

SCHEDULES

SCHEDULE 2

EXEMPTIONS ETC FROM THE GDPR

PART 3

RESTRICTION BASED ON ARTICLE 23(1): PROTECTION OF RIGHTS OF OTHERS

Protection of the rights of others: general

- 16 (1) Article 15(1) to (3) of the GDPR (confirmation of processing, access to data and safeguards for third country transfers), and Article 5 of the GDPR so far as its provisions correspond to the rights and obligations provided for in Article 15(1) to (3), do not oblige a controller to disclose information to the data subject to the extent that doing so would involve disclosing information relating to another individual who can be identified from the information.
- (2) Sub-paragraph (1) does not remove the controller's obligation where—
- (a) the other individual has consented to the disclosure of the information to the data subject, or
 - (b) it is reasonable to disclose the information to the data subject without the consent of the other individual.
- (3) In determining whether it is reasonable to disclose the information without consent, the controller must have regard to all the relevant circumstances, including—
- (a) the type of information that would be disclosed,
 - (b) any duty of confidentiality owed to the other individual,
 - (c) any steps taken by the controller with a view to seeking the consent of the other individual,
 - (d) whether the other individual is capable of giving consent, and
 - (e) any express refusal of consent by the other individual.
- (4) For the purposes of this paragraph—
- (a) “information relating to another individual” includes information identifying the other individual as the source of information;
 - (b) an individual can be identified from information to be provided to a data subject by a controller if the individual can be identified from—
 - (i) that information, or
 - (ii) that information and any other information that the controller reasonably believes the data subject is likely to possess or obtain.

Status: This is the original version (as it was originally enacted).

Assumption of reasonableness for health workers, social workers and education workers

- 17 (1) For the purposes of paragraph 16(2)(b), it is to be considered reasonable for a controller to disclose information to a data subject without the consent of the other individual where—
- (a) the health data test is met,
 - (b) the social work data test is met, or
 - (c) the education data test is met.
- (2) The health data test is met if—
- (a) the information in question is contained in a health record, and
 - (b) the other individual is a health professional who has compiled or contributed to the health record or who, in his or her capacity as a health professional, has been involved in the diagnosis, care or treatment of the data subject.
- (3) The social work data test is met if—
- (a) the other individual is—
 - (i) a children’s court officer,
 - (ii) a person who is or has been employed by a person or body referred to in paragraph 8 of Schedule 3 in connection with functions exercised in relation to the information, or
 - (iii) a person who has provided for reward a service that is similar to a service provided in the exercise of any relevant social services functions, and
 - (b) the information relates to the other individual in an official capacity or the other individual supplied the information—
 - (i) in an official capacity, or
 - (ii) in a case within paragraph (a)(iii), in connection with providing the service mentioned in paragraph (a)(iii).
- (4) The education data test is met if—
- (a) the other individual is an education-related worker, or
 - (b) the other individual is employed by an education authority (within the meaning of the Education (Scotland) Act 1980) in pursuance of its functions relating to education and—
 - (i) the information relates to the other individual in his or her capacity as such an employee, or
 - (ii) the other individual supplied the information in his or her capacity as such an employee.
- (5) In this paragraph—
- “children’s court officer” means a person referred to in paragraph 8(1)(q), (r), (s), (t) or (u) of Schedule 3;
 - “education-related worker” means a person referred to in paragraph 14(4)(a) or (b) or 16(4)(a), (b) or (c) of Schedule 3 (educational records);
 - “relevant social services functions” means functions specified in paragraph 8(1)(a), (b), (c) or (d) of Schedule 3.