



Data Protection Act 1998

1998 CHAPTER 29

PART V

ENFORCEMENT

40 Enforcement notices

- (1) If the Commissioner is satisfied that a data controller has contravened or is contravening any of the data protection principles, the Commissioner may serve him with a notice (in this Act referred to as “an enforcement notice”) requiring him, for complying with the principle or principles in question, to do either or both of the following—
 - (a) to take within such time as may be specified in the notice, or to refrain from taking after such time as may be so specified, such steps as are so specified, or
 - (b) to refrain from processing any personal data, or any personal data of a description specified in the notice, or to refrain from processing them for a purpose so specified or in a manner so specified, after such time as may be so specified.
- (2) In deciding whether to serve an enforcement notice, the Commissioner shall consider whether the contravention has caused or is likely to cause any person damage or distress.
- (3) An enforcement notice in respect of a contravention of the fourth data protection principle which requires the data controller to rectify, block, erase or destroy any inaccurate data may also require the data controller to rectify, block, erase or destroy any other data held by him and containing an expression of opinion which appears to the Commissioner to be based on the inaccurate data.
- (4) An enforcement notice in respect of a contravention of the fourth data protection principle, in the case of data which accurately record information received or obtained by the data controller from the data subject or a third party, may require the data controller either—

Status: This is the original version (as it was originally enacted).

- (a) to rectify, block, erase or destroy any inaccurate data and any other data held by him and containing an expression of opinion as mentioned in subsection (3), or
 - (b) to take such steps as are specified in the notice for securing compliance with the requirements specified in paragraph 7 of Part II of Schedule 1 and, if the Commissioner thinks fit, for supplementing the data with such statement of the true facts relating to the matters dealt with by the data as the Commissioner may approve.
- (5) Where—
- (a) an enforcement notice requires the data controller to rectify, block, erase or destroy any personal data, or
 - (b) the Commissioner is satisfied that personal data which have been rectified, blocked, erased or destroyed had been processed in contravention of any of the data protection principles,
- an enforcement notice may, if reasonably practicable, require the data controller to notify third parties to whom the data have been disclosed of the rectification, blocking, erasure or destruction; and in determining whether it is reasonably practicable to require such notification regard shall be had, in particular, to the number of persons who would have to be notified.
- (6) An enforcement notice must contain—
- (a) a statement of the data protection principle or principles which the Commissioner is satisfied have been or are being contravened and his reasons for reaching that conclusion, and
 - (b) particulars of the rights of appeal conferred by section 48.
- (7) Subject to subsection (8), an enforcement notice must not require any of the provisions of the notice to be complied with before the end of the period within which an appeal can be brought against the notice and, if such an appeal is brought, the notice need not be complied with pending the determination or withdrawal of the appeal.
- (8) If by reason of special circumstances the Commissioner considers that an enforcement notice should be complied with as a matter of urgency he may include in the notice a statement to that effect and a statement of his reasons for reaching that conclusion; and in that event subsection (7) shall not apply but the notice must not require the provisions of the notice to be complied with before the end of the period of seven days beginning with the day on which the notice is served.
- (9) Notification regulations (as defined by section 16(2)) may make provision as to the effect of the service of an enforcement notice on any entry in the register maintained under section 19 which relates to the person on whom the notice is served.
- (10) This section has effect subject to section 46(1).