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# Data Protection Act 1998

## 1998 CHAPTER 29

### PART VI

#### MISCELLANEOUS AND GENERAL

*[<sup>F1</sup>Monetary penalties<sup>F2F3F4</sup>]*

#### Textual Amendments

- F1** Ss. 55A - 55E and cross-heading inserted (1.10.2009 for certain purposes and 1.4.2010 to the extent that it is not already in force) by [Criminal Justice and Immigration Act 2008 \(c. 4\), ss. 144\(1\), 153](#); S.I. 2009/2606, [art. 2\(n\)](#); S.I. 2010/712, [art. 4](#)
- F2** S. 55B inserted (1.10.2009 for certain purposes and 6.4.2010 to the extent that it is not already in force) by [Criminal Justice and Immigration Act 2008 \(c. 4\), ss. 144\(1\), 153](#); S.I. 2009/2606, [art. 2\(n\)](#); S.I. 2010/712, [art. 4](#)
- F3** S. 55C inserted (1.10.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\), ss. 144\(1\), 153](#); S.I. 2009/2606, [art. 2\(n\)](#)
- F4** S. 55E inserted (1.10.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\), ss. 144\(1\), 153](#); S.I. 2009/2606, [art. 2\(n\)](#)

#### **[<sup>F5</sup>55A Power of Commissioner to impose monetary penalty**

- (1) The Commissioner may serve a data controller with a monetary penalty notice if the Commissioner is satisfied that—
- there has been a serious contravention of section 4(4) by the data controller,
  - the contravention was of a kind likely to cause substantial damage or substantial distress, and
  - subsection (2) or (3) applies.
- (2) This subsection applies if the contravention was deliberate.
- (3) This subsection applies if the data controller—
- knew or ought to have known —

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- (i) that there was a risk that the contravention would occur, and
- (ii) that such a contravention would be of a kind likely to cause substantial damage or substantial distress, but
- (b) failed to take reasonable steps to prevent the contravention.
- (4) A monetary penalty notice is a notice requiring the data controller to pay to the Commissioner a monetary penalty of an amount determined by the Commissioner and specified in the notice.
- (5) The amount determined by the Commissioner must not exceed the prescribed amount.
- (6) The monetary penalty must be paid to the Commissioner within the period specified in the notice.
- (7) The notice must contain such information as may be prescribed.
- (8) Any sum received by the Commissioner by virtue of this section must be paid into the Consolidated Fund.
- (9) In this section—
  - “data controller” does not include the Crown Estate Commissioners or a person who is a data controller by virtue of section 63(3);
  - “prescribed” means prescribed by regulations made by the Secretary of State.]

#### Textual Amendments

- F5** S. 55A inserted (1.10.2009 for certain purposes and 6.4.2010 to the extent that it is not already in force) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), [ss. 144\(1\), 153](#); [S.I. 2009/2606](#), [art. 2\(n\)](#); [S.I. 2010/712](#), [art. 4](#)

#### [<sup>F2</sup>55B Monetary penalty notices: procedural rights

- (1) Before serving a monetary penalty notice, the Commissioner must serve the data controller with a notice of intent.
- (2) A notice of intent is a notice that the Commissioner proposes to serve a monetary penalty notice.
- (3) A notice of intent must—
  - (a) inform the data controller that he may make written representations in relation to the Commissioner's proposal within a period specified in the notice, and
  - (b) contain such other information as may be prescribed.
- (4) The Commissioner may not serve a monetary penalty notice until the time within which the data controller may make representations has expired.
- (5) A person on whom a monetary penalty notice is served may appeal to the Tribunal against—
  - (a) the issue of the monetary penalty notice;
  - (b) the amount of the penalty specified in the notice.
- (6) In this section, “prescribed” means prescribed by regulations made by the Secretary of State.]

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### [<sup>F3</sup>55C Guidance about monetary penalty notices

- (1) The Commissioner must prepare and issue guidance on how he proposes to exercise his functions under sections 55A and 55B.
- (2) The guidance must, in particular, deal with—
  - (a) the circumstances in which he would consider it appropriate to issue a monetary penalty notice, and
  - (b) how he will determine the amount of the penalty.
- (3) The Commissioner may alter or replace the guidance.
- (4) If the guidance is altered or replaced, the Commissioner must issue the altered or replacement guidance.
- (5) The Commissioner may not issue guidance under this section without the approval of the Secretary of State.
- (6) The Commissioner must lay any guidance issued under this section before each House of Parliament.
- (7) The Commissioner must arrange for the publication of any guidance issued under this section in such form and manner as he considers appropriate.
- (8) In subsections (5) to (7), “guidance” includes altered or replacement guidance.]

VALID FROM 01/04/2010

### [<sup>F6</sup>55D Monetary penalty notices: enforcement

- (1) This section applies in relation to any penalty payable to the Commissioner by virtue of section 55A.
- (2) In England and Wales, the penalty is recoverable—
  - (a) if a county court so orders, as if it were payable under an order of that court;
  - (b) if the High Court so orders, as if it were payable under an order of that court.
- (3) In Scotland, the penalty may be enforced in the same manner as an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.
- (4) In Northern Ireland, the penalty is recoverable—
  - (a) if a county court so orders, as if it were payable under an order of that court;
  - (b) if the High Court so orders, as if it were payable under an order of that court.]

#### Textual Amendments

- F6** S. 55D inserted (6.4.2010) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), ss. [144\(1\)](#), [153](#); S.I. [2010/712](#), [art. 4](#)

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#### [<sup>F4</sup>55E Notices under sections 55A and 55B: supplemental

- (1) The Secretary of State may by order make further provision in connection with monetary penalty notices and notices of intent.
- (2) An order under this section may in particular—
  - (a) provide that a monetary penalty notice may not be served on a data controller with respect to the processing of personal data for the special purposes except in circumstances specified in the order;
  - (b) make provision for the cancellation or variation of monetary penalty notices;
  - (c) confer rights of appeal to the Tribunal against decisions of the Commissioner in relation to the cancellation or variation of such notices;
  - (d) <sup>F7</sup> .....
  - (e) make provision for the determination of [<sup>F8</sup>appeals made by virtue of paragraph (c)];
  - (f) <sup>F9</sup> .....
- (3) An order under this section may apply any provision of this Act with such modifications as may be specified in the order.
- (4) An order under this section may amend this Act.]

#### Textual Amendments

- F7** S. 55E(2)(d) omitted (18.1.2010) by virtue of [The Transfer of Tribunal Functions Order 2010 \(S.I. 2010/22\)](#), arts. 1(1), 5(1), **Sch. 2 para. 28(a)**
- F8** Words in s. 55E(2)(e) substituted (18.1.2010) by [The Transfer of Tribunal Functions Order 2010 \(S.I. 2010/22\)](#), arts. 1(1), 5(1), **Sch. 2 para. 28(b)**
- F9** S. 55E(2)(f) omitted (18.1.2010) by virtue of [The Transfer of Tribunal Functions Order 2010 \(S.I. 2010/22\)](#), arts. 1(1), 5(1), **Sch. 2 para. 28(c)**

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