulations, rules)—
- (a) in subsection (4) insert at the appropriate place—  
“section 55E(1),”; and
  - (b) in subsection (5) after paragraph (c) insert—  
“(ca) regulations under section 55A(5) or (7) or 55B(3)(b),”.