



# Data Protection Act 2018

## 2018 CHAPTER 12

### PART 7

#### SUPPLEMENTARY AND FINAL PROVISION

##### *Rights of the data subject*

#### **184 Prohibition of requirement to produce relevant records**

- (1) It is an offence for a person (“P1”) to require another person to provide P1 with, or give P1 access to, a relevant record in connection with—
  - (a) the recruitment of an employee by P1,
  - (b) the continued employment of a person by P1, or
  - (c) a contract for the provision of services to P1.
- (2) It is an offence for a person (“P2”) to require another person to provide P2 with, or give P2 access to, a relevant record if—
  - (a) P2 is involved in the provision of goods, facilities or services to the public or a section of the public, and
  - (b) the requirement is a condition of providing or offering to provide goods, facilities or services to the other person or to a third party.
- (3) It is a defence for a person charged with an offence under subsection (1) or (2) to prove that imposing the requirement—
  - (a) was required or authorised by an enactment, by a rule of law or by the order of a court or tribunal, or
  - (b) in the particular circumstances, was justified as being in the public interest.
- (4) The imposition of the requirement referred to in subsection (1) or (2) is not to be regarded as justified as being in the public interest on the ground that it would assist in the prevention or detection of crime, given Part 5 of the Police Act 1997 (certificates of criminal records etc).

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*Status: This is the original version (as it was originally enacted).*

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- (5) In subsections (1) and (2), the references to a person who requires another person to provide or give access to a relevant record include a person who asks another person to do so—
- (a) knowing that, in the circumstances, it would be reasonable for the other person to feel obliged to comply with the request, or
  - (b) being reckless as to whether, in the circumstances, it would be reasonable for the other person to feel obliged to comply with the request,
- and the references to a “requirement” in subsections (3) and (4) are to be interpreted accordingly.
- (6) In this section—
- “employment” means any employment, including—
    - (a) work under a contract for services or as an office-holder,
    - (b) work under an apprenticeship,
    - (c) work experience as part of a training course or in the course of training for employment, and
    - (d) voluntary work,
  - and “employee” is to be interpreted accordingly;
  - “relevant record” has the meaning given in Schedule 18 and references to a relevant record include—
    - (a) a part of such a record, and
    - (b) a copy of, or of part of, such a record.

### **185 Avoidance of certain contractual terms relating to health records**

- (1) A term or condition of a contract is void in so far as it purports to require an individual to supply another person with a record which—
- (a) consists of the information contained in a health record, and
  - (b) has been or is to be obtained by a data subject in the exercise of a data subject access right.
- (2) A term or condition of a contract is also void in so far as it purports to require an individual to produce such a record to another person.
- (3) The references in subsections (1) and (2) to a record include a part of a record and a copy of all or part of a record.
- (4) In this section, “data subject access right” means a right under—
- (a) Article 15 of the GDPR (right of access by the data subject);
  - (b) Article 20 of the GDPR (right to data portability);
  - (c) section 45 of this Act (law enforcement processing: right of access by the data subject);
  - (d) section 94 of this Act (intelligence services processing: right of access by the data subject).

### **186 Data subject’s rights and other prohibitions and restrictions**

- (1) An enactment or rule of law prohibiting or restricting the disclosure of information, or authorising the withholding of information, does not remove or restrict the obligations

and rights provided for in the provisions listed in subsection (2), except as provided by or under the provisions listed in subsection (3).

- (2) The provisions providing obligations and rights are—
- (a) Chapter III of the GDPR (rights of the data subject),
  - (b) Chapter 3 of Part 3 of this Act (law enforcement processing: rights of the data subject), and
  - (c) Chapter 3 of Part 4 of this Act (intelligence services processing: rights of the data subject).
- (3) The provisions providing exceptions are—
- (a) in Chapter 2 of Part 2 of this Act, sections 15 and 16 and Schedules 2, 3 and 4,
  - (b) in Chapter 3 of Part 2 of this Act, sections 23, 24, 25 and 26,
  - (c) in Part 3 of this Act, sections 44(4), 45(4) and 48(3), and
  - (d) in Part 4 of this Act, Chapter 6 .