



**Isle of Man**

*Ellan Vannin*

**AT 2 of 2002**

**DATA PROTECTION ACT 2002**





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## DATA PROTECTION ACT 2002

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**Isle of Man***Ellan Vannin*

## DATA PROTECTION ACT 2002

*Received Royal Assent:* 10 December 2002  
*Passed:* 10 December 2002  
*Commenced:* See endnotes

AN ACT to make new provision for the regulation of the processing of information relating to individuals, including the obtaining, holding, use or disclosure of such information.

**GENERAL NOTE:** see SD352/09 Rules of the High Court of Justice 2009 Sch 15.1 para 3 reproduced below:

“3. In any statutory provision a reference to a petition of doleance shall be construed as an application to the court in accordance with —

- (a) Chapter 9 of Part 13 (review of detention),
  - (b) rule 14.16 (appeal by way of case stated), or
  - (c) Chapter 2 of Part 14 (review of lawfulness of decision etc.),
- as the case may require.”

## PART 1 PRELIMINARY

### 1 Basic interpretative provisions

[P1998/29/1-3]

(1) In this Act —

“**data**” means information which —

- (a) is being processed by means of equipment operating automatically in response to instructions given for that purpose,
- (b) is recorded with the intention that it should be processed by means of such equipment,
- (c) is recorded as part of a relevant filing system or with the intention that it should form part of a relevant filing system,
- (d) does not fall within paragraph (a), (b) or (c) but forms part of an accessible record, or

(e) does not fall within paragraph (a) to (d) but is recorded information held by a public authority;<sup>1</sup>

“**data controller**” means, subject to subsection (4), a person who (either alone or jointly or in common with other persons) determines the purposes for which and the manner in which any personal data are, or are to be, processed;

“**data processor**”, in relation to personal data, means any person (other than an employee of the data controller) who processes the data on behalf of the data controller;

“**data subject**” means an individual who is the subject of personal data;

“**held**” by a public authority, in relation to information covered by paragraph (e) of the definition of “data”, is to be interpreted in accordance with the *Freedom of Information Act 2015*;<sup>2</sup>

“**personal data**” means data which relate to a living individual who can be identified —

- (a) from those data, or
- (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,

and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual;

“**processing**”, in relation to information or data, means obtaining, recording or holding the information or data or carrying out any operation or set of operations on the information or data, including —

- (a) organisation, adaptation or alteration of the information or data,
- (b) retrieval, consultation or use of the information or data,
- (c) disclosure of the information or data by transmission, dissemination or otherwise making available, or
- (d) alignment, combination, blocking, erasure or destruction of the information or data;

“**public authority**” has the same meaning as in the *Freedom of Information Act 2015*;<sup>3</sup>

“**relevant filing system**” means any set of information relating to individuals to the extent that, although the information is not processed by means of equipment operating automatically in response to instructions given for that purpose, the set is structured, either by reference to individuals or by reference to criteria relating to individuals, in such a way that specific information relating to a particular individual is readily accessible;

“**sensitive personal data**” means personal data consisting of information as to —



- (a) the racial or ethnic origin of the data subject,
- (b) his political opinions,
- (c) his religious beliefs or other beliefs of a similar nature,
- (d) whether he is a member of a trade union (within the meaning of the *Trade Unions Act 1991*),
- (e) his physical or mental health or condition,
- (f) his sexual life,
- (g) the commission or alleged commission by him of any offence, or
- (h) any proceedings for any offence committed or alleged to have been committed by him, the disposal of such proceedings or the sentence of any court in such proceedings;

“the special purposes” means any one or more of the following —

- (a) the purposes of journalism,
  - (b) artistic purposes, and
  - (c) literary purposes.
- (2) In this Act —
- (a) “**obtaining**” or “**recording**”, in relation to personal data, includes obtaining or recording the information to be contained in the data, and
  - (b) “**using**” or “**disclosing**”, in relation to personal data, includes using or disclosing the information contained in the data.
- (3) In determining for the purposes of this Act whether any information is recorded with the intention —
- (a) that it should be processed by means of equipment operating automatically in response to instructions given for that purpose, or
  - (b) that it should form part of a relevant filing system,
- it is immaterial that it is intended to be so processed or to form part of such a system only after being transferred to a country or territory outside the Island.
- (4) Where personal data are processed only for purposes for which they are required by or under any enactment to be processed, the person on whom the obligation to process the data is imposed by or under that enactment is for the purposes of this Act the data controller.

## 2 The data protection principles

[P1998/29/4]

- (1) References in this Act to the data protection principles are to the principles set out in Part 1 of Schedule 1.

- (2) Those principles are to be interpreted in accordance with Part 2 of Schedule 1.
- (3) Schedule 2 (which applies to all personal data) and Schedule 3 (which applies only to sensitive personal data) set out conditions applying for the purposes of the first principle (fair and lawful processing); and Schedule 4 sets out cases in which the eighth principle does not apply.
- (4) Subject to section 23(1), it is the duty of a data controller to comply with the data protection principles in relation to all personal data with respect to which he is the data controller.

### 3 Application of Act

[P1998/29/5]

- (1) Except as otherwise provided by or under section 49, this Act applies to a data controller in respect of any data only if —
  - (a) the data controller is established in the Island and the data are processed in the context of that establishment, or
  - (b) the data controller is not established in the Island but uses equipment in the Island for processing the data otherwise than for the purposes of transit through the Island.
- (2) A data controller falling within subsection (1)(b) must nominate for the purposes of this Act a representative established in the Island.
- (3) For the purposes of subsections (1) and (2), each of the following is to be treated as established in the Island —
  - (a) an individual who is ordinarily resident in the Island,
  - (b) a body incorporated under the law of the Island,
  - (c) a partnership or other unincorporated association formed under the law of the Island, and
  - (d) any person who does not fall within paragraph (a), (b) or (c) but maintains in the Island —
    - (i) an office, branch or agency through which he carries on any activity, or
    - (ii) a regular practice.

### 4 The Tribunal<sup>4</sup>

[P1998/29/6]

- (1) [Repealed]<sup>5</sup>
- (2) [Repealed]<sup>6</sup>
- (3) For the purposes of this Act there shall continue to be an Isle of Man Data Protection Tribunal (in this Act referred to as “**the Tribunal**”).

- (4) The Tribunal is to consist of a chairman and 2 other members, appointed in accordance with the *Tribunals Act 2006*.<sup>7</sup>
- (5) [Repealed]<sup>8</sup>
- (6) Schedule 5 has effect in relation to the Tribunal.<sup>9</sup>

## PART 2 RIGHTS OF DATA SUBJECTS AND OTHERS

### 5 Right of access to personal data

[P1998/29/7 and 15, P2000/36/6/1]

- (1) Subject to the following provisions of this section and to sections 6, 7 and 7A, an individual is entitled —
  - (a) to be informed by any data controller whether personal data of which that individual is the data subject are being processed by or on behalf of that data controller,
  - (b) if that is the case, to be given by the data controller a description of —
    - (i) the personal data of which that individual is the data subject,
    - (ii) the purposes for which they are being or are to be processed, and
    - (iii) the recipients or classes of recipients to whom they are or maybe disclosed,
  - (c) to have communicated to him in an intelligible form —
    - (i) the information constituting any personal data of which that individual is the data subject, and
    - (ii) any information available to the data controller as to the source of those data, and
  - (d) where the processing by automatic means of personal data of which that individual is the data subject for the purpose of evaluating matters relating to him such as, for example, his performance at work, his creditworthiness, his reliability or his conduct, has constituted or is likely to constitute the sole basis for any decision significantly affecting him, to be informed by the data controller of the logic involved in that decision-taking.<sup>10</sup>
- (2) A data controller is not obliged to supply any information under subsection (1) unless he has received —
  - (a) a request in writing, and
  - (b) except in prescribed cases, such fee (not exceeding the prescribed maximum) as he may require.
- (3) Where a data controller —

- (a) reasonably requires further information in order to satisfy himself as to the identity of the person making a request under this section and to locate the information which that person seeks, and
- (b) has informed him of that requirement,

the data controller is not obliged to comply with the request unless he is supplied with that further information.

- (4) Where a data controller cannot comply with the request without disclosing information relating to another individual who can be identified from that information, he is not obliged to comply with the request unless —
  - (a) the other individual has consented to the disclosure of the information to the person making the request, or
  - (b) it is reasonable in all the circumstances to comply with the request without the consent of the other individual.
- (5) In subsection (4) the reference to information relating to another individual includes a reference to information identifying that individual as the source of the information sought by the request; and that subsection is not to be construed as excusing a data controller from communicating so much of the information sought by the request as can be communicated without disclosing the identity of the other individual concerned, whether by the omission of names or other identifying particulars or otherwise.
- (6) In determining for the purposes of subsection (4)(b) whether it is reasonable in all the circumstances to comply with the request without the consent of the other individual concerned, regard shall be had, in particular, to —
  - (a) any duty of confidentiality owed to the other individual,
  - (b) any steps taken by the data controller with a view to seeking the consent of the other individual,
  - (c) whether the other individual is capable of giving consent, and
  - (d) any express refusal of consent by the other individual.
- (7) An individual making a request under this section may, in such cases as may be prescribed, specify that his request is limited to personal data of any prescribed description.
- (8) Subject to subsection (4), a data controller shall comply with a request under this section promptly and in any event before the end of the prescribed period beginning with the relevant day.
- (9) If the High Court is satisfied on the application of any person who has made a request under this section that the data controller in question has failed to comply with the request in contravention of those provisions, the court may —

- (a) order him to comply with the request; and
  - (b) if the court is satisfied that the failure was unjustified and that the data controller knew or ought to have known that it was unjustified, impose on him a penalty of such amount (not exceeding £5,000) as the court thinks fit.
- (10) For the purpose of determining any question whether an applicant under subsection (9) is entitled to the information which he seeks (including any question whether any relevant data are exempt from that section by virtue of Part 4) the High Court may require —
- (a) the information constituting any data processed by or on behalf of the data controller, and
  - (b) any information as to the logic involved in any decision-taking as mentioned in subsection (1)(d),
- to be made available for its own inspection but shall not, pending the determination of that question in the applicant's favour, require the information sought by the applicant to be disclosed to him or his representatives whether by discovery or otherwise.

- (11) A penalty imposed under subsection (9)(b) shall be applicable as a fine imposed by a criminal court.

- (12) In this section —

“prescribed” means prescribed by the Council of Ministers by regulations;

“the prescribed maximum” means such amount as may be prescribed;

“the prescribed period” means 40 days or such other period as may be prescribed;

“the relevant day”, in relation to a request under this section, means the day on which the data controller receives the request or, if later, the first day on which the data controller has both the required fee and the information referred to in subsection (3).

## 6 Provisions supplementary to section 5

[P1998/29/8]

- (1) The Council of Ministers may by regulations provide that, in such cases as may be prescribed, a request for information under any provision of subsection (1) of section 5 is to be treated as extending also to information under other provisions of that subsection.
- (2) The obligation imposed by section 5(1)(c)(i) must be complied with by supplying the data subject with a copy of the information in permanent form unless —
  - (a) the supply of such a copy is not possible or would involve disproportionate effort, or
  - (b) the data subject agrees otherwise;

and where any of the information referred to in section 5(1)(c)(i) is expressed in terms which are not intelligible without explanation the copy must be accompanied by an explanation of those terms.

- (3) Where a data controller has previously complied with a request made under section 5 by an individual, the data controller is not obliged to comply with a subsequent identical or similar request under that section by that individual unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request.
- (4) In determining for the purposes of subsection (3) whether requests under section 5 are made at reasonable intervals, regard shall be had to the nature of the data, the purpose for which the data are processed and the frequency with which the data are altered.
- (5) Section 5(1)(d) is not to be regarded as requiring the provision of information as to the logic involved in any decision-taking if, and to the extent that, the information constitutes a trade secret.
- (6) The information to be supplied pursuant to a request under section 5 must be supplied by reference to the data in question at the time when the request is received, except that it may take account of any amendment or deletion made between that time and the time when the information is supplied, being an amendment or deletion that would have been made regardless of the receipt of the request.
- (7) For the purposes of section 5(4) and (5) another individual can be identified from the information being disclosed if he can be identified from that information, or from that and any other information which, in the reasonable belief of the data controller, is likely to be in, or to come into, the possession of the data subject making the request.

## **7 Application of section 5: credit reference agencies**

[P1998/29/9]

- (1) Where the data controller is a credit reference agency, section 5 has effect subject to the provisions of this section.
- (2) An individual making a request under section 5 may limit his request to personal data relevant to his financial standing, and shall be taken to have so limited his request unless the request shows a contrary intention.
- (3) Where the data controller receives a request under section 5 in a case where personal data of which the individual making the request is the data subject are being processed by or on behalf of the data controller, the obligation to supply information under that section includes an obligation to give the individual making the request a statement, in such form as may be prescribed by the Council of Ministers by regulations, of such of the individual's rights under this Act as are specified in the form.

## 7A Unstructured personal data held by public authorities

- (1) A public authority is not obliged to comply with section 5(1) in relation to unstructured personal data unless the request under that section contains a description of the data.
- (2) Even if the data are described by the data subject in the request, a public authority is not obliged to comply with section 5(1) in relation to unstructured personal data if the public authority estimates that the cost of complying with the request so far as relating to those data would exceed the limit prescribed under subsection (4).
- (3) Subsection (2) does not exempt the public authority from its obligation to comply with section 5(1)(a) in relation to the unstructured personal data unless the estimated cost of complying with that paragraph alone in relation to those data would exceed the limit prescribed under subsection (4).
- (4) The Council of Ministers may, by regulations, prescribe an amount to be the limit for the purposes subsections (2) and (3).
- (5) Any estimate for the purposes of this section must be made in accordance with regulations under section 68 of the *Freedom of Information Act 2015* (fees).
- (6) In this section “unstructured personal data” means any personal data falling within paragraph (e) of the definition of “data” in section 1(1), other than information that is recorded as part of, or with the intention that it should form part of, any set of information relating to individuals to the extent that the set is structured by reference to individuals or by reference to criteria relating to individuals.<sup>11</sup>

## 8 Right to prevent processing likely to cause damage or distress

[P1998/29/10]

- (1) Subject to subsection (2), an individual is entitled at any time by notice in writing to a data controller to require the data controller at the end of such period as is reasonable in the circumstances to cease, or not to begin, processing, or processing for a specified purpose or in a specified manner, any personal data in respect of which he is the data subject, on the ground that, for specified reasons —
  - (a) the processing of those data or their processing for that purpose or in that manner is causing or is likely to cause substantial damage or substantial distress to him or to another, and
  - (b) that damage or distress is or would be unwarranted.
- (2) Subsection (1) does not apply —
  - (a) in a case where any of the conditions in paragraphs 1 to 4 of Schedule 2 is met, or

- (b) in such other cases as may be prescribed by the Council of Ministers by order.
- (3) The data controller must within 21 days of receiving a notice under subsection (1) (“the data subject notice”) give the individual who gave it a written notice –
  - (a) stating that he has complied or intends to comply with the data subject notice, or
  - (b) stating his reasons for regarding the data subject notice as to any extent unjustified and the extent (if any) to which he has complied or intends to comply with it.
- (4) If the High Court is satisfied, on the application of any person who has given a notice under subsection (1) which appears to the court to be justified (or to be justified to any extent), that the data controller in question has failed to comply with the notice, the court may order him to take such steps for complying with the notice (or for complying with it to that extent) as the court thinks fit.
- (5) The failure by a data subject to exercise the right conferred by subsection (1) or section 9(1) does not affect any other right conferred on him by this Part.

## **9 Right to prevent processing for purposes of direct marketing**

[P1998/29/11]

- (1) An individual is entitled at any time by notice in writing to a data controller to require the data controller at the end of such period as is reasonable in the circumstances to cease, or not to begin, processing for the purposes of direct marketing personal data in respect of which he is the data subject.
- (2) If the High Court is satisfied, on the application of any person who has given a notice under subsection (1), that the data controller has failed to comply with the notice, the court may order him to take such steps for complying with the notice as the court thinks fit.
- (3) In this section “direct marketing” means the communication (by whatever means) of any advertising or marketing material which is directed to particular individuals.

## **10 Rights in relation to automated decision-taking**

[P1998/29/12]

- (1) An individual is entitled at any time, by notice in writing to any data controller, to require the data controller to ensure that no decision taken by or on behalf of the data controller which significantly affects that individual is based solely on the processing by automatic means of personal data in respect of which that individual is the data subject for



- the purpose of evaluating matters relating to him such as, for example, his performance at work, his creditworthiness, his reliability or his conduct.
- (2) Where, in a case where no notice under subsection (1) has effect, a decision which significantly affects an individual is based solely on such processing as is mentioned in subsection (1) —
    - (a) the data controller must as soon as reasonably practicable notify the individual that the decision was taken on that basis, and
    - (b) the individual is entitled, within 21 days of receiving that notification from the data controller, by notice in writing to require the data controller to reconsider the decision or to take a new decision otherwise than on that basis.
  - (3) The data controller must, within 21 days of receiving a notice under subsection (2)(b) (“the data subject notice”) give the individual a written notice specifying the steps that he intends to take to comply with the data subject notice.
  - (4) A notice under subsection (1) does not have effect in relation to an exempt decision; and nothing in subsection (2) applies to an exempt decision.
  - (5) In subsection (4) “exempt decision” means any decision —
    - (a) in respect of which the conditions in subsections (6) and (7) are met, or
    - (b) which is made in such other circumstances as may be prescribed by the Council of Ministers by order.
  - (6) The condition in this subsection is that the decision —
    - (a) is taken in the course of steps taken —
      - (i) for the purpose of considering whether to enter into a contract with the data subject,
      - (ii) with a view to entering into such a contract, or
      - (iii) in the course of performing such a contract, or
    - (b) is authorised or required by or under any enactment.
  - (7) The condition in this subsection is that either —
    - (a) the effect of the decision is to grant a request of the data subject, or
    - (b) steps have been taken to safeguard the legitimate interests of the data subject (for example, by allowing him to make representations).
  - (8) If the High Court is satisfied on the application of a data subject that a person taking a decision in respect of him (“the responsible person”) has failed to comply with subsection (1) or (2)(b), the court may order the responsible person to reconsider the decision, or to take a new decision

which is not based solely on such processing as is mentioned in subsection (1).

- (9) An order under subsection (8) shall not affect the rights of any person other than the data subject and the responsible person.

## **11 Compensation for failure to comply with certain requirements**

[P1998/29/13]

- (1) An individual who suffers damage by reason of any contravention by a data controller of any of the requirements of this Act is entitled to compensation from the data controller for that damage.
- (2) An individual who suffers distress by reason of any contravention by a data controller of any of the requirements of this Act is entitled to compensation from the data controller for that distress if —
- (a) the individual also suffers damage by reason of the contravention, or
  - (b) the contravention relates to the processing of personal data for the special purposes, or
  - (c) the contravention consists of a failure to comply with a request under section 5 in the circumstances specified in section 5(9)(b).
- (3) In proceedings brought against a person by virtue of this section it is a defence to prove that he had taken such care as in all the circumstances was reasonably required to comply with the requirement concerned.

## **12 Rectification, blocking, erasure and destruction**

[P1998/29/14]

- (1) If the High Court is satisfied on the application of a data subject that personal data of which the applicant is the subject are inaccurate, the court may order the data controller to rectify, block, erase or destroy those data and any other personal data in respect of which he is the data controller and which contain an expression of opinion which appears to the court to be based on the inaccurate data.
- (2) Subsection (1) applies whether or not the data accurately record information received or obtained by the data controller from the data subject or a third party but where the data accurately record such information, then —
- (a) if the requirements mentioned in paragraph 15 of Schedule 1 have been complied with, the High Court may, instead of making an order under subsection (1), make an order requiring the data to be supplemented by such statement of the true facts relating to the matters dealt with by the data as the court may approve, and
  - (b) if all or any of those requirements have not been complied with, the High Court may, instead of making an order under that

subsection, make such order as it thinks fit for securing compliance with those requirements with or without a further order requiring the data to be supplemented by such a statement as is mentioned in paragraph (a).

- (3) Where the High Court —
- (a) makes an order under subsection (1), or
  - (b) is satisfied on the application of a data subject that personal data of which he was the data subject and which have been rectified, blocked, erased or destroyed were inaccurate,

it may, where it considers it reasonably practicable, order the data controller to notify third parties to whom the data have been disclosed of the rectification, blocking, erasure or destruction.

- (4) If the High Court is satisfied on the application of a data subject —
- (a) that he has suffered damage by reason of any contravention by a data controller of any of the requirements of this Act in respect of any personal data, in circumstances entitling him to compensation under section 11, and
  - (b) that there is a substantial risk of further contravention in respect of those data in such circumstances,

the court may order the rectification, blocking, erasure or destruction of any of those data.

- (5) Where the court makes an order under subsection (4) it may, where it considers it reasonably practicable, order the data controller to notify third parties to whom the data have been disclosed of the rectification, blocking, erasure or destruction.
- (6) In determining whether it is reasonably practicable to require such notification as is mentioned in subsection (3) or (5) the court shall have regard, in particular, to the number of persons who would have to be notified.

## PART 3 NOTIFICATION BY DATA CONTROLLERS

### 13 Preliminary

[P1998/29/16]

- (1) In this Part “**the registrable particulars**”, in relation to a data controller, means —
- (a) his name and address,
  - (b) if he has nominated a representative for the purposes of this Act, the name and address of the representative,

- (c) a description of the personal data being or to be processed by or on behalf of the data controller and of the category or categories of data subject to which they relate,
  - (d) a description of the purpose or purposes for which the data are being or are to be processed,
  - (e) a description of any recipient or recipients to whom the data controller intends or may wish to disclose the data, and
  - (f) the names, or a description of, any countries or territories outside the Island to which the data controller directly or indirectly transfers, or intends or may wish directly or indirectly to transfer, the data.
- (2) In this Part —
- “**fees regulations**” means regulations made by the Treasury under section 15(5) or 16(4) or (7);
- “**notification regulations**” means regulations made by the Council of Ministers under the other provisions of this Part;
- “**prescribed**”, except where used in relation to fees regulations, means prescribed by notification regulations.
- (3) For the purposes of this Part, so far as it relates to the addresses of data controllers —
- (a) the address of a registered company is that of its registered office, and
  - (b) the address of a person (other than a registered company) carrying on a business is that of his principal place of business in the Island.

## 14 Prohibition on processing without registration

[P1998/29/17]

- (1) Subject to the following provisions of this section, personal data must not be processed unless an entry in respect of the data controller is included in the register maintained by the Information Commissioner under section 16 (or is treated by notification regulations made by virtue of section 16(3) as being so included).<sup>12</sup>
- (2) Except where the processing is assessable processing for the purposes of section 19, subsection (1) does not apply in relation to personal data consisting of information which falls within neither paragraph (a) nor paragraph (b) of the definition of “data” in section 1(1).
- (3) If it appears to the Council of Ministers that processing of a particular description is unlikely to prejudice the rights and freedoms of data subjects, notification regulations may provide that, in such cases as may

be prescribed, subsection (1) is not to apply in relation to processing of that description.

- (4) Subsection (1) does not apply in relation to any processing whose sole purpose is the maintenance of a public register.

## 15 Notification by data controllers

[P1998/29/18]

- (1) Any data controller who wishes to be included in the register maintained under section 16 shall give a notification to the Information Commissioner under this section.<sup>13</sup>
- (2) A notification under this section must specify in accordance with notification regulations —
- (a) the registrable particulars, and
  - (b) a general description of measures to be taken for the purpose of complying with the seventh data protection principle (measures against misuse and loss of data).
- (3) Notification regulations made by virtue of subsection (2) may provide for the determination by the Information Commissioner, in accordance with any requirements of the regulations, of the form in which the registrable particulars and the description mentioned in subsection (2)(b) are to be specified, including in particular the detail required for the purposes of section 13(1)(c), (d), (e) and (f) and subsection (2)(b).<sup>14</sup>
- (4) Notification regulations may make provision as to the giving of notification —
- (a) by partnerships, or
  - (b) in other cases where 2 or more persons are the data controllers in respect of any personal data.
- (5) The notification must be accompanied by such fee as may be prescribed by fees regulations.
- (6) Notification regulations may provide for any fee paid under subsection (5) or section 16(4) to be refunded in prescribed circumstances.

## 16 Register of notifications

[P1998/29/19]

- (1) The Information Commissioner shall —
- (a) maintain a register of persons who have given notification under section 15, and
  - (b) make an entry in the register in pursuance of each notification received by him under that section from a person in respect of

whom no entry as data controller was for the time being included in the register.<sup>15</sup>

- (2) Each entry in the register shall consist of —
  - (a) the registrable particulars notified under section 15 or, as the case requires, those particulars as amended in pursuance of section 17(4), and
  - (b) such other information as the Information Commissioner may be authorised or required by notification regulations to include in the register.<sup>16</sup>
- (3) Notification regulations may make provision as to the time as from which any entry in respect of a data controller is to be treated for the purposes of section 14 as having been made in the register.
- (4) No entry shall be retained in the register for more than the relevant time except on payment of such fee as may be prescribed by fees regulations.
- (5) In subsection (4) “the relevant time” means 12 months or such other period as may be prescribed by notification regulations.
- (6) The Information Commissioner —
  - (a) shall provide facilities for making the information contained in the entries in the register available for inspection (in visible and legible form) by members of the public at all reasonable hours and free of charge, and
  - (b) may provide such other facilities for making the information contained in those entries available to the public free of charge as he considers appropriate.<sup>17</sup>
- (7) The Information Commissioner shall, on payment of such fee, if any, as may be prescribed by fees regulations, supply any member of the public with a duly certified copy in writing of the particulars contained in any entry made in the register.<sup>18</sup>

## 17 Duty to notify changes

[P1989/29/20]

- (1) For the purpose specified in subsection (2), notification regulations shall include provision imposing on every person in respect of whom an entry as a data controller is for the time being included in the register maintained under section 16 a duty to notify to the Information Commissioner, in such circumstances and at such time or times and in such form as may be prescribed, such matters relating to the registrable particulars and measures taken as mentioned in section 15(2)(b) as may be prescribed.<sup>19</sup>
- (2) The purpose referred to in subsection (1) is that of ensuring, so far as practicable, that at any time —

- (a) the entries in the register maintained under section 16 contain current names and addresses and describe the current practice or intentions of the data controller with respect to the processing of personal data, and
  - (b) the Information Commissioner is provided with a general description of measures currently being taken as mentioned in section 15(2)(b).<sup>20</sup>
- (3) Section 15(3) has effect in relation to notification regulations made by virtue of subsection (1) as it has effect in relation to notification regulations made by virtue of section 15(2).
- (4) On receiving any notification under notification regulations made by virtue of subsection (1), the Information Commissioner shall make such amendments of the relevant entry in the register maintained under section 16 as are necessary to take account of the notification.<sup>21</sup>

## 18 Offences

[P1998/29/21]

- (1) If section 14(1) is contravened, the data controller is guilty of an offence.
- (2) Any person who fails to comply with the duty imposed by notification regulations made by virtue of section 17(1) is guilty of an offence.
- (3) It shall be a defence for a person charged with an offence under subsection (2) to show that he exercised all due diligence to comply with the duty.

## 19 Preliminary assessment by Information Commissioner<sup>22</sup>

[P1998/29/22]

- (1) In this section “assessable processing” means processing which is of a description specified in an order made by the Council of Ministers as appearing to it to be particularly likely —
  - (a) to cause substantial damage or substantial distress to data subjects, or
  - (b) otherwise significantly to prejudice the rights and freedoms of data subjects.
- (2) On receiving notification from any data controller under section 15 or under notification regulations made by virtue of section 17 the Information Commissioner shall consider —
  - (a) whether any of the processing to which the notification relates is assessable processing, and
  - (b) if so, whether the assessable processing is likely to comply with the provisions of this Act.<sup>23</sup>

- (3) Subject to subsection (4), the Information Commissioner shall, within the period of 28 days beginning with the day on which he receives a notification which relates to assessable processing, give a notice to the data controller stating the extent to which the Information Commissioner is of the opinion that the processing is likely or unlikely to comply with the provisions of this Act.<sup>24</sup>
- (4) Before the end of the period referred to in subsection (3) the Information Commissioner may, by reason of special circumstances, extend that period on one occasion only by notice to the data controller by such further period not exceeding 14 days as the Information Commissioner may specify in the notice.<sup>25</sup>
- (5) No assessable processing in respect of which a notification has been given to the Information Commissioner as mentioned in subsection (2) shall be carried on unless either –
  - (a) the period of 28 days beginning with the day on which the notification is received by the Information Commissioner (or, in a case falling within subsection (4), that period as extended under that subsection) has elapsed, or<sup>26</sup>
  - (b) before the end of that period (or that period as so extended) the data controller has received a notice from the Information Commissioner under subsection (3) in respect of the processing.<sup>27</sup>
- 28
- (6) Where subsection (5) is contravened, the data controller is guilty of an offence.
- (7) The Council of Ministers may by order amend subsections (3), (4) and (5) by substituting for the number of days for the time being specified there a different number specified in the order.

## 20 Reference of notification to Tribunal

- (1) If it appears to the Information Commissioner that any processing of personal data by a data controller in accordance with registrable particulars notified under section 15 or under notification regulations made by virtue of section 17 would contravene any of the data protection principles, he may refer the notification to the Tribunal, specifying the data protection principle or principles which the Information Commissioner considers would be contravened and his reasons for doing so.<sup>29</sup>
- (2) In deciding whether to make a reference under this section, the Information Commissioner shall consider whether the processing in question has caused or is likely to cause any person damage or distress.<sup>30</sup>



- (3) Where on a reference under this section the Tribunal is satisfied that the processing in question would contravene any of the data protection principles, it may direct the Information Commissioner —
  - (a) to cancel the relevant entry in the register, or
  - (b) to vary that entry to such extent as the Tribunal considers appropriate to avoid or prevent any such contravention.<sup>31</sup>
- (4) Schedule 6 shall have effect in relation to references under this section and the proceedings of the Tribunal in respect of any such reference.
- (5) Any party to a reference under this section may appeal from the decision of the Tribunal on a point of law to the High Court.

## **21 Power to make provision for appointment of data supervisors**

[P1998/29/23]

- (1) The Council of Ministers may by order —
  - (a) make provision under which a data controller may appoint a person to act as a data supervisor responsible in particular for monitoring in an independent manner the data controller's compliance with the provisions of this Act, and
  - (b) provide that, in relation to any data controller who has appointed a data supervisor in accordance with the provisions of the order and who complies with such conditions as may be specified in the order, the provisions of this Part are to have effect subject to such exemptions or other modifications as may be specified in the order.
- (2) An order under this section may —
  - (a) impose duties on data supervisors in relation to the Information Commissioner, and<sup>32</sup>
  - (b) confer functions on the Information Commissioner in relation to data supervisors.<sup>33</sup>

## **22 Duty of certain data controllers to make certain information available**

[P1998/29/24]

- (1) Subject to subsection (3), where personal data are processed in a case where —
  - (a) by virtue of section 14(2) or (3), section 14(1) does not apply to the processing, and
  - (b) the data controller has not notified the relevant particulars in respect of that processing under section 15,

the data controller must, within 21 days of receiving a written request from any person, make the relevant particulars available to that person in writing free of charge.

- (2) In this section “the relevant particulars” means the particulars referred to in paragraphs (a) to (f) of section 13(1).
- (3) This section has effect subject to any exemption conferred for the purposes of this section by notification regulations.
- (4) Any data controller who fails to comply with the duty imposed by subsection (1) is guilty of an offence.
- (5) It shall be a defence for a person charged with an offence under subsection (4) to show that he exercised all due diligence to comply with the duty.

## PART 4 EXEMPTIONS

### 23 Preliminary

[P1998/29/27]

- (1) References in any of the data protection principles or any provision of Parts 2 and 3 to personal data or to the processing of personal data do not include references to data or processing which by virtue of this Part are exempt from that principle or other provision.
- (2) In this Part “**the subject information provisions**” means—
  - (a) the first data protection principle (fair and lawful processing) to the extent to which it requires compliance with paragraph 10 of Schedule 1, and
  - (b) section 5.
- (3) In this Part “**the non-disclosure provisions**” means the provisions specified in subsection (4) to the extent to which they are inconsistent with the disclosure in question.
- (4) The provisions referred to in subsection (3) are —
  - (a) the first data protection principle (fair and lawful processing), except to the extent to which it requires compliance with the conditions in Schedules 2 and 3,
  - (b) the second data protection principle (purpose for which data are obtained and processed),
  - (c) the third data protection principle (adequacy and relevance of data),
  - (d) the fourth data protection principle (accuracy of data),
  - (e) the fifth data protection principle (time for keeping data), and
  - (f) sections 8 and 12(1) to (3).
- (5) Except as provided by this Part, the subject information provisions shall have effect notwithstanding any statutory provision or rule of law

prohibiting or restricting the disclosure, or authorising the withholding, of information.

## 24 National security

[P1998/29/28]

- (1) Personal data are exempt from any of the provisions of —
  - (a) the data protection principles,
  - (b) Parts 2, 3 and 5, and
  - (c) section 50,if the exemption from that provision is required for the purpose of safeguarding national security.
- (2) Subject to subsection (4), a certificate signed by the Chief Minister certifying that exemption from all or any of the provisions mentioned in subsection (1) is or at any time was required for the purpose there mentioned in respect of any personal data shall be conclusive evidence of that fact.
- (3) A certificate under subsection (2) may identify the personal data to which it applies by means of a general description and may be expressed to have prospective effect.
- (4) Any person directly affected by the issuing of a certificate under subsection (2) may appeal to the Tribunal against the certificate.
- (5) If on an appeal under subsection (4), the Tribunal finds that, applying the principles applied by the High Court on a petition of dolence, the Chief Minister did not have reasonable grounds for issuing the certificate, the Tribunal may allow the appeal and quash the certificate.<sup>34</sup>
- (6) Where in any proceedings under or by virtue of this Act it is claimed by a data controller that a certificate under subsection (2) which identifies the personal data to which it applies by means of a general description applies to any personal data, then, subject to any determination under subsection (7), the certificate shall be conclusively presumed so to apply.
- (7) Any other party to proceedings referred to in subsection (6) may appeal to the Tribunal on the ground that the certificate does not apply to the personal data in question, and the Tribunal may determine that the certificate does not so apply.
- (8) A document purporting to be a certificate under subsection (2) shall be received in evidence and deemed to be such a certificate unless the contrary is proved.
- (9) No power conferred by any provision of Part 5 may be exercised in relation to personal data which by virtue of this section are exempt from that provision.

- (10) Schedule 6 shall have effect in relation to appeals under subsection (4) or (7) and the proceedings of the Tribunal in respect of any such appeal.

## 25 Crime and taxation

[P1998/29/29]

- (1) Personal data processed for any of the following purposes —
- (a) the prevention or detection of crime,
  - (b) the apprehension or prosecution of offenders, or
  - (c) the assessment or collection of any tax or duty or of any imposition of a similar nature,

are exempt from the first data protection principle (fair and lawful processing) (except to the extent to which it requires compliance with the conditions in Schedules 2 and 3) and section 5 in any case to the extent to which the application of those provisions to the data would be likely to prejudice any of the matters mentioned in this subsection.

- (2) Personal data which —
- (a) are processed for the purpose of discharging statutory functions, and
  - (b) consist of information obtained for such a purpose from a person who had it in his possession for any of the purposes mentioned in subsection (1),

are exempt from the subject information provisions to the same extent as personal data processed for any of the purposes mentioned in that subsection.

- (3) Personal data are exempt from the non-disclosure provisions in any case in which —
- (a) the disclosure is for any of the purposes mentioned in subsection (1), and
  - (b) the application of those provisions in relation to the disclosure would be likely to prejudice any of the matters mentioned in that subsection.
- (4) Personal data in respect of which the data controller is a relevant authority and which —
- (a) consist of a classification applied to the data subject as part of a system of risk assessment which is operated by that authority for either of the following purposes —
    - (i) the assessment or collection of any tax or duty or any imposition of a similar nature, or
    - (ii) the prevention or detection of crime, or apprehension or prosecution of offenders, where the offence concerned

involves any unlawful claim for any payment out of, or any unlawful application of, public funds, and

- (b) are processed for either of those purposes, are exempt from section 5 to the extent to which the exemption is required in the interests of the operation of the system.
- (5) In subsection (4) “relevant authority” means a Department, Statutory Board, local authority or joint board.

## 26 Health, education and social work

[P1998/29/30]

- (1) The Council of Ministers may by order exempt from the subject information provisions, or modify those provisions in relation to, personal data consisting of information as to the physical or mental health or condition of the data subject.
- (2) The Council of Ministers may by order exempt from the subject information provisions, or modify those provisions in relation to personal data —
- (a) in respect of which the data controller is the proprietor of, or a teacher at, a school or college, and which consist of information relating to persons who are or have been pupils at the school or college; or
- (b) in respect of which the data controller is the Department of Education, Sport and Culture, and which consist of information relating to persons who are or have been pupils at a school or college maintained by that Department.<sup>35</sup>
- (3) The Council of Ministers may by order exempt from the subject information provisions, or modify those provisions in relation to, personal data of such other descriptions as may be specified in the order, being information —
- (a) processed by the Department of Health and Social Care or by voluntary organisations or other bodies designated by or under the order, and<sup>36</sup>
- (b) appearing to it to be processed in the course of, or for the purposes of, carrying out social work in relation to the data subject or other individuals;

but the Council of Ministers shall not under this subsection confer any exemption or make any modification except so far as it considers that the application to the data of those provisions (or of those provisions without modification) would be likely to prejudice the carrying out of social work.

## 27 Regulatory activity

[P1998/29/31]

- (1) Personal data processed for the purposes of discharging functions to which this subsection applies are exempt from the subject information provisions in any case to the extent to which the application of those provisions to the data would be likely to prejudice the proper discharge of those functions.
- (2) Subsection (1) applies to any relevant function which is designed for —
  - (a) protecting members of the public against —
    - (i) financial loss due to dishonesty, malpractice or other seriously improper conduct by, or the unfitness or incompetence of, persons concerned in the provision of banking, insurance, investment or other financial services or in the management of bodies corporate,
    - (ii) financial loss due to the conduct of discharged or undischarged bankrupts, or
    - (iii) dishonesty, malpractice or other seriously improper conduct by, or the unfitness or incompetence of, persons authorised to carry on any profession or other activity,
  - (b) protecting charities against misconduct or mismanagement (whether by trustees or other persons) in their administration, protecting the property of charities from loss or misapplication, or the recovery of the property of charities,
  - (c) securing the health, safety and welfare of persons at work, or protecting persons other than persons at work against risk to health or safety arising out of or in connection with the actions of persons at work.
- (3) In subsection (2) “relevant function” means —
  - (a) any function conferred on any person by or under any statutory provision, or
  - (b) any other function which is of a public nature and is exercised in the public interest.
- (4) Personal data processed for the purpose of discharging any function of the Isle of Man Office of Fair Trading under the *Fair Trading Act 1996* are exempt from the subject information provisions in any case to the extent to which the application of those provisions to the data would be likely to prejudice the proper discharge of that function.
- (5) Personal data processed for the purpose of considering a complaint under section 26 of the *Social Services Act 2011* are exempt from the subject information provisions in any case to the extent to which the application of those provisions to the data would be likely to prejudice the proper discharge of that function.<sup>37</sup>

**28 Journalism, literature and art**

[P1998/29/32]

- (1) Personal data which are processed only for the special purposes are exempt from any provision to which this subsection relates if —
  - (a) the processing is undertaken with a view to the publication by any person of any journalistic, literary or artistic material,
  - (b) the data controller reasonably believes that, having regard in particular to the special importance of the public interest in freedom of expression, publication would be in the public interest, and
  - (c) the data controller reasonably believes that, in all the circumstances, compliance with that provision is incompatible with the special purposes.
- (2) Subsection (1) relates to the provisions of —
  - (a) the data protection principles except the seventh data protection principle (measures against misuse and loss of data),
  - (b) section 5,
  - (c) section 8,
  - (d) section 10, and
  - (e) section 12(1) to (3).
- (3) In considering for the purposes of subsection (1)(b) whether the belief of a data controller that publication would be in the public interest was or is a reasonable one, regard may be had to his compliance with any code of practice which —
  - (a) is relevant to the publication in question, and
  - (b) is designated by the Council of Ministers by order for the purposes of this subsection.
- (4) Where at any time (“the relevant time”) in any proceedings against a data controller under section 5(9), 8(4), 10(8) or 12 or by virtue of section 11 the data controller claims, or it appears to the High Court, that any personal data to which the proceedings relate are being processed —
  - (a) only for the special purposes, and
  - (b) with a view to the publication by any person of any journalistic, literary or artistic material which, at the time 24 hours immediately before the relevant time, had not previously been published by the data controller,

the court shall stay the proceedings until either of the conditions in subsection (5) is met.
- (5) Those conditions are —

- (a) that a determination of the Information Commissioner under section 41 with respect to the data in question takes effect, or<sup>38</sup>
  - (b) in a case where the proceedings were stayed on the making of a claim, that the claim is withdrawn.
- (6) For the purposes of this Act “**publish**”, in relation to journalistic, literary or artistic material, means make available to the public or any section of the public.

## 29 Research, history and statistics

[P1998/29/33]

- (1) In this section —
- “research purposes” includes statistical or historical purposes;
- “the relevant conditions”, in relation to any processing of personal data, means the conditions —
- (a) that the data are not processed to support measures or decisions with respect to particular individuals, and
  - (b) that the data are not processed in such a way that substantial damage or substantial distress is, or is likely to be, caused to any data subject.
- (2) For the purposes of the second data protection principle (purpose for which data are obtained and processed), the further processing of personal data only for research purposes in compliance with the relevant conditions is not to be regarded as incompatible with the purposes for which they were obtained.
- (3) Personal data which are processed only for research purposes in compliance with the relevant conditions may, notwithstanding the fifth data protection principle (time for keeping data), be kept indefinitely.
- (4) Personal data which are processed only for research purposes are exempt from section 5 if —
- (a) they are processed in compliance with the relevant conditions, and
  - (b) the results of the research or any resulting statistics are not made available in a form which identifies data subjects or any of them.
- (5) For the purposes of subsections (2) to (4) personal data are not to be treated as processed otherwise than for research purposes merely because the data are disclosed —
- (a) to any person, for research purposes only,
  - (b) to the data subject or a person acting on his behalf,
  - (c) at the request, or with the consent, of the data subject or a person acting on his behalf, or



- (d) in circumstances in which the person making the disclosure has reasonable grounds for believing that the disclosure falls within paragraph (a), (b) or (c).

### **29A Manual data held by public authorities**

- (1) Personal data falling within paragraph (e) of the definition of “data” in section 1(1) are exempt from —
  - (a) the first, second, third, fifth, seventh and eighth data protection principles;
  - (b) the sixth data protection principle except so far as it relates to the rights conferred on data subjects by sections 5 and 12;
  - (c) sections 8 to 10;
  - (d) section 11, except so far as it relates to damage caused by a contravention of section 5 or of the fourth data protection principle and to any distress that is also suffered by reason of that contravention;
  - (e) Part 3; and
  - (f) section 50.
- (2) Personal data that fall within paragraph (e) of the definition of “data” in section 1(1) and relate to appointments or removals, pay, discipline, superannuation or other personnel matters, in relation to —
  - (a) service in any office or employment under the Crown or under any public authority; or
  - (b) service in any office or employment, or under any contract for services, in respect of which power to take action, or to determine or approve the action taken, in such matters is vested in the Lieutenant Governor, any Minister or any public authority, are also exempt from the remaining data protection principles and the remaining provisions of Part 2,

are also exempt from the remaining data protection principles and the remaining provisions of Part 2.<sup>39</sup>

### **30 Information available to the public by or under statutory provision**

[P1998/29/34]

Personal data are exempt from —

- (a) the subject information provisions,
- (b) the fourth data protection principle (accuracy of data) and section 12(1) to (3), and
- (c) the non-disclosure provisions,

if the data consist of information which the data controller is obliged by or under any statutory provision (other than the *Freedom of Information Act 2015* or

an enactment under that Act) to make available to the public, whether by publishing it, by making it available for inspection, or otherwise and whether gratuitously or on payment of a fee.<sup>40</sup>

### **31 Disclosures required by law or made in connection with legal proceedings etc.**

[P1998/29/35]

- (1) Personal data are exempt from the non-disclosure provisions where the disclosure is required by or under any statutory provision, by any rule of law or by the order of a court.
- (2) Personal data are exempt from the non-disclosure provisions where the disclosure is necessary —
  - (a) for the purpose of, or in connection with, any legal proceedings (including prospective legal proceedings), or
  - (b) for the purpose of obtaining legal advice,or is otherwise necessary for the purposes of establishing, exercising or defending legal rights.

### **32 Tynwald privilege**

[P1998/29/35A, P2000/36/6/2]

Personal data are exempt from —

- (a) the first data protection principle, except to the extent to which it requires compliance with the conditions in Schedules 2 and 3,
- (b) the second, third, fourth and fifth data protection principles,
- (c) section 5, and
- (d) sections 8 and 12(1) to (3),

if the exemption is required for the purpose of avoiding an infringement of the privileges of Tynwald, the Council or the Keys.

### **33 Domestic purposes**

[P1998/29/36]

Personal data processed by an individual only for the purposes of that individual's personal, family or household affairs (including recreational purposes) are exempt from the data protection principles and the provisions of Parts 2 and 3.

### **34 Miscellaneous exemptions**

[P1998/29/37]

Schedule 7 (which confers further miscellaneous exemptions) has effect.

**35 Powers to make further exemptions by order**

[P1998/29/38]

- (1) The Council of Ministers may by order exempt from the subject information provisions personal data consisting of information the disclosure of which is prohibited or restricted by or under any statutory provision if and to the extent that it considers it necessary for the safeguarding of the interests of the data subject or the rights and freedoms of any other individual that the prohibition or restriction ought to prevail over those provisions.
- (2) The Council of Ministers may by order exempt from the non-disclosure provisions any disclosures of personal data made in circumstances specified in the order, if it considers the exemption is necessary for the safeguarding of the interests of the data subject or the rights and freedoms of any other individual.

**PART 5 ENFORCEMENT****36 Enforcement notices**

[P1998/29/40]

- (1) If the Information Commissioner is satisfied that a data controller has contravened or is contravening any of the data protection principles, the Information Commissioner may serve him with a notice (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.<sup>41</sup>
- (2) In deciding whether to serve an enforcement notice, the Information Commissioner shall consider whether the contravention has caused or is likely to cause any person damage or distress.<sup>42</sup>
- (3) An enforcement notice in respect of a contravention of the fourth data protection principle (accuracy of data) 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 Information Commissioner to be based on the inaccurate data.<sup>43</sup>
- (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 —

- (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 15 of Schedule 1 and, if the Information 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 Information Commissioner may approve.<sup>44</sup>
- (5) Where —
- (a) an enforcement notice requires the data controller to rectify, block, erase or destroy any personal data, or
  - (b) the Information 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,<sup>45</sup>

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 Information Commissioner is satisfied have been or are being contravened and his reasons for reaching that conclusion, and<sup>46</sup>
  - (b) particulars of the rights of appeal conferred by section 44.
- (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 Information 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 7 days beginning with the day on which the notice is served.<sup>47</sup>

- (9) Notification regulations (as defined in section 13(2)) may make provision as to the effect of the service of an enforcement notice on any entry in the register maintained under section 16 which relates to the person on whom the notice is served.
- (10) This section has effect subject to section 42(1).

### **37 Cancellation of enforcement notice**

[P1998/29/41]

- (1) If the Information Commissioner considers that all or any of the provisions of an enforcement notice need not be complied with in order to ensure compliance with the data protection principle or principles to which it relates, he may cancel or vary the notice by written notice to the person on whom it was served.<sup>48</sup>
- (2) A person on whom an enforcement notice has been served may, at any time after the expiry of the period during which an appeal can be brought against that notice, apply in writing to the Information Commissioner for the cancellation or variation of that notice on the ground that, by reason of a change of circumstances, all or any of the provisions of that notice need not be complied with in order to ensure compliance with the data protection principle or principles to which that notice relates.<sup>49</sup>

### **38 Request for assessment**

[P1998/29/42]

- (1) A request may be made to the Information Commissioner by or on behalf of any person who is, or believes himself to be, directly affected by any processing of personal data for an assessment as to whether it is likely or unlikely that the processing has been or is being carried out in compliance with the provisions of this Act.<sup>50</sup>
- (2) On receiving a request under this section, the Information Commissioner shall make an assessment in such manner as appears to him to be appropriate, unless he has not been supplied with such information as he may reasonably require in order to —
  - (a) satisfy himself as to the identity of the person making the request, and
  - (b) enable him to identify the processing in question.<sup>51</sup>
- (3) The matters to which the Information Commissioner may have regard in determining in what manner it is appropriate to make an assessment include —
  - (a) the extent to which the request appears to him to raise a matter of substance,
  - (b) any undue delay in making the request, and

- (c) whether or not the person making the request is entitled to make an application under section 5 in respect of the personal data in question.<sup>52</sup>
- (4) Where the Information Commissioner has received a request under this section he shall notify the person who made the request —
  - (a) whether he has made an assessment as a result of the request, and
  - (b) to the extent that he considers appropriate, having regard in particular to any exemption from section 5 applying in relation to the personal data concerned, of any view formed or action taken as a result of the request.<sup>53</sup>

### 39 Information notices

[P1998/29/43]

- (1) If the Information Commissioner —
  - (a) has received a request under section 38 in respect of any processing of personal data, or
  - (b) reasonably requires any information for the purpose of determining whether the data controller has complied or is complying with the data protection principles,

he may serve the data controller with a notice (an “information notice”) requiring the data controller, within such time as is specified in the notice, to furnish the Information Commissioner, in such form as may be so specified, with such information relating to the request or to compliance with the principles as is so specified.<sup>54</sup>

- (2) An information notice must contain —
  - (a) in a case falling within subsection (1)(a), a statement that the Information Commissioner has received a request under section 38 in relation to the specified processing, or<sup>55</sup>
  - (b) in a case falling within subsection (1)(b), a statement that the Information Commissioner regards the specified information as relevant for the purpose of determining whether the data controller has complied, or is complying, with the data protection principles and his reasons for regarding it as relevant for that purpose.<sup>56</sup>
- (3) An information notice must also contain particulars of the rights of appeal conferred by section 44.
- (4) Subject to subsection (5), the time specified in an information notice shall not expire before the end of the period within which an appeal can be brought against the notice and, if such an appeal is brought, the information need not be furnished pending the determination or withdrawal of the appeal.

- (5) If by reason of special circumstances the Information Commissioner considers that the information is required 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 (4) shall not apply, but the notice shall not require the information to be furnished before the end of the period of 7 days beginning with the day on which the notice is served.<sup>57</sup>
- (6) A person shall not be required by virtue of this section to furnish the Information Commissioner with any information in respect of —
- (a) any communication between an advocate and his client in connection with the giving of legal advice to the client with respect to his obligations, liabilities or rights under this Act, or
  - (b) any communication between an advocate and his client, or between an advocate or his client and any other person, made in connection with or in contemplation of proceedings under or arising out of this Act (including proceedings before the Tribunal) and for the purposes of such proceedings.<sup>58</sup>
- (7) In subsection (6) references to the client of an advocate include references to any person representing such a client.
- (8) A person shall not be required by virtue of this section to furnish the Information Commissioner with any information if the furnishing of that information would, by revealing evidence of the commission of any offence other than an offence under this Act, expose him to proceedings for that offence.<sup>59</sup>
- (9) The Information Commissioner may cancel an information notice by written notice to the person on whom it was served.<sup>60</sup>
- (10) This section has effect subject to section 42(3).

#### **40 Special information notices**

[P1998/29/44]

- (1) If the Information Commissioner —
- (a) has received a request under section 38 in respect of any processing of personal data, or
  - (b) has reasonable grounds for suspecting that, in a case in which proceedings have been stayed under section 28, the personal data to which the proceedings relate —
    - (i) are not being processed only for the special purposes, or
    - (ii) are not being processed with a view to the publication by any person of any journalistic, literary or artistic material which has not previously been published by the data controller,

he may serve the data controller with a notice (a “special information notice”) requiring the data controller, within such time as is specified in the notice, to furnish the Information Commissioner, in such form as may be so specified, with such information as is so specified for the purpose specified in subsection (2).<sup>61</sup>

- (2) That purpose is the purpose of ascertaining —
  - (a) whether the personal data are being processed only for the special purposes, or
  - (b) whether they are being processed with a view to the publication by any person of any journalistic, literary or artistic material which has not previously been published by the data controller.
- (3) A special information notice must contain —
  - (a) in a case falling within subsection (1)(a), a statement that the Information Commissioner has received a request under section 38 in relation to the specified processing, or<sup>62</sup>
  - (b) in a case falling within subsection (1)(b), a statement of the Information Commissioner’s grounds for suspecting that the personal data are not being processed as mentioned in subsection (1)(b).<sup>63</sup>
- (4) A special information notice must also contain particulars of the rights of appeal conferred by section 44.
- (5) Subject to subsection (6), the time specified in a special information notice shall not expire before the end of the period within which an appeal can be brought against the notice and, if such an appeal is brought, the information need not be furnished pending the determination or withdrawal of the appeal.
- (6) If by reason of special circumstances the Information Commissioner considers that the information is required 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 (5) shall not apply, but the notice shall not require the information to be furnished before the end of the period of 7 days beginning with the day on which the notice is served.<sup>64</sup>
- (7) A person shall not be required by virtue of this section to furnish the Information Commissioner with any information in respect of —
  - (a) any communication between an advocate and his client in connection with the giving of legal advice to the client with respect to his obligations, liabilities or rights under this Act, or
  - (b) any communication between an advocate and his client, or between an advocate or his client and any other person, made in connection with or in contemplation of proceedings under or



arising out of this Act (including proceedings before the Tribunal) and for the purposes of such proceedings.<sup>65</sup>

- (8) In subsection (7) references to the client of an advocate include references to any person representing such a client.
- (9) A person shall not be required by virtue of this section to furnish the Information Commissioner with any information if the furnishing of that information would, by revealing evidence of the commission of any offence other than an offence under this Act, expose him to proceedings for that offence.<sup>66</sup>
- (10) The Information Commissioner may cancel a special information notice by written notice to the person on whom it was served.<sup>67</sup>

#### **41 Determination by Information Commissioner as to the special purposes<sup>68</sup>**

[P1998/29/45]

- (1) Where at any time it appears to the Information Commissioner (whether as a result of the service of a special information notice or otherwise) that any personal data —
  - (a) are not being processed only for the special purposes, or
  - (b) are not being processed with a view to the publication by any person of any journalistic, literary or artistic material which has not previously been published by the data controller,he may make a determination in writing to that effect.<sup>69</sup>
- (2) Notice of the determination shall be given to the data controller; and the notice must contain particulars of the right of appeal conferred by section 44.
- (3) A determination under subsection (1) shall not take effect until the end of the period within which an appeal can be brought and, where an appeal is brought, shall not take effect pending the determination or withdrawal of the appeal.

#### **42 Restriction on enforcement in case of processing for the special purposes**

[P1998/29/46]

- (1) The Information Commissioner may not at any time serve an enforcement notice on a data controller with respect to the processing of personal data for the special purposes unless —
  - (a) a determination under section 41(1) with respect to those data has taken effect, and
  - (b) the High Court has granted leave for the notice to be served.<sup>70</sup>

- (2) The High Court shall not grant leave for the purposes of subsection (1)(b) unless it is satisfied –
  - (a) that the Information Commissioner has reason to suspect a contravention of the data protection principles which is of substantial public importance, and<sup>71</sup>
  - (b) except where the case is one of urgency, that the data controller has been given notice, in accordance with rules of court, of the application for leave.
- (3) The Information Commissioner may not serve an information notice on a data controller with respect to the processing of personal data for the special purposes unless a determination under section 41(1) with respect to those data has taken effect.<sup>72</sup>

### **43 Failure to comply with notice**

[P1998/29/47]

- (1) A person who fails to comply with an enforcement notice, an information notice or a special information notice is guilty of an offence.
- (2) A person who, in purported compliance with an information notice or a special information notice –
  - (a) makes a statement which he knows to be false in a material respect, or
  - (b) recklessly makes a statement which is false in a material respect,is guilty of an offence.
- (3) It is a defence for a person charged with an offence under subsection (1) to prove that he exercised all due diligence to comply with the notice in question.

### **44 Rights of appeal**

[P1998/29/48]

- (1) A person on whom an enforcement notice, an information notice or a special information notice has been served may appeal to the Tribunal against the notice.
- (2) A person on whom an enforcement notice has been served may appeal to the Tribunal against the refusal of an application under section 37(2) for cancellation or variation of the notice.
- (3) Where an enforcement notice, an information notice or a special information notice contains a statement by the Information Commissioner in accordance with section 36(8), 39(5) or 40(6) then, whether or not the person appeals against the notice, he may appeal against –

- (a) the Information Commissioner's decision to include the statement in the notice, or<sup>73</sup>
  - (b) the effect of the inclusion of the statement as respects any part of the notice.<sup>74</sup>
- (4) A data controller in respect of whom a determination has been made under section 41 may appeal to the Tribunal against the determination.
- (5) Schedule 6 has effect in relation to appeals under this section and the proceedings of the Tribunal in respect of any such appeal.

## 45 Determination of appeals

[P1998/29/49]

- (1) If on an appeal under section 44(1) the Tribunal considers —
  - (a) that the notice against which the appeal is brought is not in accordance with the law, or
  - (b) to the extent that the notice involved an exercise of discretion by the Information Commissioner, that he ought to have exercised his discretion differently,<sup>75</sup>

the Tribunal shall allow the appeal or substitute such other notice or decision as could have been served or made by the Information Commissioner; and in any other case the Tribunal shall dismiss the appeal.<sup>76</sup>

- (2) On such an appeal, the Tribunal may review any determination of fact on which the notice in question was based.
- (3) If on an appeal under section 44(2) the Tribunal considers that the enforcement notice ought to be cancelled or varied by reason of a change in circumstances, the Tribunal shall cancel or vary the notice.
- (4) On an appeal under section 44(3) the Tribunal may direct —
  - (a) that the notice in question shall have effect as if it did not contain any such statement as is mentioned in section 44(3), or
  - (b) that the inclusion of the statement shall not have effect in relation to any part of the notice,

and may make such modifications in the notice as may be required for giving effect to the direction.

- (5) On an appeal under section 44(4), the Tribunal may cancel the determination of the Information Commissioner.<sup>77</sup>
- (6) Any party to an appeal to the Tribunal under section 44 may appeal from the decision of the Tribunal on a point of law to the High Court.

**46 Powers of entry and inspection**

[P1998/29/50]

Schedule 8 (powers of entry and inspection) has effect.

**PART 6 MISCELLANEOUS AND GENERAL***Functions of Information Commissioner*<sup>78</sup>**47 General duties of Information Commissioner**<sup>79</sup>

[P1998/29/51]

- (1) It is the duty of the Information Commissioner to promote the following of good practice by data controllers and, in particular, so to perform his functions under this Act as to promote the observance of the requirements of this Act by data controllers.<sup>80</sup>
- (2) The Information Commissioner shall arrange for the dissemination in such form and manner as he considers appropriate of such information as it may appear to him expedient to give to the public about the operation of this Act, about good practice, and about other matters within the scope of his functions under this Act, and may give advice to any person as to any of those matters.<sup>81</sup>
- (3) Where —
  - (a) the Council of Ministers so directs, or
  - (b) the Information Commissioner considers it appropriate to do so,<sup>82</sup>the Information Commissioner shall, after such consultation with trade associations, data subjects or persons representing data subjects as appears to him to be appropriate, prepare and disseminate to such persons as he considers appropriate codes of practice for guidance as to good practice.<sup>83</sup>
- (4) The Information Commissioner shall also —
  - (a) where he considers it appropriate to do so, encourage trade associations to prepare, and to disseminate to their members, such codes of practice, and
  - (b) where any trade association submits a code of practice to him for his consideration, consider the code and, after such consultation with data subjects or persons representing data subjects as appears to him to be appropriate, notify the trade association whether in his opinion the code promotes the following of good practice.<sup>84</sup>
- (5) A direction under subsection (3)(a) shall describe the personal data or processing to which the code of practice is to relate, and may also describe the persons or classes of persons to whom it is to relate.

- (6) The Information Commissioner shall arrange for the dissemination in such form and manner as he considers appropriate of such other information as it may appear to him to be expedient to give to data controllers in relation to any personal data about the protection of the rights and freedoms of data subjects in relation to the processing of personal data in countries and territories outside the Island.<sup>85</sup>
- (7) The Information Commissioner may, with the consent of the data controller, assess any processing of personal data for the following of good practice and shall inform the data controller of the results of the assessment.<sup>86</sup>
- (8) The Information Commissioner may charge such sums as he may with the consent of the Treasury determine for any services provided by him by virtue of this Part.<sup>87</sup>
- (9) In this section –  
“good practice” means such practice in the processing of personal data as appears to the Information Commissioner to be desirable having regard to the interests of data subjects and others, and includes (but is not limited to) compliance with the requirements of this Act;<sup>88</sup>  
“trade association” includes any body representing data controllers.

#### **48 Reports and codes of practice to be laid before Tynwald**

[P1998/29/52]

- (1) The Information Commissioner shall lay annually before Tynwald a general report on the exercise of his functions under this Act.<sup>89</sup>
- (2) The Information Commissioner may from time to time lay before Tynwald such other reports with respect to those functions as he thinks fit.<sup>90</sup>
- (3) The Information Commissioner shall lay before Tynwald any code of practice prepared under section 47(3), unless the code is included in any report laid under subsection (1) or (2).<sup>91</sup>

#### **49 International co-operation**

[P1998/29/54]

- (1) The Information Commissioner shall continue to be the designated authority in the Island for the purposes of Article 13 of the Convention.<sup>92</sup>
- (2) The Council of Ministers may by order make provision as to the functions to be discharged by the Information Commissioner as the designated authority in the Island for the purposes of Article 13 of the Convention.<sup>93</sup>
- (3) The Council of Ministers may by order make provision as to co-operation by the Information Commissioner with supervisory authorities in

countries and territories outside the Island in connection with the performance of their data protection functions and, in particular, as to —

- (a) the exchange of information with such authorities, and
  - (b) the exercise within the Island at the request of such an authority, in cases excluded by section 3 from the application of the other provisions of this Act, of functions of the Information Commissioner specified in the order.<sup>94 95</sup>
- (4) The Information Commissioner shall also carry out any data protection functions which the Council of Ministers may by order direct him to carry out for the purpose of giving effect to any international obligations of the United Kingdom which extend to the Island.<sup>96</sup>
- (5) In this section “data protection functions” means functions relating to the protection of individuals with respect to the processing of personal information.

*Unlawful obtaining etc. of personal data*

**50 Unlawful obtaining etc. of personal data**

[P1998/29/55]

- (1) A person shall not knowingly or recklessly, without the consent of the data controller —
- (a) obtain or disclose personal data or the information contained in personal data, or
  - (b) procure the disclosure to another person of the information contained in personal data.
- (2) Subsection (1) does not apply to a person who shows —
- (a) that the obtaining, disclosing or procuring —
    - (i) was necessary for the purpose of preventing or detecting crime, or
    - (ii) was required or authorised by or under any statutory provision, by any rule of law or by the order of a court,
  - (b) that he acted in the reasonable belief that he had in law the right to obtain or disclose the data or information or, as the case may be, to procure the disclosure of the information to the other person,
  - (c) that he acted in the reasonable belief that he would have had the consent of the data controller if the data controller had known of the obtaining, disclosing or procuring and the circumstances of it, or
  - (d) that in the particular circumstances the obtaining, disclosing or procuring was justified as being in the public interest.

- (3) A person who contravenes subsection (1) is guilty of an offence.
- (4) A person who sells personal data is guilty of an offence if he has obtained the data in contravention of subsection (1).
- (5) A person who offers to sell personal data is guilty of an offence if —
  - (a) he has obtained the data in contravention of subsection (1), or
  - (b) he subsequently obtains the data in contravention of that subsection.
- (6) For the purposes of subsection (5), an advertisement indicating that personal data are or may be for sale is an offer to sell the data.
- (7) Section 1(2) does not apply for the purposes of this section; and for the purposes of subsections (4) to (6), “personal data” includes information extracted from personal data.
- (8) References in this section to personal data do not include references to personal data which by virtue of section 24 or 29A are exempt from this section.<sup>97</sup>

*Records obtained under data subject's right of access*

## **51 Prohibition of requirement as to production of certain records**

[P1998/29/56]

- (1) A person must not, in connection with —
  - (a) the recruitment of another person as an employee,
  - (b) the continued employment of another person, or
  - (c) any contract for the provision of services to him by another person,require that other person or a third party to supply him with a relevant record or to produce a relevant record to him.
- (2) A person concerned with the provision (for payment or not) of goods, facilities or services to the public or a section of the public must not, as a condition of providing or offering to provide any goods, facilities or services to another person, require that other person or a third party to supply him with a relevant record or to produce a relevant record to him.
- (3) Subsections (1) and (2) do not apply to a person who shows —
  - (a) that the imposition of the requirement was required or authorised by or under any statutory provision, by any rule of law or by the order of a court, or
  - (b) that in the particular circumstances the imposition of the requirement was justified as being in the public interest.
- (4) A person who contravenes subsection (1) or (2) is guilty of an offence.

- (5) In this section “a relevant record” means any record which —
- (a) has been or is to be obtained by a data subject from any data controller specified in the first column of the table below in the exercise of the right conferred by section 5, and
  - (b) contains information relating to any matter specified in relation to that data controller in the second column,
- and includes a copy of such a record or a part of such a record.



Data controller	Subject matter
The Chief Constable	(a) Convictions. (b) Cautions.
The Department of Home Affairs	(a) Convictions. (b) Cautions. (c) Its functions under the <i>Custody Act 1995</i> in relation to any person in custody.
The Treasury	Its functions under the Social Security Contributions and Benefits Act 1992, the Social Security Administration Act 1992 or the Jobseekers Act 1995 (Acts of Parliament) [see SD505/94, SD506/94 and SD8/96] as they have effect in the Island. <sup>98</sup>

- (6) In the table in subsection (5) —
- “caution” means a caution given to any person in the Island in respect of an offence which, at the time when the caution is given, is admitted;
- “conviction” has the same meaning as in the *Rehabilitation of Offenders Act 2001*.
- (6A) A record is not a relevant record to the extent that it relates, or is to relate, only to personal data falling within paragraph (e) of the definition of “data” in section 1(1).<sup>99</sup>
- (7) The Council of Ministers may by order amend —
- (a) the table in subsection (5), and
- (b) subsection (6).
- (8) For the purposes of this section a record which states that a data controller is not processing any personal data relating to a particular matter shall be taken to be a record containing information relating to that matter.
- (9) In this section “employee” means an individual who —
- (a) works under a contract of employment, as defined by section 88 of the *Employment Act 1991*, or
- (b) holds any office,
- whether or not he is entitled to remuneration; and “employment” shall be construed accordingly.<sup>100</sup>

## 52 Avoidance of certain contractual terms relating to health records

[P1998/29/57]

- (1) Any term or condition of a contract is void in so far as it purports to require an individual —
- (a) to supply any other person with a record to which this section applies, or with a copy of such a record or a part of such a record, or

- (b) to produce to any other person such a record, copy or part.
- (2) This section applies to any record which —
  - (a) has been or is to be obtained by a data subject in the exercise of the right conferred by section 5, and
  - (b) consists of the information contained in any health record.

*Information provided to Information Commissioner or Tribunal<sup>101</sup>*

### 53 Disclosure of information

[P1998/29/58]

No statutory provision or rule of law prohibiting or restricting the disclosure of information shall preclude a person from furnishing the Information Commissioner or the Tribunal with any information necessary for the discharge of their functions under this Act.<sup>102</sup>

### 54 [Repealed]<sup>103</sup>

*General provisions relating to offences*

### 55 Prosecutions and penalties

[P1998/29/60]

- (1) No proceedings for an offence under this Act shall be instituted except by the Information Commissioner or by or with the consent of the Attorney General.<sup>104</sup>
- (2) A person guilty of an offence under any provision of this Act other than paragraph 12 of Schedule 8 is liable —
  - (a) on summary conviction, to a fine not exceeding £5,000, or
  - (b) on conviction on information, to a fine.
- (3) A person guilty of an offence under paragraph 12 of Schedule 8 is liable on summary conviction to a fine not exceeding £5,000.
- (4) Subject to subsection (5), the court by or before which a person is convicted of —
  - (a) an offence under section 18(1), 19(6), 50 or 51,
  - (b) an offence under section 18(2) relating to processing which is assessable processing for the purposes of section 19, or
  - (c) an offence under section 43(1) relating to an enforcement notice,may order any document or other material used in connection with the processing of personal data and appearing to the court to be connected with the commission of the offence to be forfeited, destroyed or erased.

- (5) The court shall not make an order under subsection (4) in relation to any material where a person (other than the offender) claiming to be the owner of or otherwise interested in the material applies to be heard by the court, unless an opportunity is given to him to show cause why the order should not be made.

## 56 Liability of directors etc.

[P1998/29/61]

- (1) Where an offence under this Act has been committed by a body corporate and is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of any director, manager, secretary or similar officer of the body corporate or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and be liable to be proceeded against and punished accordingly.
- (2) Where the affairs of a body corporate are managed by its members subsection (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

### *Supply and inspection of copies of public registers*

## 57 Registers of electors etc.

The *Jury Act 1980* [is] amended in accordance with Schedule 9.<sup>105</sup>

### *General*

## 58 Application to Government

[1986/31/37]

- (1) Except as provided in subsection (2), a Department, a Statutory Board and an office of the Government shall be subject to the same obligations and liabilities under this Act as a private person; and for the purposes of this Act —
- (a) an employee of the Public Services Commission acting under the direction of any Department or Statutory Board shall be treated as an employee of that Department or Board;<sup>106</sup>
- (b) such employee shall be treated as an employee of the Treasury.<sup>107</sup>
- (2) For the purposes of this Act a member of the Isle of Man Constabulary shall be treated as an employee of the Chief Constable.

## 59 Application to Tynwald

[P1998/29/63A, P2000/36/6/3]

- (1) Subject to the following provisions of this section and to section 32, this Act applies to the processing of personal data by or on behalf of Tynwald, the Council or the Keys as it applies to the processing of personal data by other persons.
- (2) Where the purposes for which and the manner in which any personal data are, or are to be, processed are determined by or on behalf of Tynwald, the Council or the Keys, the data controller in respect of those data for the purposes of this Act shall be the Clerk of Tynwald, the Clerk of the Council or the Secretary of the Keys, as the case may be.

## 60 Service of notices by Information Commissioner<sup>108</sup>

[P1998/29/65]

- (1) Any notice authorised or required by this Act to be served on or given to any person by the Information Commissioner may —
  - (a) if that person is an individual, be served on him —
    - (i) by delivering it to him, or
    - (ii) by sending it to him by post addressed to him at his usual or last-known place of residence or business, or
    - (iii) by leaving it for him at that place;
  - (b) if that person is a body corporate or unincorporate, be served on that body —
    - (i) by sending it by post to the proper officer of the body at its principal office, or
    - (ii) by addressing it to the proper officer of the body and leaving it at that office.<sup>109</sup>
- (2) In subsection (1)(b) “principal office”, in relation to a registered company, means its registered office and “proper officer”, in relation to any body, means the secretary or other executive officer charged with the conduct of its general affairs.
- (3) This section is without prejudice to any other lawful method of serving or giving a notice.

## 61 Orders, rules and regulations

[P1998/29/67]

- (1) Orders, rules and regulations made by the Council of Ministers or any Department (other than an order under section 67(2)) shall not have effect unless they are approved by Tynwald.
- (2) Before making any order or regulations under this Act (other than an order under section 67(2)), the Council of Ministers or the Department

concerned, as the case may be, shall consult the Information Commissioner.<sup>110</sup>

## 62 Interpretation

[P1998/29/68-70]

(1) In this Act —

“**accessible record**” means —

- (a) a health record,
- (b) an educational record, or
- (c) any record which is kept by an authority specified in the following table and is a record of information of a description specified in that table in relation to that authority —

Authority	Accessible information
The Department of Infrastructure <sup>111</sup> A local authority A joint board	Information held for any purpose of the relationship of landlord and tenant of a dwelling which subsists, has subsisted or may subsist between the authority and any individual who is, has been or, as the case may be, has applied to be, a tenant of the authority
The Department of Health and Social Care	Information held for the purpose of any past, current or proposed exercise by the authority with respect to functions under — (a) the <i>Social Services Act 2011</i> ; <sup>112</sup> (b) the <i>Adoption Act 1984</i> ; (c) the <i>Children and Young Persons Act 2001</i> ; <sup>113</sup>

“**business**” includes any trade or profession;

“**civil servant**” means a member of the Isle of Man Civil Service;

“**college**” has the same meaning as in the *Education Act 2001*;

“**the Convention**” means the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data which was opened for signature on 28th January 1981;<sup>114</sup>

“**credit reference agency**” means a person carrying on a business comprising the furnishing of persons with information relevant to the financial standing of individuals and collected by that person for that purpose;

“**the Data Protection Directive**” means Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data;<sup>115</sup>

“**educational record**” means any record of information which —

- (a) relates to any person who is or has been a pupil at a school or college maintained by the Department of Education, Sport and Culture,<sup>116</sup>
- (b) is processed by or on behalf of that Department or the governing body of, or a teacher at, that school or college, and
- (c) originated from or was supplied by or on behalf of any of the following —
  - (i) an employee of the Department of Education, Sport and Culture,<sup>117</sup>
  - (ii) in the case of a maintained school (within the meaning of the *Education Act 2001*), a teacher or other employee at the school,
  - (iii) the pupil to whom the record relates, and
  - (iv) a parent (within the meaning of the *Education Act 2001*) of that pupil;

other than information which is processed by a teacher solely for the teacher's own use;

“**fees regulations**” has the meaning given by section 13(2);

“**health professional**” has the same meaning as in the *Access to Health Records and Reports Act 1993*;

“**health record**” means any record which —

- (a) consists of information relating to the physical or mental health or condition of an individual, and
- (b) has been made by or on behalf of a health professional in connection with the care of that individual;

“**Information Commissioner**” means the Isle of Man Information Commissioner appointed under section 52 of the *Freedom of Information Act 2015*;<sup>118</sup>

“**notification regulations**” has the meaning given by section 13(2);

“**public register**” means any register which pursuant to a requirement imposed —

- (a) by or under any statutory provision, or
- (b) in pursuance of any international agreement,

is open to public inspection or open to inspection by any person having a legitimate interest;

“**pupil**”, in relation to a school, means a registered pupil within the meaning of the *Education Act 2001*,

“**recipient**”, in relation to any personal data, means any person to whom the data are disclosed, including any person (such as an employee or agent of the data controller, a data processor or an employee or agent of a data processor) to whom they are disclosed in the course of processing the data for the data controller, but does not include any person to whom disclosure is or may be made as a result of, or with a view to, a particular inquiry by or on behalf of that person made in the exercise of any power conferred by law;

“**registered company**” means a company registered under the *Companies Act 1931*;

“**school**” has the same meaning as in the *Education Act 2001*;

“**statutory provision**” includes a statutory provision made after this Act;

“**the Supervisor**” [Repealed]<sup>119</sup>

“**third party**”, in relation to personal data, means any person other than —

- (a) the data subject,
- (b) the data controller, or

- (c) any data processor or other person authorised to process data for the data controller or processor;

“the Tribunal” means the Isle of Man Data Protection Tribunal.

- (2) For the purposes of this Act data are inaccurate if they are incorrect or misleading as to any matter of fact.
- (3) In construing any provision of this Act any court or tribunal shall have regard to any provision of the Convention or of the Data Protection Directive which appears to the court or tribunal to be relevant.

### 63 Index of defined expressions<sup>120</sup>

[P1998/29/71]

The following table shows provisions defining or otherwise explaining expressions used in this Act (other than provisions defining or explaining an expression only used in the same section or Schedule) —

accessible record	section 62(1)
address (in Part 3)	section 13(3)
business	section 62(1)
civil servant	section 62(1)
college	section 62(1)
the Convention	section 62(1)
credit reference agency	section 62(1)
data	section 1(1)
data controller	sections 1(1) and (4)
data processor	section 1(1)
the Data Protection Directive	section 62(1)
data protection principles	section 2 and Schedule 1
data subject	section 1(1)
disclosing (of personal data)	section 1(2)(b)
enforcement notice	section 36(1)
fees regulations (in Part 3)	section 13(2)
health professional	section 62(1)
held	section 1(1)
inaccurate (in relation to data)	section 62(2)
Information Commissioner	section 62(1)
information notice	section 39(1)
the non-disclosure provisions (in Part 4)	section 23(3)
notification regulations (in Part 3)	section 13(2)
obtaining (of personal data)	section 1(2)(a)
personal data	section 1(1)
prescribed (in Part 3)	section 13(2)
processing (of information or data)	section 1(1)
public authority	section 1(1)
public register	section 62(1)
publish (in relation to journalistic, literary or artistic material)	section 28(6)
pupil (in relation to a school)	section 62(1)
recipient (in relation to personal data)	section 62(1)
recording (of personal data)	section 1(2)(a)
registered company	section 62(1)



registrable particulars (in Part 3)	section 13(1)
relevant filing system	section 1(1)
school	section 62(1)
sensitive personal data	section 1(1)
special information notice	section 40(1)
the special purposes	section 1(1)
statutory provision	section 62(1)
the subject information provisions (in Part 4)	section 23(2)
third party (in relation to processing of personal data)	section 62(1)
the Tribunal	section 62(1)
using (of personal data)	section 1(2)(b)

#### **64 Transitional exemptions and modifications**

[P1998/29/39 and 72]

- (1) Part 1 of Schedule 10 (which confers transitional exemptions) has effect.
- (2) During the period beginning with the commencement of Part 2 and ending on 23rd October 2007, the provisions of this Act shall have effect subject to the modifications set out in Part 2 of Schedule 10.

#### **65 Transitional provisions and savings**

[P1998/29/73]

Schedule 11 (which contains transitional provisions and savings) has effect.

#### **66 Minor and consequential amendments etc**

[P1998/29/74]

- (1) The enactments specified in Schedule 12 are amended in accordance with that Schedule.
- (2) The enactments specified in Schedule 13 are repealed to the extent specified in column 3 of that Schedule.

#### **67 Short title and commencement**

- (1) This Act may be cited as the Data Protection Act 2002.
- (2) This Act, except the following provisions —
  - (a) section 1,
  - (b) sections 61 to 63,
  - (c) this section,
  - (d) paragraph 18 of Schedule 11, and
  - (e) so much of any other provision of this Act as confers any power to make orders, rules or regulations,

shall come into operation on such day or days as the Council of Ministers may by order appoint.<sup>121</sup>



**Schedule 1****THE DATA PROTECTION PRINCIPLES**

Section 2(1) and (2)

**PART 1 THE PRINCIPLES***The first principle: fair and lawful processing*

1. Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless —
  - (a) at least one of the conditions in Schedule 2 is met, and
  - (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.

*The second principle: purpose for which data are obtained and processed*

2. Personal data shall be obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes.

*The third principle: adequacy and relevance of data*

3. Personal data shall be adequate, relevant and not excessive in relation to the purpose or purposes for which they are processed.

*The fourth principle: accuracy of data*

4. Personal data shall be accurate and, where necessary, kept up to date.

*The fifth principle: time for keeping data*

5. Personal data processed for any purpose or purposes shall not be kept for longer than is necessary for that purpose or those purposes.

*The sixth principle: rights of data subjects*

6. Personal data shall be processed in accordance with the rights of data subjects under this Act.

*The seventh principle: measures against misuse and loss of data*

7. Appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.

*The eighth principle: transfer of data abroad*

8. Personal data shall not be transferred to a country or territory outside the Island unless that country or territory ensures an adequate level of protection for the rights and freedoms of data subjects in relation to the processing of personal data.

**PART 2 INTERPRETATION OF THE PRINCIPLES IN PART 1***The first principle (fair and lawful processing)*

9. (1) In determining for the purposes of the first principle whether personal data are processed fairly, regard is to be had to the method by which they are obtained, including in particular whether any person from whom they are obtained is deceived or misled as to the purpose or purposes for which they are to be processed.

(2) Subject to paragraph 10, for the purposes of the first principle data are to be treated as obtained fairly if they consist of information obtained from a person who —

- (a) is authorised by or under any statutory provision to supply it, or
- (b) is required to supply it by or under any statutory provision or by any convention or other instrument imposing an international obligation on the United Kingdom and extending to the Island.

10. (1) Subject to paragraph 11, for the purposes of the first principle personal data are not to be treated as processed fairly unless —

- (a) in the case of data obtained from the data subject, the data controller ensures so far as practicable that the data subject has, is provided with, or has made readily available to him, the information specified in sub-paragraph (3), and
- (b) in any other case, the data controller ensures so far as practicable that, before the relevant time or as soon as practicable after that time, the data subject has, is provided with, or has made readily available to him, the information specified in sub-paragraph (3).

(2) In sub-paragraph (1)(b) “the relevant time” means —

- (a) the time when the data controller first processes the data, or
- (b) in a case where at that time disclosure to a third party within a reasonable period is envisaged —
  - (i) if the data are in fact disclosed to such a person within that period, the time when the data are first disclosed,
  - (ii) if within that period the data controller becomes, or ought to become, aware that the data are unlikely to be disclosed to such a person within that period, the time when the data controller does become, or ought to become, so aware, or
  - (iii) in any other case, the end of that period.

- (3) The information referred to in sub-paragraph (1) is as follows, namely —
- (a) the identity of the data controller,
  - (b) if he has nominated a representative for the purposes of this Act, the identity of that representative,
  - (c) the purpose or purposes for which the data are intended to be processed, and
  - (d) any further information which is necessary, having regard to the specific circumstances in which the data are or are to be processed, to enable processing in respect of the data subject to be fair.

11. (1) Paragraph 10(1)(b) does not apply where either of the primary conditions in sub-paragraph (2), together with such of the further conditions in sub-paragraphs (3) to (7) as are relevant, are met.

- (2) The primary conditions referred to in sub-paragraph (1) are —
- (a) that the provision of that information would involve a disproportionate effort, or
  - (b) that the recording of the information to be contained in the data by, or the disclosure of the data by, the data controller is necessary for compliance with any legal obligation to which the data controller is subject, other than an obligation imposed by contract.

(3) Where either of the primary conditions in sub-paragraph (2) is met, a further condition is that set out in sub-paragraph (6).

(4) Where the primary condition in sub-paragraph (2)(a) is met, a further condition is that the data controller shall record the reasons for his view that that primary condition is met in respect of the data.

(5) Where the primary condition in sub-paragraph (2)(b) is met by virtue of the fact that the recording of the information to be contained in the data by, or the disclosure of the data by, the data controller —

- (a) is not a function conferred on him by or under any statutory provision or an obligation imposed on him by order of a court, but
- (b) is necessary for compliance with any legal obligation to which the data controller is subject, other than an obligation imposed by contract,

a further condition is that set out in sub-paragraph (6).

(6) The condition referred to in sub-paragraphs (3) to (5) is that, in respect of any particular data subject, either —

- (a) no notice in writing has been received at any time by the data controller from an individual, requiring that data controller to provide the information set out in paragraph 10(3) before the

relevant time (as defined in paragraph 10(2)) or as soon as practicable after that time; or

- (b) where such notice in writing has been received but the data controller does not have sufficient information about the individual in order readily to determine whether he is processing personal data about that individual, the data controller shall send to the individual a written notice stating that he cannot provide the information set out in paragraph 10(3) because of his inability to make that determination, and explaining the reasons for that inability.

(7) The requirement in sub-paragraph (6) that notice should be in writing is satisfied where the text of the notice —

- (a) is transmitted by electronic means,
- (b) is received in legible form, and
- (c) is capable of being used for subsequent reference.

(8) The Council of Ministers may by order amend sub-paragraphs (1) to (7).

12. (1) Personal data which contain a general identifier falling within a description prescribed by the Council of Ministers by order are not to be treated as processed fairly and lawfully unless they are processed in compliance with any conditions so prescribed in relation to general identifiers of that description.

(2) In sub-paragraph (1) “a general identifier” means any identifier (such as, for example, a number or code used for identification purposes) which —

- (a) relates to an individual, and
- (b) forms part of a set of similar identifiers which is of general application.

*The second principle (purpose for which data are obtained and processed)*

13. The purpose or purposes for which personal data are obtained may in particular be specified —

- (a) in a notice given for the purposes of paragraph 10 by the data controller to the data subject, or
- (b) in a notification given to the Information Commissioner under Part 3 of this Act.<sup>122</sup>

14. In determining whether any disclosure of personal data is compatible with the purpose or purposes for which the data were obtained, regard is to be had to the purpose or purposes for which the personal data are intended to be processed by any person to whom they are disclosed.

*The fourth principle (accuracy of data)*

15. The fourth principle is not to be regarded as being contravened by reason of any inaccuracy in personal data which accurately record information obtained by the data controller from the data subject or a third party in a case where —

- (a) having regard to the purpose or purposes for which the data were obtained and further processed, the data controller has taken reasonable steps to ensure the accuracy of the data, and
- (b) if the data subject has notified the data controller of the data subject's view that the data are inaccurate, the data indicate that fact.

*The sixth principle (rights of data subjects)*

16. A person is to be regarded as contravening the sixth principle if, but only if —

- (a) he contravenes section 5 by failing to supply information in accordance with that section,
- (b) he contravenes section 8 by failing to comply with a notice given under section 8(1) to the extent that the notice is justified or by failing to give a notice under section 8(3),
- (c) he contravenes section 9 by failing to comply with a notice given under section 9(1), or
- (d) he contravenes section 10 by failing to comply with a notice given under section 10(1) or (2)(b) or by failing to give a notification under section 10(2)(a) or a notice under section 10(3).

*The seventh principle (measures against misuse and loss of data)*

17. Having regard to the state of technological development and the cost of implementing any measures, the measures must ensure a level of security appropriate to —

- (a) the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage as are mentioned in the seventh principle, and
- (b) the nature of the data to be protected.

18. The data controller must take reasonable steps to ensure the reliability of any employees of his who have access to the personal data.

19. Where processing of personal data is carried out by a data processor on behalf of a data controller, the data controller must in order to comply with the seventh principle —

- (a) choose a data processor providing sufficient guarantees in respect of the technical and organisational security measures governing the processing to be carried out, and
- (b) take reasonable steps to ensure compliance with those measures.

20. Where processing of personal data is carried out by a data processor on behalf of a data controller, the data controller is not to be regarded as complying with the seventh principle unless —

- (a) the processing is carried out under a contract —
  - (i) which is made or evidenced in writing, and
  - (ii) under which the data processor is to act only on instructions from the data controller, and
- (b) the contract requires the data processor to comply with obligations equivalent to those imposed on a data controller by the seventh principle.

*The eighth principle (transfer of data abroad)*

21. An adequate level of protection is one which is adequate in all the circumstances of the case, having regard in particular to —

- (a) the nature of the personal data,
- (b) the country or territory of origin of the information contained in the data,
- (c) the country or territory of final destination of that information,
- (d) the purposes for which and period during which the data are intended to be processed,
- (e) the law in force in the country or territory in question,
- (f) the international obligations of that country or territory,
- (g) any relevant codes of conduct or other rules which are enforceable in that country or territory (whether generally or by arrangement in particular cases), and
- (h) any security measures taken in respect of the data in that country or territory.

22. The eighth principle does not apply to a transfer falling within any paragraph of Schedule 4, except in such circumstances and to such extent as the Council of Ministers may by order provide.

23. (1) Where in any proceedings under this Act any question arises as to whether the requirement of the eighth principle as to an adequate level of protection is met in relation to the transfer of any personal data to a country or territory within the European Economic Area, it shall be conclusively presumed that that requirement is met in relation to that transfer.



- (2) Where —
- (a) in any proceedings under this Act any question arises as to whether the requirement of the eighth principle as to an adequate level of protection is met in relation to the transfer of any personal data to a country or territory outside the European Economic Area, and
  - (b) a Community finding has been made in relation to transfers of the kind in question,

that question is to be determined in accordance with that finding.

(3) In sub-paragraph (2) “Community finding” means a finding of the European Commission, under the procedure provided for in Article 31(2) of the Data Protection Directive, that a country or territory outside the European Economic Area does, or does not, ensure an adequate level of protection within the meaning of Article 25(2) of the Directive.

**Schedule 2****CONDITIONS RELEVANT FOR PURPOSES OF THE FIRST PRINCIPLE:  
PROCESSING OF ANY PERSONAL DATA**

## Section 2(3)

1. The data subject has given his consent to the processing.
2. The processing is necessary –
  - (a) for the performance of a contract to which the data subject is a party, or
  - (b) for the taking of steps at the request of the data subject with a view to entering into a contract.
3. The processing is necessary for compliance with any legal obligation to which the data controller is subject, other than an obligation imposed by contract.
4. The processing is necessary in order to protect the vital interests of the data subject.
5. The processing is necessary –
  - (a) for the administration of justice,
  - (b) for the exercise of any functions of Tynwald, the Council or the Keys;
  - (c) for the exercise of any functions conferred on any person by or under any statutory provision,
  - (d) for the exercise of any functions of the Crown, a Department or a Statutory Board, or
  - (e) for the exercise of any other functions of a public nature exercised in the public interest by any person.
6. (1) The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.  
(2) The Council of Ministers may by order specify particular circumstances in which this condition is, or is not, to be taken to be satisfied.

## Schedule 3

**CONDITIONS RELEVANT FOR PURPOSES OF THE FIRST PRINCIPLE:  
PROCESSING OF SENSITIVE PERSONAL DATA**

## Section 2(3)

1. The data subject has given his explicit consent to the processing of the personal data.
2.
  - (1) The processing is necessary for the purposes of exercising or performing any right or obligation which is conferred or imposed by law on the data controller in connection with employment.
  - (2) The Council of Ministers may by order —
    - (a) exclude the application of sub-paragraph (1) in such cases as may be specified, or
    - (b) provide that, in such cases as may be specified, the condition in sub-paragraph (1) is not to be regarded as satisfied unless such further conditions as may be specified in the order are also satisfied.
3. The processing is necessary —
  - (a) in order to protect the vital interests of the data subject or another person, in a case where —
    - (i) consent cannot be given by or on behalf of the data subject, or
    - (ii) the data controller cannot reasonably be expected to obtain the consent of the data subject, or
  - (b) in order to protect the vital interests of another person, in a case where consent by or on behalf of the data subject has been unreasonably withheld.
4. The processing —
  - (a) is carried out in the course of its legitimate activities by any body or association which —
    - (i) is not established or conducted for profit, and
    - (ii) exists for political, philosophical, religious or trade-union purposes,
  - (b) is carried out with appropriate safeguards for the rights and freedoms of data subjects,
  - (c) relates only to individuals who either are members of the body or association or have regular contact with it in connection with its purposes, and

- (d) does not involve disclosure of the personal data to a third party without the consent of the data subject.

5. The information contained in the personal data has been made public as a result of steps deliberately taken by the data subject.

6. The processing —

- (a) is necessary for the purpose of, or in connection with, any legal proceedings (including prospective legal proceedings),
- (b) is necessary for the purpose of obtaining legal advice, or
- (c) is otherwise necessary for the purposes of establishing, exercising or defending legal rights.

7. (1) The processing is necessary —

- (a) for the administration of justice,
- (b) for the exercise of any functions of Tynwald, the Council or the Keys;
- (c) for the exercise of any functions conferred on any person by or under any statutory provision, or
- (d) for the exercise of any functions of the Crown, a Department or a Statutory Board.

(2) The Council of Ministers may by order —

- (a) exclude the application of sub-paragraph (1) in such cases as may be specified, or
- (b) provide that, in such cases as may be specified, the condition in sub-paragraph (1) is not to be regarded as satisfied unless such further conditions as may be specified in the order are also satisfied.

8. (1) The processing is necessary for medical purposes and is undertaken by —

- (a) a health professional, or
- (b) a person who in the circumstances owes a duty of confidentiality which is equivalent to that which would arise if that person were a health professional.

(2) In this paragraph “medical purposes” includes the purposes of preventive medicine, medical diagnosis, medical research, the provision of care and treatment and the management of healthcare services.

9. (1) The processing —

- (a) is of sensitive personal data consisting of information as to racial or ethnic origin,

- (b) is necessary for the purpose of identifying or keeping under review the existence or absence of equality of opportunity or treatment between persons of different racial or ethnic origins, with a view to enabling such equality to be promoted or maintained, and
    - (c) is carried out with appropriate safeguards for the rights and freedoms of data subjects.
  - (2) The Council of Ministers may by order specify circumstances in which processing falling within sub-paragraph (1)(a) and (b) is, or is not, to be taken for the purposes of sub-paragraph (1)(c) to be carried out with appropriate safeguards for the rights and freedoms of data subjects.
10. (1) The processing —
- (a) is in the substantial public interest;
  - (b) is necessary for the purposes of the prevention or detection of any unlawful act; and
  - (c) must necessarily be carried out without the explicit consent of the data subject being sought so as not to prejudice those purposes.
- (2) In this paragraph, “act” includes a failure to act.
11. The processing —
- (a) is in the substantial public interest;
  - (b) is necessary for the discharge of any function which is designed for protecting members of the public against —
    - (i) dishonesty, malpractice, or other seriously improper conduct by, or the unfitness or incompetence of, any person, or
    - (ii) mismanagement in the administration of, or failures in services provided by, any body or association; and
  - (c) must necessarily be carried out without the explicit consent of the data subject being sought so as not to prejudice the discharge of that function.
12. (1) The disclosure of personal data —
- (a) is in the substantial public interest;
  - (b) is in connection with —
    - (i) the commission by any person of any unlawful act (whether alleged or established),
    - (ii) dishonesty, malpractice, or other seriously improper conduct by, or the unfitness or incompetence of, any person (whether alleged or established), or

- (iii) mismanagement in the administration of, or failures in services provided by, any body or association (whether alleged or established);
    - (c) is for the special purposes as defined in section 1(1); and
    - (d) is made with a view to the publication of those data by any person and the data controller reasonably believes that such publication would be in the public interest.
  - (2) In this paragraph, “act” includes a failure to act.
13. The processing —
- (a) is in the substantial public interest;
  - (b) is necessary for the discharge of any function which is designed for the provision of confidential counselling, advice, support or any other service; and
  - (c) is carried out without the explicit consent of the data subject because the processing —
    - (i) is necessary in a case where consent cannot be given by the data subject,
    - (ii) is necessary in a case where the data controller cannot reasonably be expected to obtain the explicit consent of the data subject, or
    - (iii) must necessarily be carried out without the explicit consent of the data subject being sought so as not to prejudice the provision of that counselling, advice, support or other service.
14. (1) The processing —
- (a) is necessary for the purpose of —
    - (i) carrying on insurance business, or
    - (ii) making determinations in connection with eligibility for, and benefits payable under, an occupational pension scheme as defined in section 1 of the Pension Schemes Act 1993 (an Act of Parliament), as it has effect in the Island;<sup>123</sup>
  - (b) is of sensitive personal data consisting of information as to the physical or mental health or condition of a data subject who is the parent, grandparent, great grandparent or sibling of the insured person or the member of the scheme, as the case may be;
  - (c) is necessary in a case where the data controller cannot reasonably be expected to obtain the explicit consent of that data subject and the data controller is not aware of the data subject withholding his consent; and

- (d) does not support measures or decisions with respect to that data subject.
- (2) In this paragraph —
- (a) “insurance business” means insurance business, as defined in section 54 of the *Insurance Act 2008*, falling within such classes as are prescribed by the Council of Ministers by regulations, and<sup>124</sup>
  - (b) “insured” and “member” includes an individual who is seeking to become an insured person or member of the scheme respectively.
15. The processing —
- (a) is of sensitive personal data in relation to any particular data subject that are subject to processing which was already under way immediately before the commencement of this Schedule;
  - (b) is necessary for the purpose of —
    - (i) carrying on insurance business, as defined in section 54 of the *Insurance Act 2008*, falling within such classes as are prescribed by the Council of Ministers by regulations; or<sup>125</sup>
    - (ii) establishing or administering an occupational pension scheme as defined in section 1 of the Pension Schemes Act 1993 (an Act of Parliament), as it has effect in the Island; and
  - (c) either —
    - (i) is necessary in a case where the data controller cannot reasonably be expected to obtain the explicit consent of the data subject and that data subject has not informed the data controller that he does not so consent, or
    - (ii) must necessarily be carried out even without the explicit consent of the data subject so as not to prejudice those purposes.
16. (1) Subject to the provisions of sub-paragraph (2), the processing —
- (a) is of sensitive personal data consisting of information falling within paragraph (c) or (e) of the definition of that expression in section 1(1);
  - (b) is necessary for the purpose of identifying or keeping under review the existence or absence of equality of opportunity or treatment between persons —
    - (i) holding different beliefs as described in paragraph (c) of that definition, or
    - (ii) of different states of physical or mental health or different physical or mental conditions as described in paragraph (e) of that definition,

with a view to enabling such equality to be promoted or maintained;

- (c) does not support measures or decisions with respect to any particular data subject otherwise than with the explicit consent of that data subject; and
- (d) does not cause, nor is likely to cause, substantial damage or substantial distress to the data subject or any other person.

(2) Where any individual has given notice in writing to any data controller who is processing personal data under the provisions of sub-paragraph (1) requiring that data controller to cease processing personal data in respect of which that individual is the data subject at the end of such period as is reasonable in the circumstances, that data controller must have ceased processing those personal data at the end of that period.

17. The processing —

- (a) is in the substantial public interest;
- (b) is necessary for research purposes (within the meaning of section 29);
- (c) does not support measures or decisions with respect to any particular data subject otherwise than with the explicit consent of that data subject; and
- (d) does not cause, nor is likely to cause, substantial damage or substantial distress to the data subject or any other person.

18. The processing is necessary for the exercise of any functions conferred on a constable by any rule of law.

19. The personal data are processed in circumstances specified in an order made by the Council of Ministers for the purposes of this paragraph.



**Schedule 4****CASES WHERE THE EIGHTH PRINCIPLE DOES NOT APPLY**

## Section 2(3)

1. The data subject has given his consent to the transfer.
2. The transfer is necessary —
  - (a) for the performance of a contract between the data subject and the data controller, or
  - (b) for the taking of steps at the request of the data subject with a view to his entering into a contract with the data controller.
3. The transfer is necessary —
  - (a) for the conclusion of a contract between the data controller and a person other than the data subject which —
    - (i) is entered into at the request of the data subject, or
    - (ii) is in the interests of the data subject, or
  - (b) for the performance of such a contract.
4.
  - (1) The transfer is necessary for reasons of substantial public interest.
  - (2) The Council of Ministers may by order specify —
    - (a) circumstances in which a transfer is to be taken for the purposes of sub-paragraph (1) to be necessary for reasons of substantial public interest, and
    - (b) circumstances in which a transfer which is not required by or under a statutory provision is not to be taken for the purpose of sub-paragraph (1) to be necessary for reasons of substantial public interest.
5. The transfer —
  - (a) is necessary for the purpose of, or in connection with, any legal proceedings (including prospective legal proceedings),
  - (b) is necessary for the purpose of obtaining legal advice, or
  - (c) is otherwise necessary for the purposes of establishing, exercising or defending legal rights.
6. The transfer is necessary in order to protect the vital interests of the data subject.
7. The transfer is of part of the personal data on a public register and any conditions subject to which the register is open to inspection are complied with by any person to whom the data are or may be disclosed after the transfer.

8. The transfer is made on terms which are of a kind approved by the Information Commissioner as ensuring adequate safeguards for the rights and freedoms of data subjects.<sup>126</sup>

9. The transfer has been authorised by the Information Commissioner as being made in such a manner as to ensure adequate safeguards for the rights and freedoms of data subjects.<sup>127</sup>

### **Schedule 5**

#### **THE TRIBUNAL**<sup>128</sup>

##### Section 4(6)

#### **PART 1**<sup>129</sup>

#### **PART 2**<sup>130</sup>

6. [Repealed]<sup>131</sup>

#### *Staff*

7. The Public Services Commission shall make such arrangements as they consider appropriate for the provision of staff for the Tribunal.<sup>132</sup>

**Schedule 6****APPEALS AND REFERENCES**

Sections 20(4), 24(10) and 44(5)

*Interpretation*

1. In this Schedule —  
“**appeal**” means an appeal under section 24 or 44;  
“**reference**” means a reference under section 20.

*Hearing of appeals*

2. For the purpose of hearing and determining appeals or references or any matter preliminary or incidental to an appeal or reference the Tribunal shall sit at such times and in such places as the chairman or deputy chairman may direct.

*Constitution of Tribunal*

3. Subject to paragraph 4 and to any rules under paragraph 5, the Tribunal shall be duly constituted for the purpose of any proceedings if it consists of —
  - (a) the chairman or deputy chairman (who shall preside), and
  - (b) one or more other members.

*Ex parte proceedings*

4. Subject to any rules under paragraph 5, the jurisdiction of the Tribunal in respect of an appeal under section 24 may be exercised ex parte by the chairman or deputy chairman sitting alone.

*Rules of procedure*

5. (1) The Council of Ministers may make rules for regulating the exercise of the rights of appeal conferred by section 24(4) or (7) and section 44, references and the practice and procedure of the Tribunal.
  - (2) Rules under this paragraph may in particular make provision —
    - (a) with respect to the period within which an appeal can be brought or a reference made and the burden of proof on an appeal or reference,
    - (b) for the summoning of witnesses and the administration of oaths,
    - (c) for securing the production of documents and material used for the processing of personal data,

- (d) for the inspection, examination, operation and testing of any equipment or material used in connection with the processing of personal data,
- (e) for the hearing of an appeal or reference wholly or partly in camera,
- (f) for hearing an appeal in the absence of the appellant or for determining an appeal without a hearing,
- (g) for hearing a reference in the absence of the respondent or for determining a reference without a hearing,
- (h) for enabling an appeal under section 44(1) against an information notice to be determined by the chairman or deputy chairman,
  - (i) for enabling any matter preliminary or incidental to an appeal or reference to be dealt with by the chairman or deputy chairman,
- (j) for the awarding of costs,
- (k) for the publication of reports of the Tribunal's decisions, and
- (l) for conferring on the Tribunal such ancillary powers as the Council of Ministers thinks necessary for the proper discharge of its functions.

(3) In making rules under this paragraph which relate to appeals under section 24(4) or (7) the Council of Ministers shall have regard, in particular, to the need to secure that information is not disclosed contrary to the public interest.

*Obstruction etc.*

## 6. Obstruction etc

(1) If any person is guilty of any act or omission in relation to proceedings before the Tribunal which, if those proceedings were proceedings before the High Court, would constitute contempt of court, the Tribunal may certify the matter to the High Court.

(2) Where a matter is so certified, the High Court may inquire into it and, after hearing any witness who may be produced against or on behalf of the person charged with the matter, and after hearing any statement that may be offered in defence, deal with him in any manner in which it could deal with him or her if the act or omission had occurred in relation to the court.<sup>133</sup>

## Schedule 7

### MISCELLANEOUS EXEMPTIONS

#### Section 34

*Confidential references given by the data controller*

1. Personal data are exempt from section 5 if they consist of a reference given or to be given in confidence by the data controller for the purposes of —
  - (a) the education, training or employment, or prospective education, training or employment, of the data subject,
  - (b) the appointment, or prospective appointment, of the data subject to any office, or
  - (c) the provision, or prospective provision, by the data subject of any service.

*Armed forces*

2. Personal data are exempt from the subject information provisions in any case to the extent to which the application of those provisions would be likely to prejudice the combat effectiveness of any of the armed forces of the Crown.

*Judicial appointments and honours*

3. Personal data processed for the purposes of —
  - (a) assessing any person's suitability for judicial office, or
  - (b) the conferring by the Crown of any honour or dignity,are exempt from the subject information provisions.

*Crown employment and appointments*

4. The Council of Ministers may by order exempt from the subject information provisions personal data processed for the purposes of assessing any person's suitability for —
  - (a) employment by or under the Crown, or
  - (b) any office to which appointments are made by Her Majesty, the Governor, the Governor in Council or the Council of Ministers.

*Management forecasts etc.*

5. Personal data processed for the purposes of management forecasting or management planning to assist the data controller in the conduct of any business or other activity are exempt from the subject information provisions in any case to the extent to which the application of those provisions would be likely to prejudice the conduct of that business or other activity.

*Corporate finance*

6. (1) Where personal data are processed for the purposes of, or in connection with, a corporate finance service provided by any person —

- (a) the data are exempt from the subject information provisions in any case to the extent to which either —
  - (i) the application of those provisions to the data could affect the price of any securities which are already in existence or are to be or may be created, or
  - (ii) the data controller reasonably believes that the application of those provisions to the data could affect the price of any such securities, and
- (b) to the extent that the data are not exempt from the subject information provisions by virtue of paragraph (a), they are exempt from those provisions if the exemption is required for the purpose of safeguarding an important economic or financial interest of the Island.

(2) For the purposes of sub-paragraph (1)(b) the Council of Ministers may by order specify —

- (a) matters to be taken into account in determining whether exemption from the subject information provisions is required for the purpose of safeguarding an important economic or financial interest of the Island, or
- (b) circumstances in which exemption from those provisions is, or is not, to be taken to be required for that purpose.

(3) In this paragraph —

“corporate finance service” means a service consisting in —

- (a) underwriting in respect of issues of, or the placing of issues of, any securities,
- (b) advice to undertakings on capital structure, industrial strategy and related matters and advice and service relating to mergers and the purchase of undertakings, or
- (c) services relating to such underwriting as is mentioned in paragraph (a);

“price” includes value;

“securities” means —

- (a) shares or debentures,
- (b) securities of the government of any country or territory, or
- (c) rights or interests (described whether as units or otherwise) in any such shares, debentures or securities.

### *Negotiations*

7. Personal data which consist of records of the intentions of the data controller in relation to any negotiations with the data subject are exempt from the subject

information provisions in any case to the extent to which the application of those provisions would be likely to prejudice those negotiations.

*Examination marks*

8. (1) Section 5 shall have effect subject to the provisions of sub-paragraphs (2) to (4) in the case of personal data consisting of marks or other information processed by a data controller —

- (a) for the purpose of determining the results of an academic, professional or other examination or of enabling the results of any such examination to be determined, or
- (b) in consequence of the determination of any such results.

(2) Where the relevant day falls before the day on which the results of the examination are announced, the period mentioned in section 5(8) shall be extended until —

- (a) the end of 5 months beginning with the relevant day, or
- (b) the end of 40 days beginning with the date of the announcement,

whichever is the earlier.

(3) Where by virtue of sub-paragraph (2) a period longer than the prescribed period elapses after the relevant day before the request is complied with, the information to be supplied pursuant to the request shall be supplied both by reference to the data in question at the time when the request is received and (if different) by reference to the data as from time to time held in the period beginning when the request is received and ending when it is complied with.

(4) For the purposes of this paragraph the results of an examination shall be treated as announced when they are first published or (if not published) when they are first made available or communicated to the candidate in question.

(5) In this paragraph —

“examination” includes any process for determining the knowledge, intelligence, skill or ability of a candidate by reference to his performance in any test, work or other activity;

“the prescribed period” means 40 days or such other period as is for the time being prescribed under section 5 in relation to the personal data in question;

“relevant day” has the same meaning as in section 5.

*Examination scripts etc.*

9. (1) Personal data consisting of information recorded by candidates during an academic, professional or other examination are exempt from section 5.

(2) In this paragraph “examination” has the same meaning as in paragraph 8.

*Legal professional privilege*

10. Personal data are exempt from the subject information provisions if the data consist of information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

*Self-incrimination*

11. (1) A person need not comply with any request or order under section 5 to the extent that compliance would, by revealing evidence of the commission of any offence other than an offence under this Act, expose him to proceedings for that offence.

(2) Information disclosed by any person in compliance with any request or order under section 5 shall not be admissible against him in proceedings for an offence under this Act.

**Schedule 8****POWERS OF ENTRY AND INSPECTION**

## Section 46

*Issue of warrants*

1. (1) If a judge of the High Court is satisfied by information on oath supplied by the Information Commissioner that there are reasonable grounds for suspecting —

- (a) that a data controller has contravened or is contravening any of the data protection principles, or
- (b) that an offence under this Act has been or is being committed,

and that evidence of the contravention or of the commission of the offence is to be found on any premises specified in the information, he may, subject to sub-paragraph (2) and paragraph 2, grant a warrant to the Information Commissioner.<sup>134</sup>

(2) A judge shall not issue a warrant under this Schedule in respect of any personal data processed for the special purposes unless a determination by the Information Commissioner under section 41 with respect to those data has taken effect.<sup>135</sup>

(3) A warrant issued under sub-paragraph (1) shall authorise the Information Commissioner or any of his officers or staff, or any other person authorised for the purpose by the Information Commissioner, at any time within 7 days of the date of the warrant to enter the premises, to search them, to inspect, examine, operate and test any equipment found there which is used or intended to be used for the processing of personal data and to inspect and seize any documents or other material found there which may be such evidence as is mentioned in that sub-paragraph.<sup>136</sup>



2. (1) A judge shall not issue a warrant under this Schedule unless he is satisfied —
- (a) that the Information Commissioner has given 7 days' notice in writing to the occupier of the premises in question demanding access to the premises, and<sup>137</sup>
  - (b) that either —
    - (i) access was demanded at a reasonable hour and was unreasonably refused, or
    - (ii) although entry to the premises was granted, the occupier unreasonably refused to comply with a request by the Information Commissioner or any of the Information Commissioner's officers or staff to permit the Information Commissioner or the officer or member of staff to do any of the things referred to in paragraph 1(3), and<sup>138</sup>
  - (c) that the occupier, has, after the refusal, been notified by the Information Commissioner of the application for the warrant and has had an opportunity of being heard by the judge on the question whether or not it should be issued.<sup>139</sup>
- (2) Sub-paragraph (1) does not apply if the judge is satisfied that the case is one of urgency or that compliance with those provisions would defeat the object of the entry.
3. A judge who issues a warrant under this Schedule shall also issue 2 copies of it and certify them clearly as copies.

*Execution of warrants*

4. A person executing a warrant issued under this Schedule may use such reasonable force as may be necessary.
5. A warrant issued under this Schedule shall be executed at a reasonable hour unless it appears to the person executing it that there are grounds for suspecting that the evidence in question would not be found if it were so executed.
6. If the person who occupies the premises in respect of which a warrant is issued under this Schedule is present when the warrant is executed, he shall be shown the warrant and supplied with a copy of it; and if that person is not present a copy of the warrant shall be left in a prominent place on the premises.
7. (1) A person seizing anything in pursuance of a warrant under this Schedule shall give a receipt for it if asked to do so.
- (2) Anything so seized may be retained for so long as is necessary in all the circumstances but the person in occupation of the premises in question shall be given a copy of anything that is seized if he so requests and the person executing the warrant considers that it can be done without undue delay.

*Matters exempt from inspection and seizure*

8. The powers of inspection and seizure conferred by a warrant issued under this Schedule shall not be exercisable in respect of personal data which by virtue of section 24 are exempt from any of the provisions of this Act.

9. (1) Subject to the provisions of this paragraph, the powers of inspection and seizure conferred by a warrant issued under this Schedule shall not be exercisable in respect of —

- (a) any communication between an advocate and his client in connection with the giving of legal advice to the client with respect to his obligations, liabilities or rights under this Act, or
- (b) any communication between an advocate and his client, or between an advocate or his client and any other person, made in connection with or in contemplation of proceedings under or arising out of this Act (including proceedings before the Tribunal) and for the purposes of such proceedings.

(2) Sub-paragraph (1) applies also to —

- (a) any copy or other record of any such communication as is there mentioned, and
- (b) any document or article enclosed with or referred to in any such communication if made in connection with the giving of any advice or, as the case may be, in connection with or in contemplation of and for the purposes of such proceedings as are there mentioned.

(3) This paragraph does not apply to anything in the possession of any person other than the advocate or his client or to anything held with the intention of furthering a criminal purpose.

(4) In this paragraph references to the client of an advocate include references to any person representing such a client.

10. If the person in occupation of any premises in respect of which a warrant is issued under this Schedule objects to the inspection or seizure under the warrant of any material on the grounds that it consists partly of matters in respect of which those powers are not exercisable, he shall, if the person executing the warrant so requests, furnish that person with a copy of so much of the material as is not exempt from those powers.

*Return of warrants*

11. A warrant issued under this Schedule shall be returned to the Chief Registrar —

- (a) after being executed, or
- (b) if not executed within the time authorised for its execution;

and the person by whom any such warrant is executed shall make an endorsement on it stating what powers have been exercised by him under the warrant.

*Offences*

12. Any person who —
- (a) intentionally obstructs a person in the execution of a warrant issued under this Schedule, or
  - (b) fails without reasonable excuse to give any person executing such a warrant such assistance as he may reasonably require for the execution of the warrant,
- is guilty of an offence.

*Vessels, vehicles etc.*

13. In this Schedule “**premises**” includes any vessel, vehicle, aircraft or hovercraft, and references to the occupier of any premises include references to the person in charge of any vessel, vehicle, aircraft or hovercraft.

**Schedule 9**

**REGISTERS OF ELECTORS ETC.**

Section 57

[Sch 9 amended by Registration of Electors Act 2006 Sch 3, and amends the following Act —  
Jury Act 1980 q.v.]

**Schedule 10**

**EXEMPTIONS AND MODIFICATIONS HAVING EFFECT BEFORE 24TH  
OCTOBER 2007**

Section 64

**PART 1 TRANSITIONAL EXEMPTIONS**

1. In this Schedule —
- “**the appointed day**” means the date on which Part 2 comes into operation;
  - “**automated data**” means data which fall within paragraph (a) or (b) of the definition of “**data**” in section 1(1);
  - “**manual data**” means data which fall within paragraph (c) or (d) of the definition of “**data**” in section 1(1);

“the relevant conditions” has the same meaning as in section 29;

“the transitional period” means the period from the appointed day to the 23rd October 2007.

*Temporary exemption for certain manual data*

2. (1) This paragraph applies to —
- (a) manual data which were held immediately before the appointed day, and
  - (b) personal data which fall within paragraph (d) of the definition of “data” in section 1(1) but do not fall within (a) above.
- (2) During the transitional period, data to which this paragraph applies are exempt from the following provisions —
- (a) the first data protection principle (fair and lawful processing) except to the extent to which it requires compliance with paragraph 10 of Schedule 1,
  - (b) the second data protection principle (purpose for which data are obtained and processed),
  - (c) the third data protection principle (adequacy and relevance of data),
  - (d) the fourth data protection principle (accuracy of data),
  - (e) the fifth data protection principle (time for keeping data), and
  - (f) section 12(1) to (3).

*Exemption for historical research*

3. (1) This paragraph applies to manual data which —
- (a) were held immediately before the appointed day, and
  - (b) are processed only for the purpose of historical research in compliance with the relevant conditions.
- (2) After the transitional period, data to which this paragraph applies are exempt from the provisions specified in paragraph 2(2).
4. (1) This paragraph applies to automated data which —
- (a) were subject to processing which was already under way immediately before the appointed day, and
  - (b) are processed only for the purpose of historical research in compliance with the relevant conditions.
- (2) During and after the transitional period, data to which this paragraph applies are exempt from the first data protection principle to the extent to which it requires compliance with the conditions in Schedules 2 and 3.

(3) During and after the transitional period, data to which this paragraph applies which are processed otherwise than by reference to the data subject are also exempt from the provisions referred to in paragraph 2(2).

5. For the purposes of this Part of this Schedule personal data are not to be treated as processed otherwise than for the purpose of historical research merely because the data are disclosed —

- (a) to any person, for the purpose of historical research only,
- (b) to the data subject or a person acting on his behalf,
- (c) at the request, or with the consent, of the data subject or a person acting on his behalf, or
- (d) in circumstances in which the person making the disclosure has reasonable grounds for believing that the disclosure falls within paragraph (a), (b) or (c).

*Exemption from section 19*

6. Processing which was already under way immediately before the appointed day is not assessable processing for the purposes of section 19.

## **PART 2 MODIFICATIONS HAVING EFFECT BEFORE 24TH OCTOBER 2007**

7. After section 10 insert —

**“10A Rights of data subjects in relation to exempt manual data**

(1) A data subject is entitled at any time by notice in writing —

- (a) to require the data controller to rectify, block, erase or destroy exempt manual data which are inaccurate or incomplete, or
- (b) to require the data controller to cease holding exempt manual data in a way incompatible with the legitimate purposes pursued by the data controller.

(2) A notice under subsection (1)(a) or (b) must state the data subject's reasons for believing that the data are inaccurate or incomplete or, as the case may be, his reasons for believing that they are held in a way incompatible with the legitimate purposes pursued by the data controller.

(3) If the High Court is satisfied, on the application of any person who has given a notice under subsection (1) which appears to the court to be justified (or to be justified to any extent) that the data controller in question has failed to comply with the notice, the court may order him to take such steps for complying with the notice (or for complying with it to that extent) as the court thinks fit.

(4) In this section “exempt manual data” means data to which paragraph 2 of Schedule 10 applies.

(5) For the purposes of this section personal data are incomplete if, and only if, the data, although not inaccurate, are such that their incompleteness would constitute a contravention of the third or fourth data protection principles, if those principles applied to the data.”

8. In section 28 —

(a) in subsection (2), after “section 10” insert —

“(dd) section 10A,”;

(b) in subsection (4), after “10(8)” insert “10A(3)”.

9. In section 30, for “section 12(1) to (3)” substitute “sections 10A and 12(1) to (3).”

10. In paragraph 16 of Schedule 1, omit the word “or” at the end of paragraph (c), and after paragraph (d) insert “or

(e) he contravenes section 10A by failing to comply with a notice given under section 10A(1) to the extent that the notice is justified.”

## Schedule 11

### TRANSITIONAL PROVISIONS AND SAVINGS

#### Section 65

#### *Interpretation*

1. In this Schedule —

“**the 1986 Act**” means the *Data Protection Act 1986*;

“**the old principles**” means the data protection principles within the meaning of the 1986 Act;

“**the new principles**” means the data protection principles within the meaning of this Act.

#### *Effect of registration under Part II of 1986 Act*

2. (1) Subject to sub-paragraphs (4) and (5), any person who, immediately before the commencement of Part 3 of this Act —

(a) is registered as a data user under Part II of the 1986 Act, or

(b) is treated by virtue of section 7(6) of the 1986 Act as so registered,

is exempt from section 14(1) of this Act until the end of the registration period.

(2) In sub-paragraph (1) “the registration period”, in relation to a person, means —

- (a) where there is a single entry in respect of that person as a data user, the period at the end of which, if section 8 of the 1986 Act had remained in force, that entry would have fallen to be removed unless renewed, and
- (b) where there are 2 or more entries in respect of that person as a data user, the period at the end of which, if that section had remained in force, the last of those entries to expire would have fallen to be removed unless renewed.
- (3) Any application for registration as a data user under Part II of the 1986 Act which is received by the Supervisor before the commencement of Part 3 of this Act (including any appeal against a refusal of registration) shall be determined in accordance with the old principles and the provisions of the 1986 Act.
- (4) If a person falling within sub-paragraph (1)(b) receives a notification under section 7(1) of the 1986 Act of the refusal of his application, sub-paragraph (1) shall cease to apply to him –
- (a) if no appeal is brought, at the end of the period within which an appeal can be brought against the refusal, or
- (b) on the withdrawal or dismissal of the appeal.
- (5) If a data controller gives a notification under section 15(1) at a time when he is exempt from section 14(1) by virtue of sub-paragraph (1), he shall cease to be so exempt.
- (6) The Supervisor shall include in the register maintained under section 16 an entry in respect of each person who is exempt from section 14(1) by virtue of sub-paragraph (1); and each entry shall consist of the particulars which, immediately before the commencement of Part 3 of this Act, were included (or treated as included) in respect of that person in the register maintained under section 4 of the 1986 Act.
- (7) Notification regulations under Part 3 of this Act may make provision modifying the duty referred to in section 17(1) in its application to any person in respect of whom an entry in the register maintained under section 16 has been made under sub-paragraph (6).
- (8) Notification regulations under Part 3 of this Act may make further transitional provision in connection with the substitution of Part 3 for Part II of the 1986 Act (registration), including provision modifying the application of provisions of Part 3 in transitional cases.

### *Rights of data subjects*

3. (1) The repeal of section 20 of the 1986 Act (right of access to personal data) does not affect the application of that section in any case in which the request (together with the information referred to in section 21(4)(a) and, in a case where it is required, the consent referred to in section 21(4)(b)) was received before the day on which the repeal comes into force.

(2) Sub-paragraph (1) does not apply where the request is made by reference to this Act.

(3) Any fee paid for the purposes of section 20 of the 1986 Act before the commencement of section 5 in a case not falling within sub-paragraph (1) shall be taken to have been paid for the purposes of section 5.

4. The repeal of section 21 of the 1986 Act (compensation for inaccuracy) and the repeal of section 22 of that Act (compensation for loss or unauthorised disclosure) do not affect the application of those sections in relation to damage or distress suffered at any time by reason of anything done or omitted to be done before the commencement of the repeals.

5. The repeal of section 23 of the 1986 Act (rectification and erasure) does not affect any case in which the application to the High Court was made before the day on which the repeal comes into force.

6. Section 12(3)(b) does not apply where the rectification, blocking, erasure or destruction occurred before the commencement of section 12.

*Enforcement and transfer prohibition notices served under Part V of 1986 Act*

7. (1) If, immediately before the commencement of section 36 —
- (a) an enforcement notice under section 10 of the 1986 Act has effect, and
  - (b) either the time for appealing against the notice has expired or any appeal has been determined,

then, after that commencement, to the extent mentioned in sub-paragraph (3), the notice shall have effect for the purposes of sections 37 and 43 as if it were an enforcement notice under section 36.

(2) Where an enforcement notice has been served under section 10 of the 1986 Act before the commencement of section 36 and immediately before that commencement either —

- (a) the time for appealing against the notice has not expired, or
- (b) an appeal has not been determined,

the appeal shall be determined in accordance with the provisions of the 1986 Act and the old principles and, unless the notice is quashed on appeal, to the extent mentioned in sub-paragraph (3) the notice shall have effect for the purposes of sections 37 and 43 as if it were an enforcement notice under section 36.

(3) An enforcement notice under section 10 of the 1986 Act has the effect described in sub-paragraph (1) or (2) only to the extent that the steps specified in the notice for complying with the old principle or principles in question are steps which the data controller could be required by an enforcement notice under section 36 to take for complying with the new principles or any of them.



8. (1) If, immediately before the commencement of section 36 —
- (a) a transfer prohibition notice under section 12 of the 1986 Act has effect, and
  - (b) either the time for appealing against the notice has expired or any appeal has been determined,

then, on and after that commencement, to the extent specified in sub-paragraph (3), the notice shall have effect for the purposes of sections 37 and 43 as if it were an enforcement notice under section 36.

- (2) Where a transfer prohibition notice has been served under section 12 of the 1986 Act and immediately before the commencement of section 36 either —
- (a) the time for appealing against the notice has not expired, or
  - (b) an appeal has not been determined,

the appeal shall be determined in accordance with the provisions of the 1986 Act and the old principles and, unless the notice is quashed on appeal, to the extent mentioned in sub-paragraph (3) the notice shall have effect for the purposes of sections 37 and 43 as if it were an enforcement notice under section 36.

- (3) A transfer prohibition notice under section 12 of the 1986 Act has the effect described in sub-paragraph (1) or (2) only to the extent that the prohibition imposed by the notice is one which could be imposed by an enforcement notice under section 36 for complying with the new principles or any of them.

*Notices under new law relating to matters in relation to which 1986 Act had effect*

9. The Supervisor may serve an enforcement notice under section 36 on or after the day on which that section comes into force if he is satisfied that, before that day, the data controller contravened the old principles by reason of any act or omission which would also have constituted a contravention of the new principles if they had applied before that day.

10. Section 36(5)(b) does not apply where the rectification, blocking, erasure or destruction occurred before the commencement of section 36.

11. The Supervisor may serve an information notice under section 39 on or after the day on which that section comes into force if he has reasonable grounds for suspecting that, before that day, the data controller contravened the old principles by reason of any act or omission which would also have constituted a contravention of the new principles if they had applied before that day.

12. Where by virtue of paragraph 11 an information notice is served on the basis of anything done or omitted to be done before the day on which section 39 comes into force, section 39(2)(b) shall have effect as if the reference to the data controller having complied, or complying, with the new principles were a reference to the data controller having contravened the old principles by reason of any such act or omission as is mentioned in paragraph 11.

*Self-incrimination, etc.*

13. (1) In section 39(8), section 40(9) and paragraph 11 of Schedule 7, any reference to an offence under this Act includes a reference to an offence under the 1986 Act.

(2) In section 34(9) of the 1986 Act, any reference to an offence under that Act includes a reference to an offence under this Act.

*Warrants issued under 1986 Act*

14. The repeal of Schedule 4 to the 1986 Act does not affect the application of that Schedule in any case where a warrant was issued under that Schedule before the commencement of the repeal.

*Complaints under section 35(2) of 1986 Act and requests for assessment under section 38*

15. The repeal of section 35(2) of the 1986 Act does not affect the application of that provision in any case where the complaint was received by the Supervisor before the commencement of the repeal.

16. In dealing with a complaint under section 35(2) of the 1986 Act or a request for an assessment under section 38 of this Act, the Supervisor shall have regard to the provisions from time to time applicable to the processing, and accordingly —

- (a) in section 36(2) of the 1986 Act, the reference to the old principles and the provisions of that Act includes, in relation to any time when the new principles and the provisions of this Act have effect, those principles and provisions, and
- (b) in section 38 of this Act, the reference to the provisions of this Act includes, in relation to any time when the old principles and the provisions of the 1986 Act had effect, those principles and provisions.

*Applications under Access to Health Records and Reports Act 1993*

17. (1) The repeal of any provision of *the Access to Health Records and Reports Act 1993* does not affect —

- (a) the application of section 3 or 6 of that Act in any case in which the application under that section was received before the day on which the repeal comes into force, or
- (b) the application of section 8 of that Act in any case in which the application to the High Court was made before the day on which the repeal comes into force.

(2) Sub-paragraph (1)(a) does not apply in relation to an application for access to information which was made by reference to this Act.

*The Supervisor*

18. Any reference in this Act or in any instrument under this Act to the Supervisor shall be construed, in relation to any time before the commencement of section 4(1), as a reference to the Isle of Man Data Protection Registrar.

*Staff of Supervisor*

19. Any officer of the Supervisor who immediately before the commencement of this Act was a civil servant shall not cease to be a civil servant by virtue only of the passing of this Act unless he and the Civil Service Commission otherwise agree in writing.

*Functions relating to children and young persons*

20. Until the whole of the *Children and Young Persons Act 2001* has come into force, the reference in the table in section 62(1) to functions of the Department of Health and Social Security under that Act shall be construed as including a reference to functions of that Department under any enactment repealed by that Act.

**Schedule 12****AMENDMENT OF ENACTMENTS**

## Section 66(1)

[Sch 12 amended by Public Sector Pensions Act 2011 Sch 3, and amends the following Acts —

Legal Aid Act 1986 q.v.

Customs and Excise Management Act 1986 q.v.

Access to Health Records and Reports Act 1993 q.v.

Lloyds TSB Act 1997 q.v.

Residence Act 2001 q.v.

Online Gambling Regulation Act 2001 q.v.

Halifax International Act 2001 q.v.]

**Schedule 13****ENACTMENTS REPEALED**

## Section 66(2)

[Sch 13 repeals the following Act wholly —

Data Protection Act 1986

and the following Acts in part —

Statute Law Revision Act 1989

Access to Health Records and Reports Act 1993  
Criminal Justice Act 2001.]

## ENDNOTES

### Table of Legislation History

Legislation	Year and No	Commencement

### Table of Renumbered Provisions

Original	Current

### Table of Endnote References

<sup>1</sup> Para (e) inserted by Freedom of information Act 2015 Sch 4.

<sup>2</sup> Definition of “held” inserted by Freedom of Information Act 2015 Sch 4.

<sup>3</sup> Definition of “public authority” inserted by Freedom of Information Act 2015 Sch 4.

<sup>4</sup> S 4 heading substituted by Freedom of Information Act 2015 Sch 4.

<sup>5</sup> Subs (1) repealed by Freedom of Information Act 2015 Sch 4.

<sup>6</sup> Subs (2) repealed by Freedom of Information Act 2015 Sch 4.

<sup>7</sup> Subs (4) substituted by Legislation Act 2015 s 99.

<sup>8</sup> Subs (5) repealed by Tribunals Act 2006 Sch 3.

<sup>9</sup> Subs (6) amended by Freedom of Information Act 2015 Sch 4.

<sup>10</sup> Subs (1) amended by Freedom of Information Act 2015 Sch 4.

<sup>11</sup> S 7A inserted by Freedom of Information Act 2015 Sch 4.

<sup>12</sup> Subs (1) amended by Freedom of Information Act 2015 Sch 4.

<sup>13</sup> Subs (1) amended by Freedom of Information Act 2015 Sch 4.

<sup>14</sup> Subs (3) amended by Freedom of Information Act 2015 Sch 4.

<sup>15</sup> Subs (1) amended by Freedom of Information Act 2015 Sch 4.

<sup>16</sup> Para (b) amended by Freedom of Information Act 2015 Sch 4.

<sup>17</sup> Subs (6) amended by Freedom of Information Act 2015 Sch 4.

<sup>18</sup> Subs (7) amended by Freedom of Information Act 2015 Sch 4.

<sup>19</sup> Subs (1) amended by Freedom of Information Act 2015 Sch 4.

<sup>20</sup> Para (b) amended by Freedom of Information Act 2015 Sch 4.

<sup>21</sup> Subs (4) amended by Freedom of Information Act 2015 Sch 4.

<sup>22</sup> S 19 heading amended by Freedom of Information Act 2015 Sch 4.

<sup>23</sup> Subs (2) amended by Freedom of Information Act 2015 Sch 4.

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- <sup>24</sup> Subs (3) amended by Freedom of Information Act 2015 Sch 4.
- <sup>25</sup> Subs (4) amended by Freedom of Information Act 2015 Sch 4.
- <sup>26</sup> Para (a) amended by Freedom of Information Act 2015 Sch 4.
- <sup>27</sup> Para (b) amended by Freedom of Information Act 2015 Sch 4.
- <sup>28</sup> Subs (5) amended by Freedom of Information Act 2015 Sch 4.
- <sup>29</sup> Subs (1) amended by Freedom of Information Act 2015 Sch 4.
- <sup>30</sup> Subs (2) amended by Freedom of Information Act 2015 Sch 4.
- <sup>31</sup> Subs (3) amended by Freedom of Information Act 2015 Sch 4.
- <sup>32</sup> Para (a) amended by Freedom of Information Act 2015 Sch 4.
- <sup>33</sup> Para (b) amended by Freedom of Information Act 2015 Sch 4.
- <sup>34</sup> See General Note.
- <sup>35</sup> Para (b) amended by SD155/10 Sch 10 and by SD2017/0325.
- <sup>36</sup> Para (a) amended by SD155/10 Sch 6 and by SD2014/08.
- <sup>37</sup> Subs (5) inserted by Social Services Act 2011 Sch 3.
- <sup>38</sup> Para (a) amended by Freedom of Information Act 2015 Sch 4.
- <sup>39</sup> S 29A inserted by Freedom of Information Act 2015 Sch 4.
- <sup>40</sup> S 30 amended by Freedom of Information Act 2015 Sch 4.
- <sup>41</sup> Subs (1) amended by Freedom of Information Act 2015 Sch 4.
- <sup>42</sup> Subs (2) amended by Freedom of Information Act 2015 Sch 4.
- <sup>43</sup> Subs (3) amended by Freedom of Information Act 2015 Sch 4.
- <sup>44</sup> Para (b) amended by Freedom of Information Act 2015 Sch 4.
- <sup>45</sup> Para (b) amended by Freedom of Information Act 2015 Sch 4.
- <sup>46</sup> Para (a) amended by Freedom of Information Act 2015 Sch 4.
- <sup>47</sup> Subs (8) amended by Freedom of Information Act 2015 Sch 4.
- <sup>48</sup> Subs (1) amended by Freedom of Information Act 2015 Sch 4.
- <sup>49</sup> Subs (2) amended by Freedom of Information Act 2015 Sch 4.
- <sup>50</sup> Subs (1) amended by Freedom of Information Act 2015 Sch 4.
- <sup>51</sup> Subs (2) amended by Freedom of Information Act 2015 Sch 4.
- <sup>52</sup> Subs (3) amended by Freedom of Information Act 2015 Sch 4.
- <sup>53</sup> Subs (4) amended by Freedom of Information Act 2015 Sch 4.
- <sup>54</sup> Subs (1) amended by Freedom of Information Act 2015 Sch 4.
- <sup>55</sup> Para (a) amended by Freedom of Information Act 2015 Sch 4.
- <sup>56</sup> Para (b) amended by Freedom of Information Act 2015 Sch 4.
- <sup>57</sup> Subs (5) amended by Freedom of Information Act 2015 Sch 4.
- <sup>58</sup> Subs (6) amended by Freedom of Information Act 2015 Sch 4.
- <sup>59</sup> Subs (8) amended by Freedom of Information Act 2015 Sch 4.
- <sup>60</sup> Subs (9) amended by Freedom of Information Act 2015 Sch 4.
- <sup>61</sup> Subs (1) amended by Freedom of Information Act 2015 Sch 4.
- <sup>62</sup> Para (a) amended by Freedom of Information Act 2015 Sch 4.
- <sup>63</sup> Para (b) amended by Freedom of Information Act 2015 Sch 4.
- <sup>64</sup> Subs (6) amended by Freedom of Information Act 2015 Sch 4.

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- <sup>65</sup> Subs (7) amended by Freedom of Information Act 2015 Sch 4.
- <sup>66</sup> Subs (9) amended by Freedom of Information Act 2015 Sch 4.
- <sup>67</sup> Subs (10) amended by Freedom of Information Act 2015 Sch 4.
- <sup>68</sup> S 41 heading amended by Freedom of Information Act 2015 Sch 4.
- <sup>69</sup> Subs (1) amended by Freedom of Information Act 2015 Sch 4.
- <sup>70</sup> Subs (1) amended by Freedom of Information Act 2015 Sch 4.
- <sup>71</sup> Para (a) amended by Freedom of Information Act 2015 Sch 4.
- <sup>72</sup> Subs (3) amended by Freedom of Information Act 2015 Sch 4.
- <sup>73</sup> Para (a) amended by Freedom of Information Act 2015 Sch 4.
- <sup>74</sup> Subs (3) amended by Freedom of Information Act 2015 Sch 4.
- <sup>75</sup> Para (b) amended by Freedom of Information Act 2015 Sch 4.
- <sup>76</sup> Subs (1) amended by Freedom of Information Act 2015 Sch 4.
- <sup>77</sup> Subs (5) amended by Freedom of Information Act 2015 Sch 4.
- <sup>78</sup> Cross-heading amended by Freedom of Information Act 2015 Sch 4.
- <sup>79</sup> S 47 heading amended by Freedom of Information Act 2015 Sch 4.
- <sup>80</sup> Subs (1) amended by Freedom of Information Act 2015 Sch 4.
- <sup>81</sup> Subs (2) amended by Freedom of Information Act 2015 Sch 4.
- <sup>82</sup> Para (b) amended by Freedom of Information Act 2015 Sch 4.
- <sup>83</sup> Subs (3) amended by Freedom of Information Act 2015 Sch 4.
- <sup>84</sup> Subs (4) amended by Freedom of Information Act 2015 Sch 4.
- <sup>85</sup> Subs (6) amended by Freedom of Information Act 2015 Sch 4.
- <sup>86</sup> Subs (7) amended by Freedom of Information Act 2015 Sch 4.
- <sup>87</sup> Subs (8) amended by Freedom of Information Act 2015 Sch 4.
- <sup>88</sup> Definition of “good practice” amended by Freedom of Information Act 2015 Sch 4.
- <sup>89</sup> Subs (1) amended by Freedom of Information Act 2015 Sch 4.
- <sup>90</sup> Subs (2) amended by Freedom of Information Act 2015 Sch 4.
- <sup>91</sup> Subs (3) amended by Freedom of Information Act 2015 Sch 4.
- <sup>92</sup> Subs (1) amended by Freedom of Information Act 2015 Sch 4.
- <sup>93</sup> Subs (2) amended by Freedom of Information Act 2015 Sch 4.
- <sup>94</sup> Para (b) amended by Freedom of Information Act 2015 Sch 4.
- <sup>95</sup> Subs (3) amended by Freedom of Information Act 2015 Sch 4.
- <sup>96</sup> Subs (4) amended by Freedom of Information Act 2015 Sch 4.
- <sup>97</sup> Subs (8) amended by Freedom of Information Act 2015 Sch 4.
- <sup>98</sup> Para (b) amended by SD155/10 Sch 6 and by SD2014/08.
- <sup>99</sup> Subs (6A) inserted by Freedom of Information Act 2015 Sch 4.
- <sup>100</sup> S 51 not yet in force.
- <sup>101</sup> Cross-heading amended by Freedom of Information Act 2015 Sch 4.
- <sup>102</sup> S 53 amended by Freedom of Information Act 2015 Sch 4.
- <sup>103</sup> S 54 repealed by Freedom of Information Act 2015 Sch 4.
- <sup>104</sup> Subs (1) amended by Freedom of Information Act 2015 Sch 4.
- <sup>105</sup> S 57 amended by Registration of Electors Act 2006 Sch 3.

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- <sup>106</sup> Para (a) amended by Public Services Commission Act 2015 Sch.
- <sup>107</sup> Para (b) amended by Public Services Commission Act 2015 Sch.
- <sup>108</sup> S 60 heading amended by Freedom of Information Act 2015 Sch 4.
- <sup>109</sup> Subs (1) amended by Freedom of Information Act 2015 Sch 4.
- <sup>110</sup> Subs (2) amended by Freedom of Information Act 2015 Sch 4.
- <sup>111</sup> Entry amended by SD2015/0109.
- <sup>112</sup> Para (a) substituted by Social Services Act 2011 Sch 3.
- <sup>113</sup> Para (c) amended by SD155/10 Sch 6 and by SD2014/08.
- <sup>114</sup> See CM1329
- <sup>115</sup> See OJ L281, 23.11.95, p. 31.
- <sup>116</sup> Para (a) amended by SD155/10 Sch 10 and by SD2017/0325.
- <sup>117</sup> Subpara (i) amended by SD155/10 Sch 10 and by SD2017/0325.
- <sup>118</sup> Definition of “Information Commissioner” inserted by Freedom of Information Act 2015 Sch 4.
- <sup>119</sup> Definition of “the Supervisor” repealed by Freedom of Information Act 2015 Sch 4.
- <sup>120</sup> Index amended by Freedom of Information Act 2015 Sch 4.
- <sup>121</sup> ADO (whole Act except provisions specified in s 67(2)(a) to (e), ss 51 and 57 and Sch 9) 1/4/2003 (SD15/03); (s 57 and Sch 9) 1/1/2004 (SD701/03).
- <sup>122</sup> Item (b) amended by Freedom of Information Act 2015 Sch 4.
- <sup>123</sup> See SD531/95.
- <sup>124</sup> Item (a) amended by Insurance Act 2008 Sch 8.
- <sup>125</sup> Subitem (i) amended by Insurance Act 2008 Sch 8.
- <sup>126</sup> Para 8 amended by Freedom of Information Act 2015 Sch 4.
- <sup>127</sup> Para 9 amended by Freedom of Information Act 2015 Sch 4.
- <sup>128</sup> Sch 5 heading amended by Freedom of Information Act 2015 Sch 4.
- <sup>129</sup> Part 1 repealed by Freedom of Information Act 2015 Sch 4.
- <sup>130</sup> Part 2 heading repealed by Freedom of Information Act 2015 Sch 4.
- <sup>131</sup> Para 6 repealed by Tribunals Act 2006 Sch 3.
- <sup>132</sup> Para 7 amended by Public Services Commission Act 2015 Sch.
- <sup>133</sup> Para 6 substituted by Legislation Act 2015 s 99.
- <sup>134</sup> Subpara (1) amended by Freedom of Information Act 2015 Sch 4.
- <sup>135</sup> Subpara (2) amended by Freedom of Information Act 2015 Sch 4.
- <sup>136</sup> Subpara (3) amended by Freedom of Information Act 2015 Sch 4.
- <sup>137</sup> Item (a) amended by Freedom of Information Act 2015 Sch 4.
- <sup>138</sup> Subitem (ii) amended by Freedom of Information Act 2015 Sch 4.
- <sup>139</sup> Item (c) amended by Freedom of Information Act 2015 Sch 4.