

ENGLISH DATA PROTECTION ACT 1998, ARTS. 1-50; SCHEDULES 1-4

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

Part I Preliminary

§ 1 Basic interpretative provisions

(1) In this Act, unless the context otherwise requires--

"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, or

(d) does not fall within paragraph (a), (b) or (c) but forms part of an accessible record as defined by section 68; or

(e) is recorded information held by a public authority and does not fall within any of paragraphs (a) to (d);]

"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;

"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 2000;]

"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.

(2) In this Act, unless the context otherwise requires--

(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 European Economic Area.

(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.

(5) In paragraph (e) of the definition of "data" in subsection (1), the reference to information "held" by a public authority shall be construed in accordance with section 3(2) of the Freedom of Information Act 2000.

(6) Where section 7 of the Freedom of Information Act 2000 prevents Parts I to V of that Act from applying to certain information held by a public authority, that information is not to be treated for the purposes of paragraph (e) of the definition of "data" in subsection (1) as held by a public authority.

§ 2 Sensitive personal data

In this Act "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 Union and Labour Relations (Consolidation) Act 1992,
- (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.

§: 3 The special purposes

In this Act "the special purposes" means any one or more of the following--

- (a) the purposes of journalism,
- (b) artistic purposes, and
- (c) literary purposes.

§ 4 The data protection principles

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

(2) Those principles are to be interpreted in accordance with Part II 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; and Schedule 4 sets out cases in which the eighth principle does not apply.

(4) Subject to section 27(1), it shall be 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.

§ 5 Application of Act

(1) Except as otherwise provided by or under section 54, this Act applies to a data controller in respect of any data only if--

(a) the data controller is established in the United Kingdom and the data are processed in the context of that establishment, or

(b) the data controller is established neither in the United Kingdom nor in any other EEA State but uses equipment in the United Kingdom for processing the data otherwise than for the purposes of transit through the United Kingdom.

(2) A data controller falling within subsection (1)(b) must nominate for the purposes of this Act a representative established in the United Kingdom.

(3) For the purposes of subsections (1) and (2), each of the following is to be treated as established in the United Kingdom--

- (a) an individual who is ordinarily resident in the United Kingdom,
- (b) a body incorporated under the law of, or of any part of, the United Kingdom,
- (c) a partnership or other unincorporated association formed under the law of any part of the United Kingdom, and

- (d) any person who does not fall within paragraph (a), (b) or (c) but maintains in the United Kingdom--
 - (i) an office, branch or agency through which he carries on any activity, or
 - (ii) a regular practice;
- and the reference to establishment in any other EEA State has a corresponding meaning.

§ 6 The Commissioner and the Tribunal

(1) For the purposes of this Act and of the Freedom of Information Act 2000 there shall be an officer known as

(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 a court is satisfied on the application of any person who has made a request under the foregoing provisions of this section that the data controller in question has failed to comply with the request in contravention of those provisions, the court may order him to comply with the request.

(10) In this section--

"prescribed" means prescribed by the Secretary of State by regulations;

"the prescribed maximum" means such amount as may be prescribed;

"the prescribed period" means forty 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).

(11) Different amounts or periods may be prescribed under this section in relation to different cases.

§ 8 Provisions supplementary to section 7

(1) The Secretary of State may by regulations provide that, in such cases as may be prescribed, a request for information under any provision of subsection (1) of section 7 is to be treated as extending also to information under other provisions of that subsection.

(2) The obligation imposed by section 7(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 7(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 7 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 7 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 7(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 7 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 7(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.

§ 10 Right to prevent processing likely to cause damage or distress

(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 Secretary of State by order.

(3) The data controller must within twenty-one 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 a 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 11(1) does not affect any other right conferred on him by this Part.

§ 11 Right to prevent processing for purposes of direct marketing

(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 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.

(2A) This section shall not apply in relation to the processing of such data as are mentioned in paragraph (1) of regulation 8 of the Telecommunications (Data Protection and Privacy) Regulations 1999 (processing of telecommunications billing data for certain marketing purposes) for the purposes mentioned in paragraph (2) of that regulation.

(3) In this section "direct marketing" means the communication (by whatever means) of any advertising or marketing material which is directed to particular individuals.

§ 12 Rights in relation to automated decision-taking

(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 twenty-one 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 twenty-one 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 condition in subsection (6) and the condition in subsection (7) are met, or

(b) which is made in such other circumstances as may be prescribed by the Secretary of State 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 a 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.

§ 13 Compensation for failure to comply with certain requirements

(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.

(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.

§ 14 Rectification, blocking, erasure and destruction

(1) If a 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 7 of Part II of Schedule 1 have been complied with, the 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 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 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 a 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 13, 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.

§ 15 Jurisdiction and procedure

(1) The jurisdiction conferred by sections 7 to 14 is exercisable by the High Court or a county court or, in Scotland, by the Court of Session or the sheriff.

(2) For the purpose of determining any question whether an applicant under subsection (9) of section 7 is entitled to the information which he seeks (including any question whether any relevant data are exempt from that section by virtue of Part IV) a court may require the information constituting any data processed by or on behalf of the data controller and any information as to the logic involved in any decision-taking as mentioned in section 7(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, in Scotland, recovery) or otherwise.

Part III Notification by Data Controllers

§16 Preliminary

(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,

(f) the names, or a description of, any countries or territories outside the European Economic Area to which the data controller directly or indirectly transfers, or intends or may wish directly or indirectly to transfer, the data,

- (ff) where the data controller is a public authority, a statement of that fact, and
- (g) in any case where--
 - (i) personal data are being, or are intended to be, processed in circumstances in which the prohibition in subsection (1) of section 17 is excluded by subsection (2) or (3) of that section, and
 - (ii) the notification does not extend to those data,

a statement of that fact.

(2) In this Part--

"fees regulations" means regulations made by the Secretary of State under section 18(5) or 19(4) or (7);

"notification regulations" means regulations made by the Secretary of State 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 United Kingdom.

§ 17 Prohibition on processing without registration

(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 Commissioner under section 19 (or is treated by notification regulations made by virtue of section 19(3) as being so included).

(2) Except where the processing is assessable processing for the purposes of section 22, subsection (1) does not apply in relation to personal data consisting of information which falls neither within paragraph (a) of the definition of "data" in section 1(1) nor within paragraph (b) of that definition.

(3) If it appears to the Secretary of State 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.

§ 18 Notification by data controllers

(1) Any data controller who wishes to be included in the register maintained under section 19 shall give a notification to the Commissioner under this section.

(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.

(3) Notification regulations made by virtue of subsection (2) may provide for the determination by the 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 16(1)(c), (d), (e) and (f) and subsection (2)(b).

(4) Notification regulations may make provision as to the giving of notification--

(a) by partnerships, or

(b) in other cases where two 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 19(4) to be refunded in prescribed circumstances.

§ 19 Register of notifications

(1) The Commissioner shall--

(a) maintain a register of persons who have given notification under section 18, 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.

(2) Each entry in the register shall consist of--

(a) the registrable particulars notified under section 18 or, as the case requires, those particulars as amended in pursuance of section 20(4), and

(b) such other information as the Commissioner may be authorised or required by notification regulations to include in the register.

(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 17 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 twelve months or such other period as may be prescribed by notification regulations; and different periods may be prescribed in relation to different cases.

(6) The 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.

(7) The 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.

§ 20 Duty to notify changes

(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 19 a duty to notify to the 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 18(2)(b) as may be prescribed.

(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 19 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 Commissioner is provided with a general description of measures currently being taken as mentioned in section 18(2)(b).

(3) Subsection (3) of section 18 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 subsection (2) of that section.

(4) On receiving any notification under notification regulations made by virtue of subsection (1), the Commissioner shall make such amendments of the relevant entry in the register maintained under section 19 as are necessary to take account of the notification.

§ 21 Offences

(1) If section 17(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 20(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.

Part IV Exemptions

§ 28 National security

(1) Personal data are exempt from any of the provisions of--

(a) the data protection principles,

(b) Parts II, III and V, and

(c) section 55,

if the exemption from that provision is required for the purpose of safeguarding national security.

§ 29 Crime and taxation

(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 (except to the extent to which it requires compliance with the conditions in Schedules 2 and 3) and section 7 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.

§ 30 Health, education and social work

(1) The Secretary of State 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.

§ 32 Journalism, literature and art

(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,
- (b) section 7,
- (c) section 10,
- (d) section 12,
- (dd) section 12A, and
- (e) section 14(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 Secretary of State 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 7(9), 10(4), 12(8), 12A(3) or 14 or by virtue of section 13 the data controller claims, or it appears to the 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 twenty-four 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 Commissioner under section 45 with respect to the data in question takes effect, or
- (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.

§ 33 Research, history and statistics

(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, 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, be kept indefinitely.

(4) Personal data which are processed only for research purposes are exempt from section 7 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).

§ 34 Information available to the public by or under enactment

Personal data are exempt from--

(a) the subject information provisions,

(b) the fourth data protection principle and [sections 12A and 14(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 enactment [other than an enactment contained in the Freedom of Information Act 2000] 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.

§ 35 Disclosures required by law or made in connection with legal proceedings etc

(1) Personal data are exempt from the non-disclosure provisions where the disclosure is required by or under any enactment, 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.

§ 35A Parliamentary privilege

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 7, and
- (d) sections 10 and 14(1) to (3),

if the exemption is required for the purpose of avoiding an infringement of the privileges of either House of Parliament.

§ 36 Domestic purposes

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 II and III.

Part V Enforcement

§ 40 Enforcement notices

(1) If the Commissioner is satisfied that a data controller has contravened or is contravening any of the data protection principles, the Commissioner may serve him with a notice (in this Act referred to as "an enforcement notice") requiring him, for complying with the principle or principles in question, to do either or both of the following--

(a) to take within such time as may be specified in the notice, or to refrain from taking after such time as may be so specified, such steps as are so specified, or

(b) to refrain from processing any personal data, or any personal data of a description specified in the notice, or to refrain from processing them for a purpose so specified or in a manner so specified, after such time as may be so specified.

(2) In deciding whether to serve an enforcement notice, the Commissioner shall consider whether the contravention has caused or is likely to cause any person damage or distress.

(3) An enforcement notice in respect of a contravention of the fourth data protection principle which requires the data controller to rectify, block, erase or destroy any inaccurate data may also require the data controller to rectify, block, erase or destroy any other data held by him and containing an expression of opinion which appears to the Commissioner to be based on the inaccurate data.

(4) An enforcement notice in respect of a contravention of the fourth data protection principle, in the case of data which accurately record information received or obtained by the data controller from the data subject or a third party, may require the data controller either--

(a) to rectify, block, erase or destroy any inaccurate data and any other data held by him and containing an expression of opinion as mentioned in subsection (3), or

(b) to take such steps as are specified in the notice for securing compliance with the requirements specified in paragraph 7 of Part II of Schedule 1 and, if the Commissioner thinks fit, for supplementing the data with such statement of the true facts relating to the matters dealt with by the data as the Commissioner may approve.

(5) Where--

(a) an enforcement notice requires the data controller to rectify, block, erase or destroy any personal data, or

(b) the Commissioner is satisfied that personal data which have been rectified, blocked, erased or destroyed had been processed in contravention of any of the data protection principles, an enforcement notice may, if reasonably practicable, require the data controller to notify third parties to whom the data have been disclosed of the rectification, blocking, erasure or destruction; and in determining whether it is reasonably practicable to require such notification regard shall be had, in particular, to the number of persons who would have to be notified.

(6) An enforcement notice must contain--

(a) a statement of the data protection principle or principles which the Commissioner is satisfied have been or are being contravened and his reasons for reaching that conclusion, and

(b) particulars of the rights of appeal conferred by section 48.

(7) Subject to subsection (8), an enforcement notice must not require any of the provisions of the notice to be complied with before the end of the period within which an appeal can be brought against the notice and, if such an appeal is brought, the notice need not be complied with pending the determination or withdrawal of the appeal.

(8) If by reason of special circumstances the Commissioner considers that an enforcement notice should be complied with as a matter of urgency he may include in the notice a statement to that effect and a statement of his reasons for reaching that conclusion; and in that event subsection (7) shall not apply but the notice must not require the provisions of the notice to be complied with before the end of the period of seven days beginning with the day on which the notice is served.

(9) Notification regulations (as defined by section 16(2)) may make provision as to the effect of the service of an enforcement notice on any entry in the register maintained under section 19 which relates to the person on whom the notice is served.

(10) This section has effect subject to section 46(1).

Part VI Miscellaneous and General: Functions of Commissioner

§ 51 General duties of Commissioner

(1) It shall be the duty of the 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.

(2) The 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.

(3) Where--

- (a) the Secretary of State so directs by order, or
- (b) the Commissioner considers it appropriate to do so,

the 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.

(4) The 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.

(5) An order under subsection (3) 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 Commissioner shall arrange for the dissemination in such form and manner as he considers appropriate of--

(a) any Community finding as defined by paragraph 15(2) of Part II of Schedule 1,

(b) any decision of the European Commission, under the procedure provided for in Article 31(2) of the Data Protection Directive, which is made for the purposes of Article 26(3) or (4) of the Directive, and

(c) 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 European Economic Area.

(7) The 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.

(8) The Commissioner may charge such sums as he may with the consent of the Secretary of State determine for any services provided by the Commissioner by virtue of this Part.

(9) In this section--

"good practice" means such practice in the processing of personal data as appears to the 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;

"trade association" includes any body representing data controllers.

Sch 1, Part I The Principles

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

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.

3

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

4

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

5

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

6

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

7

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

8

Personal data shall not be transferred to a country or territory outside the European Economic Area 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.

Sch 1, Part II Interpretation of the Principles in Part I

The first principle

1

(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 2, 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 enactment to supply it, or
- (b) is required to supply it by or under any enactment or by any convention or other instrument imposing an international obligation on the United Kingdom.

2

(1) Subject to paragraph 3, 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.

3

(1) Paragraph 2(1)(b) does not apply where either of the primary conditions in sub-paragraph (2), together with such further conditions as may be prescribed by the Secretary of State by order, 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.

4

(1) Personal data which contain a general identifier falling within a description prescribed by the Secretary of State 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

5

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 2 by the data controller to the data subject, or

(b) in a notification given to the Commissioner under Part III of this Act.

6

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

7

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

8

A person is to be regarded as contravening the sixth principle if, but only if--

(a) he contravenes section 7 by failing to supply information in accordance with that section,

(b) he contravenes section 10 by failing to comply with a notice given under subsection (1) of that section to the extent that the notice is justified or by failing to give a notice under subsection (3) of that section,

(c) he contravenes section 11 by failing to comply with a notice given under subsection (1) of that section,
(d) he contravenes section 12 by failing to comply with a notice given under subsection (1) or (2)(b) of that section or by failing to give a notification under subsection (2)(a) of that section or a notice under subsection (3) of that section or

(e) he contravenes section 12A by failing to comply with a notice given under subsection (1) of that section to the extent that the notice is justified.

The seventh principle

9

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.

10

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

11

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.

12

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

13

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.

14

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 Secretary of State may by order provide.

15

(1) 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.

(2) In sub-paragraph (1) "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.

Sch 2 Conditions Relevant for Purposes of the First Principle: Processing of any Personal Data (s 4(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,
 - (aa) for the exercise of any functions of either House of Parliament,
 - (b) for the exercise of any functions conferred on any person by or under any enactment,
 - (c) for the exercise of any functions of the Crown, a Minister of the Crown or a government department, or
 - (d) 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 Secretary of State may by order specify particular circumstances in which this condition is, or is not, to be taken to be satisfied.

Sch 3 Conditions Relevant for Purposes of the First Principle: Processing of Sensitive Personal Data (s 4(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 Secretary of State 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 subparagraph (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,
 - (aa) for the exercise of any functions of either House of Parliament,
 - (b) for the exercise of any functions conferred on any person by or under an enactment, or
 - (c) for the exercise of any functions of the Crown, a Minister of the Crown or a government department.
 - (2) The Secretary of State 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 subparagraph (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 preventative 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 Secretary of State 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 The personal data are processed in circumstances specified in an order made by the Secretary of State for the purposes of this paragraph.

Sch 4 Cases where the Eighth Principle does not Apply (s 4(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 Secretary of State may by order specify--

(a) circumstances in which a transfer is to be taken for the purposes of subparagraph (1) to be necessary for reasons of substantial public interest, and

(b) circumstances in which a transfer which is not required by or under an enactment 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 Commissioner as ensuring adequate safeguards for the rights and freedoms of data subjects.

9

The transfer has been authorised by the Commissioner as being made in such a manner as to ensure adequate safeguards for the rights and freedoms of data subjects.