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SCHEDULES

SCHEDULE 3

EXEMPTIONS ETC FROM THE [F1UK GDPR]: HEALTH, SOCIAL WORK, EDUCATION AND CHILD ABUSE DATA

Textual Amendments

- F1** Words in Sch. 3 heading 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. 2 para. 93(2) (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)

PART 3

SOCIAL WORK DATA

Definitions

- 7 (1) In this Part of this Schedule—
- “education data” has the meaning given by paragraph 17 of this Schedule;
 - “Health and Social Care trust” means a Health and Social Care trust established under the Health and Personal Social Services (Northern Ireland) Order 1991 (S.I. 1991/194 (N.I. 1));
 - “Principal Reporter” means the Principal Reporter appointed under the Children's Hearings (Scotland) Act 2011 (asp 1), or an officer of the Scottish Children's Reporter Administration to whom there is delegated under paragraph 10(1) of Schedule 3 to that Act any function of the Principal Reporter;
 - “social work data” means personal data which—
 - (a) is data to which paragraph 8 applies, but
 - (b) is not education data or data concerning health.
- (2) For the purposes of this Part of this Schedule, the “serious harm test” is met with respect to social work data if the application of Article 15 of the [F1UK GDPR] to the data would be likely to prejudice carrying out social work, because it would be likely to cause serious harm to the physical or mental health of the data subject or another individual.
- (3) In sub-paragraph (2), “carrying out social work” is to be taken to include doing any of the following—
- (a) the exercise of any functions mentioned in paragraph 8(1)(a), (d), (f) to (j), (m), (p), (s), (t), (u), (v) or (w);
 - (b) the provision of any service mentioned in paragraph 8(1)(b), (c) or (k);

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(c) the exercise of the functions of a body mentioned in paragraph 8(1)(e) or a person mentioned in paragraph 8(1)(q) or (r).

(4) In this Part of this Schedule, a reference to a local authority, in relation to data processed or formerly processed by it, includes a reference to the Council of the Isles of Scilly, in relation to data processed or formerly processed by the Council in connection with any functions mentioned in paragraph 8(1)(a)(ii) which are or have been conferred on the Council by an enactment.

Textual Amendments

F1 Words in Sch. 3 para. 7(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. 2 para. 93(10) (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)

8 (1) This paragraph applies to personal data falling within any of the following descriptions—

- (a) data processed by a local authority—
 - (i) in connection with its social services functions (within the meaning of the Local Authority Social Services Act 1970 or the Social Services and Well-being (Wales) Act 2014 (anaw 4)) or any functions exercised by local authorities under the Social Work (Scotland) Act 1968 or referred to in section 5(1B) of that Act, or
 - (ii) in the exercise of other functions but obtained or consisting of information obtained in connection with any of the functions mentioned in sub-paragraph (i);
- (b) data processed by [^{F2}the Department of Health in Northern Ireland or any person or body exercising functions by virtue of paragraph 22A of Schedule 3 to the Health and Personal Social Services (Northern Ireland) Order 1991]—
 - (i) in connection with the provision of social care within the meaning of section 2(5) of the Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1 (N.I.)), or
 - (ii) in the exercise of other functions but obtained or consisting of information obtained in connection with the provision of that care;
- (c) data processed by a Health and Social Care trust—
 - [^{F3}(i) in the exercise of social care and children functions within the meaning of Article 10A of the Health and Personal Social Services (Northern Ireland) Order 1991,
 - (ia) in connection with the provision of social care within the meaning of section 2(5) of the Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1 (N.I.)) by virtue of a delegation direction under Article 10B of the Health and Personal Social Services (Northern Ireland) Order 1991, or]
 - (ii) in the exercise of other functions but obtained or consisting of information obtained in connection with the provision of that care;
- (d) data processed by a council in the exercise of its functions under Part 2 of Schedule 9 to the Health and Social Services and Social Security Adjudications Act 1983;
- (e) data processed by—

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- (i) a probation trust established under section 5 of the Offender Management Act 2007, or
 - (ii) the Probation Board for Northern Ireland established by the Probation Board (Northern Ireland) Order 1982 (S.I. 1982/713 (N.I. 10));
- (f) data processed by a local authority in the exercise of its functions under section 36 of the Children Act 1989 or Chapter 2 of Part 6 of the Education Act 1996, so far as those functions relate to ensuring that children of compulsory school age (within the meaning of section 8 of the Education Act 1996) receive suitable education whether by attendance at school or otherwise;
- (g) data processed by the Education Authority in the exercise of its functions under Article 55 of the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2)) or Article 45 of, and Schedule 13 to, the Education and Libraries (Northern Ireland) Order 1986 (S.I. 1986/594 (N.I. 3)), so far as those functions relate to ensuring that children of compulsory school age (within the meaning of Article 46 of the Education and Libraries (Northern Ireland) Order 1986) receive efficient full-time education suitable to their age, ability and aptitude and to any special educational needs they may have, either by regular attendance at school or otherwise;
- (h) data processed by an education authority in the exercise of its functions under sections 35 to 42 of the Education (Scotland) Act 1980 so far as those functions relate to ensuring that children of school age (within the meaning of section 31 of the Education (Scotland) Act 1980) receive efficient education suitable to their age, ability and aptitude, whether by attendance at school or otherwise;
- (i) data relating to persons detained in a hospital at which high security psychiatric services are provided under section 4 of the National Health Service Act 2006 and processed by a Special Health Authority established under section 28 of that Act in the exercise of any functions similar to any social services functions of a local authority;
- (j) data relating to persons detained in special accommodation provided under Article 110 of the Mental Health (Northern Ireland) Order 1986 (S.I. 1986/595 (N.I. 4)) and processed by a Health and Social Care trust in the exercise of any functions similar to any social services functions of a local authority;
- (k) data which—
 - (i) is processed by the National Society for the Prevention of Cruelty to Children, or by any other voluntary organisation or other body designated under this paragraph by the Secretary of State or the Department of Health in Northern Ireland, and
 - (ii) appears to the Secretary of State or the Department, as the case may be, to be processed for the purposes of the provision of any service similar to a service provided in the exercise of any functions specified in paragraph (a), (b), (c) or (d);
- (l) data processed by a body mentioned in sub-paragraph (2)—
 - (i) which was obtained, or consists of information which was obtained, from an authority or body mentioned in any of paragraphs (a) to (k) or from a government department, and
 - (ii) in the case of data obtained, or consisting of information obtained, from an authority or body mentioned in any of paragraphs (a) to (k),

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- fell within any of those paragraphs while processed by the authority or body;
- (m) data processed by a National Health Service trust first established under section 25 of the National Health Service Act 2006, section 18 of the National Health Service (Wales) Act 2006 or section 5 of the National Health Service and Community Care Act 1990 in the exercise of any functions similar to any social services functions of a local authority;
 - (n) data processed by an NHS foundation trust in the exercise of any functions similar to any social services functions of a local authority;
 - (o) data processed by a government department—
 - (i) which was obtained, or consists of information which was obtained, from an authority or body mentioned in any of paragraphs (a) to (n), and
 - (ii) which fell within any of those paragraphs while processed by that authority or body;
 - (p) data processed for the purposes of the functions of the Secretary of State pursuant to section 82(5) of the Children Act 1989;
 - (q) data processed by—
 - (i) a children's guardian appointed under Part 16 of the Family Procedure Rules 2010 (S.I. 2010/2955 (L. 17)),
 - (ii) a guardian ad litem appointed under Article 60 of the Children (Northern Ireland) Order 1995 (S.I. 1995/755 (N.I. 2)) or Article 66 of the Adoption (Northern Ireland) Order 1987 (S.I. 1987/2203 (N.I. 22)), or
 - (iii) a safeguarder appointed under section 30(2) or 31(3) of the Children's Hearings (Scotland) Act 2011 (asp 1);
 - (r) data processed by the Principal Reporter;
 - (s) data processed by an officer of the Children and Family Court Advisory and Support Service for the purpose of the officer's functions under section 7 of the Children Act 1989 or Part 16 of the Family Procedure Rules 2010 (S.I. 2010/2955 (L. 17));
 - (t) data processed by the Welsh family proceedings officer for the purposes of the functions under section 7 of the Children Act 1989 or Part 16 of the Family Procedure Rules 2010;
 - (u) data processed by an officer of the service appointed as guardian ad litem under Part 16 of the Family Procedure Rules 2010;
 - (v) data processed by the Children and Family Court Advisory and Support Service for the purpose of its functions under section 12(1) and (2) and section 13(1), (2) and (4) of the Criminal Justice and Court Services Act 2000;
 - (w) data processed by the Welsh Ministers for the purposes of their functions under section 35(1) and (2) and section 36(1), (2), (4), (5) and (6) of the Children Act 2004;
 - (x) data processed for the purposes of the functions of the appropriate Minister pursuant to section 12 of the Adoption and Children Act 2002 (independent review of determinations).
- (2) The bodies referred to in sub-paragraph (1)(l) are—

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- (a) a National Health Service trust first established under section 25 of the National Health Service Act 2006 or section 18 of the National Health Service (Wales) Act 2006;
- (b) a National Health Service trust first established under section 5 of the National Health Service and Community Care Act 1990;
- (c) an NHS foundation trust;
- [^{F4}(d) an integrated care board established under section 14Z25 of the National Health Service Act 2006;]
- (e) [^{F5}NHS England];
- (f) a Local Health Board established under section 11 of the National Health Service (Wales) Act 2006;
- (g) a Health Board established under section 2 of the National Health Service (Scotland) Act 1978.

Textual Amendments

- F2** Words in Sch. 3 para. 8(1)(b) substituted (30.11.2022) by The Health and Social Care Act (Northern Ireland) 2022 (Consequential Amendments) Order 2022 (S.I. 2022/1174), arts. 1(2), **12(3)(a)**
- F3** Sch. 3 para. 8(1)(c)(i)(ia) substituted for Sch. 3 para. 8(1)(c)(i) (30.11.2022) by The Health and Social Care Act (Northern Ireland) 2022 (Consequential Amendments) Order 2022 (S.I. 2022/1174), arts. 1(2), **12(3)(b)**
- F4** Sch. 3 para. 8(2)(d) substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), **Sch. 4 para. 229**; S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)
- F5** Words in Sch. 3 substituted (1.7.2022) by Health and Care Act 2022 (c. 31), s. 186(6), Sch. 1 para. 1(1)(2); S.I. 2022/734, reg. 2(a), Sch. (with regs. 13, 29, 30)

Exemption from the listed GDPR provisions: data processed by a court

- 9 (1) The listed GDPR provisions do not apply to data that is not education data or data concerning health if—
- (a) it is processed by a court,
 - (b) it consists of information supplied in a report or other evidence given to the court in the course of proceedings to which rules listed in subparagraph (2) apply, and
 - (c) in accordance with any of those rules, the data may be withheld by the court in whole or in part from the data subject.
- (2) Those rules are—
- (a) the Magistrates' Courts (Children and Young Persons) Rules (Northern Ireland) 1969 (S.R. (N.I.) 1969 No. 221);
 - (b) the Magistrates' Courts (Children and Young Persons) Rules 1992 (S.I. 1992/2071 (L. 17));
 - (c) the Family Proceedings Rules (Northern Ireland) 1996 (S.R. (N.I.) 1996 No. 322);
 - (d) the Magistrates' Courts (Children (Northern Ireland) Order 1995) Rules (Northern Ireland) 1996 (S.R. (N. I.) 1996 No. 323);
 - (e) the Act of Sederunt (Child Care and Maintenance Rules) 1997 (S.I. 1997/291 (S. 19));
 - (f) the Sheriff Court Adoption Rules 2009;

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- (g) the Family Procedure Rules 2010 (S.I. 2010/2955 (L. 17));
- (h) the Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Rules 2013 (S.S.I. 2013/194).

Exemption from the listed GDPR provisions: data subject's expectations and wishes

- 10 (1) This paragraph applies where a request for social work data is made in exercise of a power conferred by an enactment or rule of law and—
- (a) in relation to England and Wales or Northern Ireland, the data subject is an individual aged under 18 and the person making the request has parental responsibility for the data subject,
 - (b) in relation to Scotland, the data subject is an individual aged under 16 and the person making the request has parental responsibilities for the data subject, or
 - (c) the data subject is incapable of managing his or her own affairs and the person making the request has been appointed by a court to manage those affairs.
- (2) The listed GDPR provisions do not apply to social work data to the extent that complying with the request would disclose information—
- (a) which was provided by the data subject in the expectation that it would not be disclosed to the person making the request,
 - (b) which was obtained as a result of any examination or investigation to which the data subject consented in the expectation that the information would not be so disclosed, or
 - (c) which the data subject has expressly indicated should not be so disclosed.
- (3) The exemptions under sub-paragraph (2)(a) and (b) do not apply if the data subject has expressly indicated that he or she no longer has the expectation mentioned there.

Exemption from Article 15 of the [F6UK GDPR]: serious harm

Textual Amendments

- F6** Words in Sch. 3 para. 11 cross-heading 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. 2 para. 93(11) (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)

- 11 Article 15(1) to (3) of the [F7UK GDPR] (confirmation of processing, access to data and safeguards for third country transfers) do not apply to social work data to the extent that the serious harm test is met with respect to the data.

Textual Amendments

- F7** Words in Sch. 3 para. 11 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. 2 para. 93(12) (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)

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Restriction of Article 15 of the [F⁸UK GDPR]: prior opinion of Principal Reporter

Textual Amendments

F8 Words in Sch. 3 para. 12 cross-heading 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. 2 para. 93(13) (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)

- 12 (1) This paragraph applies where—
- (a) a question arises as to whether a controller who is a social work authority is obliged by Article 15(1) to (3) of the [F⁹UK GDPR] (confirmation of processing, access to data and safeguards for third country transfers) to disclose social work data, and
 - (b) the data—
 - (i) originated from or was supplied by the Principal Reporter acting in pursuance of the Principal Reporter's statutory duties, and
 - (ii) is not data which the data subject is entitled to receive from the Principal Reporter.
- (2) The controller must inform the Principal Reporter of the fact that the question has arisen before the end of the period of 14 days beginning when the question arises.
- (3) Article 15(1) to (3) of the [F¹⁰UK GDPR] (confirmation of processing, access to data and safeguards for third country transfers) do not permit the controller to disclose the data to the data subject unless the Principal Reporter has informed the controller that, in the opinion of the Principal Reporter, the serious harm test is not met with respect to the data.
- (4) In this paragraph “social work authority” means a local authority for the purposes of the Social Work (Scotland) Act 1968.

Textual Amendments

F9 Words in Sch. 3 para. 12(1)(a) 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. 2 para. 93(14) (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)

F10 Words in Sch. 3 para. 12(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. 2 para. 93(14) (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Sch. 3 para. 8(1)(y) added by [2022 c. 18 \(N.I.\) Sch. 3 para. 78\(3\)](#)