

Regulation (EU) 2016/679 of the European Parliament and of the Council  
of 27 April 2016 on the protection of natural persons with regard to the  
processing of personal data and on the free movement of such data (United  
Kingdom General Data Protection Regulation)(Text with EEA relevance)

*CHAPTER IV*

***Controller and processor***

*Section 3*

***Data protection impact assessment and prior consultation***

*Article 35*

**Data protection impact assessment**

1 Where a type of processing in particular using new technologies, and taking into account the nature, scope, context and purposes of the processing, is likely to result in a high risk to the rights and freedoms of natural persons, the controller shall, prior to the processing, carry out an assessment of the impact of the envisaged processing operations on the protection of personal data. A single assessment may address a set of similar processing operations that present similar high risks.

2 The controller shall seek the advice of the data protection officer, where designated, when carrying out a data protection impact assessment.

3 A data protection impact assessment referred to in paragraph 1 shall in particular be required in the case of:

- a a systematic and extensive evaluation of personal aspects relating to natural persons which is based on automated processing, including profiling, and on which decisions are based that produce legal effects concerning the natural person or similarly significantly affect the natural person;
- b processing on a large scale of special categories of data referred to in Article 9(1), or of personal data relating to criminal convictions and offences referred to in Article 10; or
- c a systematic monitoring of a publicly accessible area on a large scale.

4 [<sup>F1</sup>The Commissioner] shall establish and make public a list of the kind of processing operations which are subject to the requirement for a data protection impact assessment pursuant to paragraph 1. <sup>F2</sup>...

5 [<sup>F3</sup>The Commissioner] may also establish and make public a list of the kind of processing operations for which no data protection impact assessment is required. <sup>F4</sup>...

<sup>F5</sup>6 .....

7 The assessment shall contain at least:

- a a systematic description of the envisaged processing operations and the purposes of the processing, including, where applicable, the legitimate interest pursued by the controller;

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*Changes to legislation: There are currently no known outstanding effects for the Regulation (EU) 2016/679 of the European Parliament and of the Council, Section 3. (See end of Document for details)*

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- b an assessment of the necessity and proportionality of the processing operations in relation to the purposes;
- c an assessment of the risks to the rights and freedoms of data subjects referred to in paragraph 1; and
- d the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of personal data and to demonstrate compliance with this Regulation taking into account the rights and legitimate interests of data subjects and other persons concerned.

8 Compliance with approved codes of conduct referred to in Article 40 by the relevant controllers or processors shall be taken into due account in assessing the impact of the processing operations performed by such controllers or processors, in particular for the purposes of a data protection impact assessment.

9 Where appropriate, the controller shall seek the views of data subjects or their representatives on the intended processing, without prejudice to the protection of commercial or public interests or the security of processing operations.

[<sup>F6</sup>10 In the case of processing pursuant to point (c) or (e) of Article 6(1), paragraphs 1 to 7 of this Article do not apply if a data protection impact assessment has already been carried out for the processing as part of a general impact assessment required by domestic law, unless domestic law provides otherwise.]

11 Where necessary, the controller shall carry out a review to assess if processing is performed in accordance with the data protection impact assessment at least when there is a change of the risk represented by processing operations.

#### Textual Amendments

- F1** Words in Art. 35(4) substituted (31.12.2020) by [The Data Protection, Privacy and Electronic Communications \(Amendments etc\) \(EU Exit\) Regulations 2019 \(S.I. 2019/419\)](#), reg. 1(2), **Sch. 1 para. 29(2)(a)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F2** Words in Art. 35(4) omitted (31.12.2020) by virtue of [The Data Protection, Privacy and Electronic Communications \(Amendments etc\) \(EU Exit\) Regulations 2019 \(S.I. 2019/419\)](#), reg. 1(2), **Sch. 1 para. 29(2)(b)** (with reg. 5, Sch. 1 para. 80); 2020 c. 1, Sch. 5 para. 1(1)
- F3** Words in Art. 35(5) substituted (31.12.2020) by [The Data Protection, Privacy and Electronic Communications \(Amendments etc\) \(EU Exit\) Regulations 2019 \(S.I. 2019/419\)](#), reg. 1(2), **Sch. 1 para. 29(3)(a)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F4** Words in Art. 35(5) omitted (31.12.2020) by virtue of [The Data Protection, Privacy and Electronic Communications \(Amendments etc\) \(EU Exit\) Regulations 2019 \(S.I. 2019/419\)](#), reg. 1(2), **Sch. 1 para. 29(3)(b)** (with reg. 5, Sch. 1 para. 80); 2020 c. 1, Sch. 5 para. 1(1)
- F5** Art. 35(6) omitted (31.12.2020) by virtue of [The Data Protection, Privacy and Electronic Communications \(Amendments etc\) \(EU Exit\) Regulations 2019 \(S.I. 2019/419\)](#), reg. 1(2), **Sch. 1 para. 29(4)** (with reg. 5, Sch. 1 para. 80); 2020 c. 1, Sch. 5 para. 1(1)
- F6** Art. 35(10) substituted (31.12.2020) by [The Data Protection, Privacy and Electronic Communications \(Amendments etc\) \(EU Exit\) Regulations 2019 \(S.I. 2019/419\)](#), reg. 1(2), **Sch. 1 para. 29(5)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)

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## Article 36

### Prior consultation

1 The controller shall consult [<sup>F7</sup>the Commissioner] prior to processing where a data protection impact assessment under Article 35 indicates that the processing would result in a high risk in the absence of measures taken by the controller to mitigate the risk.

2 Where [<sup>F8</sup>the Commissioner] is of the opinion that the intended processing referred to in paragraph 1 would infringe this Regulation, in particular where the controller has insufficiently identified or mitigated the risk, [<sup>F8</sup>the Commissioner] shall, within period of up to eight weeks of receipt of the request for consultation, provide written advice to the controller and, where applicable to the processor, and may use any of its powers referred to in Article 58. That period may be extended by six weeks, taking into account the complexity of the intended processing. [<sup>F9</sup>The Commissioner] shall inform the controller and, where applicable, the processor, of any such extension within one month of receipt of the request for consultation together with the reasons for the delay. Those periods may be suspended until [<sup>F10</sup>the Commissioner has obtained information the Commissioner] has requested for the purposes of the consultation.

3 When consulting [<sup>F11</sup>the Commissioner] pursuant to paragraph 1, the controller shall provide [<sup>F11</sup>the Commissioner] with:

- a where applicable, the respective responsibilities of the controller, joint controllers and processors involved in the processing, in particular for processing within a group of undertakings;
- b the purposes and means of the intended processing;
- c the measures and safeguards provided to protect the rights and freedoms of data subjects pursuant to this Regulation;
- d where applicable, the contact details of the data protection officer;
- e the data protection impact assessment provided for in Article 35; and
- f any other information requested by [<sup>F12</sup>the Commissioner].

4 [<sup>F13</sup>The relevant authority must consult the Commissioner] during the preparation of a proposal for a legislative measure to be adopted by [<sup>F14</sup>Parliament, the National Assembly for Wales, the Scottish Parliament or the Northern Ireland Assembly], or of a regulatory measure based on such a legislative measure, which relates to processing.

[<sup>F15</sup>4A. In paragraph 4, “the relevant authority” means—

- a in relation to a legislative measure adopted by Parliament, or a regulatory measure based on such a legislative measure, the Secretary of State;
- b in relation to a legislative measure adopted by the National Assembly for Wales, or a regulatory measure based on such a legislative measure, the Welsh Ministers;
- c in relation to a legislative measure adopted by the Scottish Parliament, or a regulatory measure based on such a legislative measure, the Scottish Ministers;
- d in relation to a legislative measure adopted by the Northern Ireland Assembly, or a regulatory measure based on such a legislative measure, the relevant Northern Ireland department.]

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### Textual Amendments

- F7** Words in Art. 36(1) substituted (31.12.2020) by [The Data Protection, Privacy and Electronic Communications \(Amendments etc\) \(EU Exit\) Regulations 2019 \(S.I. 2019/419\)](#), reg. 1(2), **Sch. 1 para. 30(2)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F8** Words in Art. 36(2) substituted (31.12.2020) by [The Data Protection, Privacy and Electronic Communications \(Amendments etc\) \(EU Exit\) Regulations 2019 \(S.I. 2019/419\)](#), reg. 1(2), **Sch. 1 para. 30(3)(a)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F9** Words in Art. 36(2) substituted (31.12.2020) by [The Data Protection, Privacy and Electronic Communications \(Amendments etc\) \(EU Exit\) Regulations 2019 \(S.I. 2019/419\)](#), reg. 1(2), **Sch. 1 para. 30(3)(b)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F10** Words in Art. 36(2) substituted (31.12.2020) by [The Data Protection, Privacy and Electronic Communications \(Amendments etc\) \(EU Exit\) Regulations 2019 \(S.I. 2019/419\)](#), reg. 1(2), **Sch. 1 para. 30(3)(c)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F11** Words in Art. 36(3) substituted (31.12.2020) by [The Data Protection, Privacy and Electronic Communications \(Amendments etc\) \(EU Exit\) Regulations 2019 \(S.I. 2019/419\)](#), reg. 1(2), **Sch. 1 para. 30(4)(a)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F12** Words in Art. 36(3)(f) substituted (31.12.2020) by [The Data Protection, Privacy and Electronic Communications \(Amendments etc\) \(EU Exit\) Regulations 2019 \(S.I. 2019/419\)](#), reg. 1(2), **Sch. 1 para. 30(4)(b)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F13** Words in Art. 36(4) substituted (31.12.2020) by [The Data Protection, Privacy and Electronic Communications \(Amendments etc\) \(EU Exit\) Regulations 2019 \(S.I. 2019/419\)](#), reg. 1(2), **Sch. 1 para. 30(5)(a)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F14** Words in Art. 36(4) substituted (31.12.2020) by [The Data Protection, Privacy and Electronic Communications \(Amendments etc\) \(EU Exit\) Regulations 2019 \(S.I. 2019/419\)](#), reg. 1(2), **Sch. 1 para. 30(5)(b)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F15** Art. 36(4A) inserted (31.12.2020) by [The Data Protection, Privacy and Electronic Communications \(Amendments etc\) \(EU Exit\) Regulations 2019 \(S.I. 2019/419\)](#), reg. 1(2), **Sch. 1 para. 30(6)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F16** Art. 36(5) omitted (31.12.2020) by virtue of [The Data Protection, Privacy and Electronic Communications \(Amendments etc\) \(EU Exit\) Regulations 2019 \(S.I. 2019/419\)](#), reg. 1(2), **Sch. 1 para. 30(7)** (with reg. 5, Sch. 1 para. 80); 2020 c. 1, Sch. 5 para. 1(1)

**Changes to legislation:**

There are currently no known outstanding effects for the Regulation (EU) 2016/679 of the European Parliament and of the Council, Section 3.