

Status: Point in time view as at 25/05/2018.

Changes to legislation: Data Protection Act 2018, Cross Heading: Freedom of Information Act 2000 (c. 36) is up to date with all changes known to be in force on or before 27 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

SCHEDULES

SCHEDULE 19

MINOR AND CONSEQUENTIAL AMENDMENTS

PART 1

AMENDMENTS OF PRIMARY LEGISLATION

Freedom of Information Act 2000 (c. 36)

55 The Freedom of Information Act 2000 is amended as follows.

Commencement Information

I1 Sch. 19 para. 55 in force at 25.5.2018 by S.I. 2018/625, reg. 2(1)(g)

56 In section 2(3) (absolute exemptions), for paragraph (f) substitute—
“*(f)* section 40(1),
(fa) section 40(2) so far as relating to cases where the first condition referred to in that subsection is satisfied.”.

Commencement Information

I2 Sch. 19 para. 56 in force at 25.5.2018 by S.I. 2018/625, reg. 2(1)(g)

57 In section 18 (the Information Commissioner), omit subsection (1).

Commencement Information

I3 Sch. 19 para. 57 in force at 25.5.2018 by S.I. 2018/625, reg. 2(1)(g)

58 (1) Section 40 (personal information) is amended as follows.

(2) In subsection (2)—

(a) in paragraph (a), for “do” substitute “ does ”, and

(b) in paragraph (b), for “either the first or the second” substitute “ the first, second or third ”.

(3) For subsection (3) substitute—

“(3A) The first condition is that the disclosure of the information to a member of the public otherwise than under this Act—

(a) would contravene any of the data protection principles, or

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- (b) would do so if the exemptions in section 24(1) of the Data Protection Act 2018 (manual unstructured data held by public authorities) were disregarded.
- (3B) The second condition is that the disclosure of the information to a member of the public otherwise than under this Act would contravene Article 21 of the GDPR (general processing: right to object to processing).”
- (4) For subsection (4) substitute—
 - “(4A) The third condition is that—
 - (a) on a request under Article 15(1) of the GDPR (general processing: right of access by the data subject) for access to personal data, the information would be withheld in reliance on provision made by or under section 15, 16 or 26 of, or Schedule 2, 3 or 4 to, the Data Protection Act 2018, or
 - (b) on a request under section 45(1)(b) of that Act (law enforcement processing: right of access by the data subject), the information would be withheld in reliance on subsection (4) of that section.”
- (5) For subsection (5) substitute—
 - “(5A) The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1).
 - (5B) The duty to confirm or deny does not arise in relation to other information if or to the extent that any of the following applies—
 - (a) giving a member of the public the confirmation or denial that would have to be given to comply with section 1(1)(a)—
 - (i) would (apart from this Act) contravene any of the data protection principles, or
 - (ii) would do so if the exemptions in section 24(1) of the Data Protection Act 2018 (manual unstructured data held by public authorities) were disregarded;
 - (b) giving a member of the public the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene Article 21 of the GDPR (general processing: right to object to processing);
 - (c) on a request under Article 15(1) of the GDPR (general processing: right of access by the data subject) for confirmation of whether personal data is being processed, the information would be withheld in reliance on a provision listed in subsection (4A)(a);
 - (d) on a request under section 45(1)(a) of the Data Protection Act 2018 (law enforcement processing: right of access by the data subject), the information would be withheld in reliance on subsection (4) of that section.”
- (6) Omit subsection (6).
- (7) For subsection (7) substitute—
 - “(7) In this section—
 - “the data protection principles” means the principles set out in—

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- (a) Article 5(1) of the GDPR, and
- (b) section 34(1) of the Data Protection Act 2018;
“data subject” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act);
“the GDPR”, “personal data”, “processing” and references to a provision of Chapter 2 of Part 2 of the Data Protection Act 2018 have the same meaning as in Parts 5 to 7 of that Act (see section 3(2), (4), (10), (11) and (14) of that Act).

- (8) In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the GDPR would be contravened by the disclosure of information, Article 6(1) of the GDPR (lawfulness) is to be read as if the second sub-paragraph (disapplying the legitimate interests gateway in relation to public authorities) were omitted.”

Commencement Information

I4 Sch. 19 para. 58 in force at 25.5.2018 by S.I. 2018/625, reg. 2(1)(g)

- 59 Omit section 49 (reports to be laid before Parliament).

Commencement Information

I5 Sch. 19 para. 59 in force at 25.5.2018 by S.I. 2018/625, reg. 2(1)(g)

- 60 For section 61 (appeal proceedings) substitute—

“61 Appeal proceedings

- (1) Tribunal Procedure Rules may make provision for regulating the exercise of rights of appeal conferred by sections 57(1) and (2) and 60(1) and (4).
- (2) In relation to appeals under those provisions, Tribunal Procedure Rules may make provision about—
 - (a) securing the production of material used for the processing of personal data, and
 - (b) the inspection, examination, operation and testing of equipment or material used in connection with the processing of personal data.
- (3) Subsection (4) applies where—
 - (a) a person does something, or fails to do something, in relation to proceedings before the First-tier Tribunal on an appeal under those provisions, and
 - (b) if those proceedings were proceedings before a court having power to commit for contempt, the act or omission would constitute contempt of court.
- (4) The First-tier Tribunal may certify the offence to the Upper Tribunal.
- (5) Where an offence is certified under subsection (4), the Upper Tribunal may—
 - (a) inquire into the matter, and

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- (b) deal with the person charged with the offence in any manner in which it could deal with the person if the offence had been committed in relation to the Upper Tribunal.
- (6) Before exercising the power under subsection (5)(b), the Upper Tribunal must—
 - (a) hear any witness who may be produced against or on behalf of the person charged with the offence, and
 - (b) hear any statement that may be offered in defence.
- (7) In this section, “personal data” and “processing” have the same meaning as in Parts 5 to 7 of the Data Protection Act 2018 (see section 3(2), (4) and (14) of that Act).”

Commencement Information

- I6** Sch. 19 para. 60 in force at Royal Assent for specified purposes, see s. 212(2)(f)
- I7** Sch. 19 para. 60 in force at 25.5.2018 in so far as not already in force by S.I. 2018/625, reg. 2(1)(g)

- 61 In section 76(1) (disclosure of information between Commissioner and ombudsmen), for “the Data Protection Act 1998” substitute “ the data protection legislation ”.

Commencement Information

- I8** Sch. 19 para. 61 in force at 25.5.2018 by S.I. 2018/625, reg. 2(1)(g)

- 62 After section 76A insert—

“76B Disclosure of information to Tribunal

- (1) No enactment or rule of law prohibiting or restricting the disclosure of information precludes a person from providing the First-tier Tribunal or the Upper Tribunal with information necessary for the discharge of their functions in connection with appeals under section 60 of this Act.
- (2) But this section does not authorise the making of a disclosure which is prohibited by any of Parts 1 to 7 or Chapter 1 of Part 9 of the Investigatory Powers Act 2016.
- (3) Until the repeal of Part 1 of the Regulation of Investigatory Powers Act 2000 by paragraphs 45 and 54 of Schedule 10 to the Investigatory Powers Act 2016 is fully in force, subsection (2) has effect as if it included a reference to that Part.”

Commencement Information

- I9** Sch. 19 para. 62 in force at 25.5.2018 by S.I. 2018/625, reg. 2(1)(g)

- 63 In section 77(1)(b) (offence of altering etc records with intent to prevent disclosure), omit “or section 7 of the Data Protection Act 1998,”.

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I10 Sch. 19 para. 63 in force at 25.5.2018 by S.I. 2018/625, reg. 2(1)(g)

64 In section 84 (interpretation), at the appropriate place insert—

““the data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act);”.

Commencement Information

I11 Sch. 19 para. 64 in force at 25.5.2018 by S.I. 2018/625, reg. 2(1)(g)

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