

Data Protection Act 2018

Received Royal Assent on 23rd May 2018, but only a limited number of sections came into effect on this date. These are listed below:

1 Overview

- (1) This Act makes provision about the processing of personal data.
- (2) Most processing of personal data is subject to the GDPR.
- (3) Part 2 supplements the GDPR (see Chapter 2) and applies a broadly equivalent regime to certain types of processing to which the GDPR does not apply (see Chapter 3).
- (4) Part 3 makes provision about the processing of personal data by competent authorities for law enforcement purposes and implements the Law Enforcement Directive.
- (5) Part 4 makes provision about the processing of personal data by the intelligence services.
- (6) Part 5 makes provision about the Information Commissioner.
- (7) Part 6 makes provision about the enforcement of the data protection legislation.
- (8) Part 7 makes supplementary provision, including provision about the application of this Act to the Crown and to Parliament.

3 Terms relating to the processing of personal data

- (1) This section defines some terms used in this Act.
- (2) “Personal data” means any information relating to an identified or identifiable living individual (subject to subsection (14)(c)).
- (3) “Identifiable living individual” means a living individual who can be identified, directly or indirectly, in particular by reference to-
 - (a) an identifier such as a name, an identification number, location data or an online identifier, or
 - (b) one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
- (4) “Processing”, in relation to information, means an operation or set of operations which is performed on information, or on sets of information, such as—
 - (a) collection, recording, organisation, structuring or storage,
 - (b) adaptation or alteration,
 - (c) retrieval, consultation or use,
 - (d) disclosure by transmission, dissemination or otherwise making available,
 - (e) alignment or combination, or
 - (f) restriction, erasure or destruction,(subject to subsection (14)(c) and sections 5(7), 29(2) and 82(3), which make provision about references to processing in the different Parts of this Act).
- (5) “Data subject” means the identified or identifiable living individual to whom personal data relates.

- (6) “Controller” and “processor”, in relation to the processing of personal data to which Chapter 2 or 3 of Part 2, Part 3 or Part 4 applies, have the same meaning as in that Chapter or Part (see sections 5, 6, 32 and 83 and see also subsection (14)(d)).
- (7) “Filing system” means any structured set of personal data which is accessible according to specific criteria, whether held by automated means or manually and whether centralised, decentralised or dispersed on a functional or geographical basis.
- (8) “The Commissioner” means the Information Commissioner (see section 114).
- (9) “The data protection legislation” means—
 - (a) the GDPR,
 - (b) the applied GDPR,
 - (c) this Act,
 - (d) regulations made under this Act, and
 - (e) regulations made under section 2(2) of the European Communities Act 1972 which relate to the GDPR or the Law Enforcement Directive.
- (10) “The GDPR” means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation).
- (11) “The applied GDPR” means the GDPR as applied by Chapter 3 of Part 2.
- (12) “The Law Enforcement Directive” means Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA.
- (13) “The Data Protection Convention” means the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data which was opened for signature on 28 January 1981, as amended up to the day on which this Act is passed.
- (14) In Parts 5 to 7, except where otherwise provided—
 - (a) references to the GDPR are to the GDPR read with Chapter 2 of Part 2 and include the applied GDPR read with Chapter 3 of Part 2;
 - (b) references to Chapter 2 of Part 2, or to a provision of that Chapter, include that Chapter or that provision as applied by Chapter 3 of Part 2;
 - (c) references to personal data, and the processing of personal data, are to personal data and processing to which Chapter 2 or 3 of Part 2, Part 3 or Part 4 applies;
 - (d) references to a controller or processor are to a controller or processor in relation to the processing of personal data to which Chapter 2 or 3 of Part 2, Part 3 or Part 4 applies.
- (15) There is an index of defined expressions in section 206.

182 Regulations and consultation

- (1) Regulations under this Act are to be made by statutory instrument.
- (2) Before making regulations under this Act, the Secretary of State must consult—
 - (a) the Commissioner, and
 - (b) such other persons as the Secretary of State considers appropriate.
- (3) Subsection (2) does not apply to regulations made under—
 - (a) section 23;

- (b) section 30;
 - (c) section 211;
 - (d) section 212;
 - (e) section 213;
 - (f) paragraph 15 of Schedule 2.
- (4) Subsection (2) does not apply to regulations made under section 18 where the Secretary of State has made an urgency statement in respect of them.
- (5) Regulations under this Act may—
 - (a) make different provision for different purposes;
 - (b) include consequential, supplementary, incidental, transitional, transitory or saving provision.
- (6) Where regulations under this Act are subject to “the negative resolution procedure” the statutory instrument containing the regulations is subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) Where regulations under this Act are subject to “the affirmative resolution procedure” the regulations may not be made unless a draft of the statutory instrument containing them has been laid before Parliament and approved by a resolution of each House of Parliament.
- (8) Where regulations under this Act are subject to “the made affirmative resolution procedure”—
 - (a) the statutory instrument containing the regulations must be laid before Parliament after being made, together with the urgency statement in respect of them, and
 - (b) the regulations cease to have effect at the end of the period of 120 days beginning with the day on which the instrument is made, unless within that period the instrument is approved by a resolution of each House of Parliament.
- (9) In calculating the period of 120 days, no account is to be taken of any time during which—
 - (a) Parliament is dissolved or prorogued, or
 - (b) both Houses of Parliament are adjourned for more than 4 days.
- (10) Where regulations cease to have effect as a result of subsection (8), that does not—
 - (a) affect anything previously done under the regulations, or
 - (b) prevent the making of new regulations.
- (11) Any provision that may be included in regulations under this Act subject to the negative resolution procedure may be made by regulations subject to the affirmative resolution procedure or the made affirmative resolution procedure.
- (12) If a draft of a statutory instrument containing regulations under section 7 would, apart from this subsection, be treated for the purposes of the standing orders of either House of Parliament as a hybrid instrument, it is to proceed in that House as if it were not such an instrument.
- (13) A requirement under a provision of this Act to consult may be satisfied by consultation before, as well as by consultation after, the provision comes into force.
- (14) In this section, “urgency statement” has the meaning given in section 18(4).

204 Meaning of “health professional” and “social work professional”

205 General interpretation

206 Index of defined expressions

209 Application to the Crown

210 Application to Parliament

213(2) Transitional provisions

- (2) The Secretary of State may by regulations make transitional, transitory or saving provision in connection with the coming into force of any provision of this Act or with the GDPR beginning to apply, including provision amending or repealing a provision of Schedule 20.

214 Extent

215 Short title

This Act may be cited as the Data Protection Act 2018.