



# Data Protection Act 2018

## 2018 CHAPTER 12

### PART 2

#### GENERAL PROCESSING

### CHAPTER 3

#### [<sup>F1</sup>EXEMPTIONS FOR MANUAL UNSTRUCTURED PROCESSING AND FOR NATIONAL SECURITY AND DEFENCE PURPOSES]

#### *Exemptions etc*

#### **28 National security and defence: modifications to Articles 9 and 32 of the [<sup>F1</sup>UK GDPR]**

- (1) Article 9(1) of [<sup>F2</sup>the UK GDPR] (prohibition on processing of special categories of personal data) does not prohibit the processing of personal data to which [<sup>F3</sup>the UK GDPR] applies to the extent that the processing is carried out—
  - (a) for the purpose of safeguarding national security or for defence purposes, and
  - (b) with appropriate safeguards for the rights and freedoms of data subjects.
- (2) Article 32 of [<sup>F4</sup>the UK GDPR] (security of processing) does not apply to a controller or processor to the extent that the controller or the processor (as the case may be) is processing personal data to which [<sup>F5</sup>the UK GDPR] applies for—
  - (a) the purpose of safeguarding national security, or
  - (b) defence purposes.
- (3) Where Article 32 of [<sup>F6</sup>the UK GDPR] does not apply, the controller or the processor must implement security measures appropriate to the risks arising from the processing of the personal data.

*Status: Point in time view as at 31/12/2020.*

*Changes to legislation: Data Protection Act 2018, Section 28 is up to date with all changes known to be in force on or before 31 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)*

- (4) For the purposes of subsection (3), where the processing of personal data is carried out wholly or partly by automated means, the controller or the processor must, following an evaluation of the risks, implement measures designed to—
- (a) prevent unauthorised processing or unauthorised interference with the systems used in connection with the processing,
  - (b) ensure that it is possible to establish the precise details of any processing that takes place,
  - (c) ensure that any systems used in connection with the processing function properly and may, in the case of interruption, be restored, and
  - (d) ensure that stored personal data cannot be corrupted if a system used in connection with the processing malfunctions.
- [<sup>F7</sup>(5) The functions conferred on the Commissioner in relation to the UK GDPR by Articles 57(1)(a), (d), (e), (h) and (u) and 58(1)(d) and (2)(a) to (d) of the UK GDPR (which are subject to safeguards set out in section 115) include functions in relation to subsection (3).]

#### Textual Amendments

- F1** Words in s. 28 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. 36(2)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F2** Words in s. 28(1) 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. 36(3)(a)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F3** Words in s. 28(1) 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. 36(3)(b)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F4** Words in s. 28(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. 36(3)(a)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F5** Words in s. 28(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. 36(3)(b)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F6** Words in s. 28(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. 36(4)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F7** S. 28(5) inserted (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. 36(5)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)

#### Modifications etc. (not altering text)

- C1** Pt. 2 Ch. 3 applied (31.12.2020) by Regulation (EU) No. 625/2017, Art. 143 (as substituted by [The Official Controls \(Animals, Feed and Food, Plant Health etc.\) \(Amendment\) \(EU Exit\) Regulations 2020](#) (S.I. 2020/1481), regs. 1, **27(3)** (with reg. 46))

**Status:**

Point in time view as at 31/12/2020.

**Changes to legislation:**

Data Protection Act 2018, Section 28 is up to date with all changes known to be in force on or before 31 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.