

Status: Point in time view as at 25/05/2018.

Changes to legislation: Data Protection Act 2018, Cross Heading: Environmental Information (Scotland) Regulations 2004 (S.S.I. 2004/520) is up to date with all changes known to be in force on or before 05 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

SCHEDULES

SCHEDULE 19

MINOR AND CONSEQUENTIAL AMENDMENTS

PART 2

AMENDMENTS OF OTHER LEGISLATION

Environmental Information (Scotland) Regulations 2004 (S.S.I. 2004/520)

310 The Environmental Information (Scotland) Regulations 2004 are amended as follows.

Commencement Information

II Sch. 19 para. 310 in force at 25.5.2018 by S.I. 2018/625, reg. 2(1)(g)

311 (1) Regulation 2 (interpretation) is amended as follows.

(2) In paragraph (1), at the appropriate places, insert—

““the data protection principles” means the principles set out in—

- (a) Article 5(1) of the GDPR, and
- (b) section 34(1) of the Data Protection Act 2018;”;

““data subject” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act);”;

““the GDPR” and references to a provision of Chapter 2 of Part 2 of the Data Protection Act 2018 have the same meaning as in Parts 5 to 7 of that Act (see section 3(10), (11) and (14) of that Act);”;

““personal data” has the same meaning as in Parts 5 to 7 of the Data Protection Act 2018 (see section 3(2) and (14) of that Act);”.

(3) For paragraph (3) substitute—

“(3A) In these Regulations, references to the Data Protection Act 2018 have effect as if in Chapter 3 of Part 2 of that Act (other general processing)—

- (a) the references to an FOI public authority were references to a Scottish public authority as defined in these Regulations, and
- (b) the references to personal data held by such an authority were to be interpreted in accordance with paragraph (2) of this regulation.”

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Commencement Information

I2 Sch. 19 para. 311 in force at 25.5.2018 by S.I. 2018/625, reg. 2(1)(g)

312 (1) Regulation 11 (personal data) is amended as follows.

(2) For paragraph (2) substitute—

“(2) To the extent that environmental information requested includes personal data of which the applicant is not the data subject, a Scottish public authority must not make the personal data available if—

- (a) the first condition set out in paragraph (3A) is satisfied, or
- (b) the second or third condition set out in paragraph (3B) or (4A) is satisfied and, in all the circumstances of the case, the public interest in making the information available is outweighed by that in not doing so.”

(3) For paragraph (3) substitute—

“(3A) The first condition is that the disclosure of the information to a member of the public otherwise than under these Regulations—

- (a) would contravene any of the data protection principles, or
- (b) would do so if the exemptions in section 24(1) of the Data Protection Act 2018 (manual unstructured data held by public authorities) were disregarded.

(3B) The second condition is that the disclosure of the information to a member of the public otherwise than under these Regulations would contravene Article 21 of the GDPR (general processing: right to object to processing).”

(4) For paragraph (4) substitute—

“(4A) The third condition is that any of the following applies to the information—

- (a) it is exempt from the obligation under Article 15(1) of the GDPR (general processing: right of access by the data subject) to provide access to, and information about, personal data by virtue of provision made by or under section 15, 16 or 26 of, or Schedule 2, 3 or 4 to, the Data Protection Act 2018, or
- (b) on a request under section 45(1)(b) of that Act (law enforcement processing: right of access by the data subject), the information would be withheld in reliance on subsection (4) of that section.”

(5) Omit paragraph (5).

(6) After paragraph (6) insert—

“(7) In determining, for the purposes of this regulation, whether the lawfulness principle in Article 5(1)(a) of the GDPR would be contravened by the disclosure of information, Article 6(1) of the GDPR (lawfulness) is to be read as if the second sub-paragraph (disapplying the legitimate interests gateway in relation to public authorities) were omitted.”

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Commencement Information

I3 Sch. 19 para. 312 in force at 25.5.2018 by S.I. 2018/625, **reg. 2(1)(g)**

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