



# Data Protection Act 2018

## 2018 CHAPTER 12

### PART 3

#### LAW ENFORCEMENT PROCESSING

### CHAPTER 3

#### RIGHTS OF THE DATA SUBJECT

##### *Overview and scope*

#### **43 Overview and scope**

- (1) This Chapter—
  - (a) imposes general duties on the controller to make information available (see section 44);
  - (b) confers a right of access by the data subject (see section 45);
  - (c) confers rights on the data subject with respect to the rectification of personal data and the erasure of personal data or the restriction of its processing (see sections 46 to 48);
  - (d) regulates automated decision-making (see sections 49 and 50);
  - (e) makes supplementary provision (see sections 51 to 54).
- (2) This Chapter applies only in relation to the processing of personal data for a law enforcement purpose.
- (3) But sections 44 to 48 do not apply in relation to the processing of relevant personal data in the course of a criminal investigation or criminal proceedings, including proceedings for the purpose of executing a criminal penalty.
- (4) In subsection (3), “relevant personal data” means personal data contained in a judicial decision or in other documents relating to the investigation or proceedings which are created by or on behalf of a court or other judicial authority.

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- (5) In this Chapter, “the controller”, in relation to a data subject, means the controller in relation to personal data relating to the data subject.

*Information: controller's general duties*

**44 Information: controller's general duties**

- (1) The controller must make available to data subjects the following information (whether by making the information generally available to the public or in any other way)—
- (a) the identity and the contact details of the controller;
  - (b) where applicable, the contact details of the data protection officer (see sections 69 to 71);
  - (c) the purposes for which the controller processes personal data;
  - (d) the existence of the rights of data subjects to request from the controller—
    - (i) access to personal data (see section 45),
    - (ii) rectification of personal data (see section 46), and
    - (iii) erasure of personal data or the restriction of its processing (see section 47);
  - (e) the existence of the right to lodge a complaint with the Commissioner and the contact details of the Commissioner.
- (2) The controller must also, in specific cases for the purpose of enabling the exercise of a data subject's rights under this Part, give the data subject the following—
- (a) information about the legal basis for the processing;
  - (b) information about the period for which the personal data will be stored or, where that is not possible, about the criteria used to determine that period;
  - (c) where applicable, information about the categories of recipients of the personal data (including recipients in third countries or international organisations);
  - (d) such further information as is necessary to enable the exercise of the data subject's rights under this Part.
- (3) An example of where further information may be necessary as mentioned in subsection (2)(d) is where the personal data being processed was collected without the knowledge of the data subject.
- (4) The controller may restrict, wholly or partly, the provision of information to the data subject under subsection (2) to the extent that and for so long as the restriction is, having regard to the fundamental rights and legitimate interests of the data subject, a necessary and proportionate measure to—
- (a) avoid obstructing an official or legal inquiry, investigation or procedure;
  - (b) avoid prejudicing the prevention, detection, investigation or prosecution of criminal offences or the execution of criminal penalties;
  - (c) protect public security;
  - (d) protect national security;
  - (e) protect the rights and freedoms of others.

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- (5) Where the provision of information to a data subject under subsection (2) is restricted, wholly or partly, the controller must inform the data subject in writing without undue delay—
- (a) that the provision of information has been restricted,
  - (b) of the reasons for the restriction,
  - (c) of the data subject's right to make a request to the Commissioner under section 51,
  - (d) of the data subject's right to lodge a complaint with the Commissioner, and
  - (e) of the data subject's right to apply to a court under section 167.
- (6) Subsection (5)(a) and (b) do not apply to the extent that complying with them would undermine the purpose of the restriction.
- (7) The controller must—
- (a) record the reasons for a decision to restrict (whether wholly or partly) the provision of information to a data subject under subsection (2), and
  - (b) if requested to do so by the Commissioner, make the record available to the Commissioner.

#### *Data subject's right of access*

### **45 Right of access by the data subject**

- (1) A data subject is entitled to obtain from the controller—
- (a) confirmation as to whether or not personal data concerning him or her is being processed, and
  - (b) where that is the case, access to the personal data and the information set out in subsection (2).
- (2) That information is—
- (a) the purposes of and legal basis for the processing;
  - (b) the categories of personal data concerned;
  - (c) the recipients or categories of recipients to whom the personal data has been disclosed (including recipients or categories of recipients in third countries or international organisations);
  - (d) the period for which it is envisaged that the personal data will be stored or, where that is not possible, the criteria used to determine that period;
  - (e) the existence of the data subject's rights to request from the controller—
    - (i) rectification of personal data (see section 46), and
    - (ii) erasure of personal data or the restriction of its processing (see section 47);
  - (f) the existence of the data subject's right to lodge a complaint with the Commissioner and the contact details of the Commissioner;
  - (g) communication of the personal data undergoing processing and of any available information as to its origin.
- (3) Where a data subject makes a request under subsection (1), the information to which the data subject is entitled must be provided in writing —
- (a) without undue delay, and

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- (b) in any event, before the end of the applicable time period (as to which see section 54).
- (4) The controller may restrict, wholly or partly, the rights conferred by subsection (1) to the extent that and for so long as the restriction is, having regard to the fundamental rights and legitimate interests of the data subject, a necessary and proportionate measure to—
  - (a) avoid obstructing an official or legal inquiry, investigation or procedure;
  - (b) avoid prejudicing the prevention, detection, investigation or prosecution of criminal offences or the execution of criminal penalties;
  - (c) protect public security;
  - (d) protect national security;
  - (e) protect the rights and freedoms of others.
- (5) Where the rights of a data subject under subsection (1) are restricted, wholly or partly, the controller must inform the data subject in writing without undue delay—
  - (a) that the rights of the data subject have been restricted,
  - (b) of the reasons for the restriction,
  - (c) of the data subject's right to make a request to the Commissioner under section 51,
  - (d) of the data subject's right to lodge a complaint with the Commissioner, and
  - (e) of the data subject's right to apply to a court under section 167.
- (6) Subsection (5)(a) and (b) do not apply to the extent that the provision of the information would undermine the purpose of the restriction.
- (7) The controller must—
  - (a) record the reasons for a decision to restrict (whether wholly or partly) the rights of a data subject under subsection (1), and
  - (b) if requested to do so by the Commissioner, make the record available to the Commissioner.

*Data subject's rights to rectification or erasure etc*

**46 Right to rectification**

- (1) The controller must, if so requested by a data subject, rectify without undue delay inaccurate personal data relating to the data subject.
- (2) Where personal data is inaccurate because it is incomplete, the controller must, if so requested by a data subject, complete it.
- (3) The duty under subsection (2) may, in appropriate cases, be fulfilled by the provision of a supplementary statement.
- (4) Where the controller would be required to rectify personal data under this section but the personal data must be maintained for the purposes of evidence, the controller must (instead of rectifying the personal data) restrict its processing.

**47 Right to erasure or restriction of processing**

- (1) The controller must erase personal data without undue delay where—

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- (a) the processing of the personal data would infringe section 35, 36(1) to (3), 37, 38(1), 39(1), 40, 41 or 42, or
  - (b) the controller has a legal obligation to erase the data.
- (2) Where the controller would be required to erase personal data under subsection (1) but the personal data must be maintained for the purposes of evidence, the controller must (instead of erasing the personal data) restrict its processing.
- (3) Where a data subject contests the accuracy of personal data (whether in making a request under this section or section 46 or in any other way), but it is not possible to ascertain whether it is accurate or not, the controller must restrict its processing.
- (4) A data subject may request the controller to erase personal data or to restrict its processing (but the duties of the controller under this section apply whether or not such a request is made).

#### **48 Rights under section 46 or 47: supplementary**

- (1) Where a data subject requests the rectification or erasure of personal data or the restriction of its processing, the controller must inform the data subject in writing—
  - (a) whether the request has been granted, and
  - (b) if it has been refused—
    - (i) of the reasons for the refusal,
    - (ii) of the data subject's right to make a request to the Commissioner under section 51,
    - (iii) of the data subject's right to lodge a complaint with the Commissioner, and
    - (iv) of the data subject's right to apply to a court under section 167.
- (2) The controller must comply with the duty under subsection (1)—
  - (a) without undue delay, and
  - (b) in any event, before the end of the applicable time period (see section 54).
- (3) The controller may restrict, wholly or partly, the provision of information to the data subject under subsection (1)(b)(i) to the extent that and for so long as the restriction is, having regard to the fundamental rights and legitimate interests of the data subject, a necessary and proportionate measure to—
  - (a) avoid obstructing an official or legal inquiry, investigation or procedure;
  - (b) avoid prejudicing the prevention, detection, investigation or prosecution of criminal offences or the execution of criminal penalties;
  - (c) protect public security;
  - (d) protect national security;
  - (e) protect the rights and freedoms of others.
- (4) Where the rights of a data subject under subsection (1) are restricted, wholly or partly, the controller must inform the data subject in writing without undue delay—
  - (a) that the rights of the data subject have been restricted,
  - (b) of the reasons for the restriction,
  - (c) of the data subject's right to lodge a complaint with the Commissioner, and
  - (d) of the data subject's right to apply to a court under section 167.

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- (5) Subsection (4)(a) and (b) do not apply to the extent that the provision of the information would undermine the purpose of the restriction.
- (6) The controller must—
- (a) record the reasons for a decision to restrict (whether wholly or partly) the provision of information to a data subject under subsection (1)(b)(i), and
  - (b) if requested to do so by the Commissioner, make the record available to the Commissioner.
- (7) Where the controller rectifies personal data, it must notify the competent authority (if any) from which the inaccurate personal data originated.
- <sup>F1</sup>(8) .....
- (9) Where the controller rectifies, erases or restricts the processing of personal data which has been disclosed by the controller—
- (a) the controller must notify the recipients, and
  - (b) the recipients must similarly rectify, erase or restrict the processing of the personal data (so far as they retain responsibility for it).
- (10) Where processing is restricted in accordance with section 47(3), the controller must inform the data subject before lifting the restriction.

#### **Textual Amendments**

- F1** S. 48(8) 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. 2 para. 38](#) (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)

### *Automated individual decision-making*

#### **49 Right not to be subject to automated decision-making**

- (1) A controller may not take a significant decision based solely on automated processing unless that decision is required or authorised by law.
- (2) A decision is a “significant decision” for the purpose of this section if, in relation to a data subject, it—
- (a) produces an adverse legal effect concerning the data subject, or
  - (b) significantly affects the data subject.

#### **50 Automated decision-making authorised by law: safeguards**

- (1) A decision is a “qualifying significant decision” for the purposes of this section if—
- (a) it is a significant decision in relation to a data subject, and
  - (b) it is required or authorised by law.
- (2) Where a controller takes a qualifying significant decision in relation to a data subject based solely on automated processing—

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- (a) the controller must, as soon as reasonably practicable, notify the data subject in writing that a decision has been taken based solely on automated processing, and
  - (b) the data subject may, before the end of the period of 1 month beginning with receipt of the notification, request the controller to—
    - (i) reconsider the decision, or
    - (ii) take a new decision that is not based solely on automated processing.
- (3) If a request is made to a controller under subsection (2), the controller must, before the end of the period of 1 month beginning with receipt of the request—
- (a) consider the request, including any information provided by the data subject that is relevant to it,
  - (b) comply with the request, and
  - (c) by notice in writing inform the data subject of—
    - (i) the steps taken to comply with the request, and
    - (ii) the outcome of complying with the request.
- (4) The Secretary of State may by regulations make such further provision as the Secretary of State considers appropriate to provide suitable measures to safeguard a data subject's rights, freedoms and legitimate interests in connection with the taking of qualifying significant decisions based solely on automated processing.
- (5) Regulations under subsection (4)—
- (a) may amend this section, and
  - (b) are subject to the affirmative resolution procedure.
- (6) In this section “significant decision” has the meaning given by section 49(2).

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**Commencement Information**

**II** S. 50 in force at Royal Assent for specified purposes, see s. 212(2)(f)

*Supplementary*

**51 Exercise of rights through the Commissioner**

- (1) This section applies where a controller—
- (a) restricts under section 44(4) the information provided to the data subject under section 44(2) (duty of the controller to give the data subject additional information),
  - (b) restricts under section 45(4) the data subject's rights under section 45(1) (right of access), or
  - (c) refuses a request by the data subject for rectification under section 46 or for erasure or restriction of processing under section 47.
- (2) The data subject may—
- (a) where subsection (1)(a) or (b) applies, request the Commissioner to check that the restriction imposed by the controller was lawful;
  - (b) where subsection (1)(c) applies, request the Commissioner to check that the refusal of the data subject's request was lawful.

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- (3) The Commissioner must take such steps as appear to the Commissioner to be appropriate to respond to a request under subsection (2) (which may include the exercise of any of the powers conferred by sections 142 and 146).
- (4) After taking those steps, the Commissioner must inform the data subject—
  - (a) where subsection (1)(a) or (b) applies, whether the Commissioner is satisfied that the restriction imposed by the controller was lawful;
  - (b) where subsection (1)(c) applies, whether the Commissioner is satisfied that the controller's refusal of the data subject's request was lawful.
- (5) The Commissioner must also inform the data subject of the data subject's right to apply to a court under section 167.
- (6) Where the Commissioner is not satisfied as mentioned in subsection (4)(a) or (b), the Commissioner may also inform the data subject of any further steps that the Commissioner is considering taking under Part 6 .

## **52 Form of provision of information etc**

- (1) The controller must take reasonable steps to ensure that any information that is required by this Chapter to be provided to the data subject is provided in a concise, intelligible and easily accessible form, using clear and plain language.
- (2) Subject to subsection (3), the information may be provided in any form, including electronic form.
- (3) Where information is provided in response to a request by the data subject under section 45, 46, 47 or 50, the controller must provide the information in the same form as the request where it is practicable to do so.
- (4) Where the controller has reasonable doubts about the identity of an individual making a request under section 45, 46 or 47, the controller may—
  - (a) request the provision of additional information to enable the controller to confirm the identity, and
  - (b) delay dealing with the request until the identity is confirmed.
- (5) Subject to section 53, any information that is required by this Chapter to be provided to the data subject must be provided free of charge.
- (6) The controller must facilitate the exercise of the rights of the data subject under sections 45 to 50.

## **53 Manifestly unfounded or excessive requests by the data subject**

- (1) Where a request from a data subject under section 45, 46, 47 or 50 is manifestly unfounded or excessive, the controller may—
  - (a) charge a reasonable fee for dealing with the request, or
  - (b) refuse to act on the request.
- (2) An example of a request that may be excessive is one that merely repeats the substance of previous requests.
- (3) In any proceedings where there is an issue as to whether a request under section 45, 46, 47 or 50 is manifestly unfounded or excessive, it is for the controller to show that it is.



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- (4) The Secretary of State may by regulations specify limits on the fees that a controller may charge in accordance with subsection (1)(a).
- (5) Regulations under subsection (4) are subject to the negative resolution procedure.

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**Commencement Information**

**I2** [S. 53](#) in force at Royal Assent for specified purposes, see [s. 212\(2\)\(f\)](#)

## **54 Meaning of “applicable time period”**

- (1) This section defines “the applicable time period” for the purposes of sections 45(3)(b) and 48(2)(b).
- (2) “The applicable time period” means the period of 1 month, or such longer period as may be specified in regulations, beginning with the relevant time.
- (3) “The relevant time” means the latest of the following—
  - (a) when the controller receives the request in question;
  - (b) when the controller receives the information (if any) requested in connection with a request under section 52(4);
  - (c) when the fee (if any) charged in connection with the request under section 53 is paid.
- (4) The power to make regulations under subsection (2) is exercisable by the Secretary of State.
- (5) Regulations under subsection (2) may not specify a period which is longer than 3 months.
- (6) Regulations under subsection (2) are subject to the negative resolution procedure.

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**Commencement Information**

**I3** [S. 54](#) in force at Royal Assent for specified purposes, see [s. 212\(2\)\(f\)](#)

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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\(3\)](#)