
DRAFT STATUTORY INSTRUMENTS

2019 No.

**The Data Protection, Privacy and Electronic Communications
(Amendments etc) (EU Exit) Regulations 2019**

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019.

(2) Subject to paragraph (3), they come into force on exit day.

(3) Regulations 7 and 8 and Schedule 4 come into force on 29th March 2018.

(4) An amendment, repeal or revocation made by these Regulations has the same extent in the United Kingdom as the provision to which it relates.

Interpretation

2. In these Regulations—

“the 2018 Act” means the Data Protection Act 2018;

“the UK GDPR” means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27th 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) as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018.

Amendment of the General Data Protection Regulation

3. Schedule 1 amends the UK GDPR.

Amendment of the Data Protection Act 2018

4. Schedule 2 amends the 2018 Act.

GDPR merger modifications

5.—(1) Schedules 1 and 2 include modifications (“the GDPR merger modifications”) that merge the provisions relating to the processing of personal data that, immediately before exit day, are found in the EU GDPR and the applied GDPR, read with the 2018 Act.

(2) Retained case law and retained general principles of EU law falling within paragraph (3) are not, by virtue of the GDPR merger modifications, to be treated as relevant to the UK GDPR or the 2018 Act as they apply to applied GDPR processing on and after exit day.

(3) Retained case law and retained general principles of EU law fall within this paragraph so far as they are, or are derived from, principles or decisions that are not relevant to any of the following immediately before exit day—

(a) the applied GDPR,

(b) the applied Chapter 2, or

(c) Parts 5 to 7 of the 2018 Act so far as they apply to applied GDPR processing, having regard (among other things) to the limits of EU competence immediately before exit day.

(4) In this regulation—

“the applied Chapter 2” means Chapter 2 of Part 2 of the 2018 Act as applied by Chapter 3 of that Part immediately before exit day (see section 22 of that Act);

“the applied GDPR” means the EU GDPR as applied by Chapter 3 of Part 2 of the 2018 Act as it has effect immediately before exit day (see section 22 of that Act);

“applied GDPR processing” means the processing of personal data to which the applied GDPR applied immediately before exit day (see section 21 of the 2018 Act);

“the EU GDPR” means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27th 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) as it has effect in EU law immediately before exit day;

“retained case law” and “retained general principles of EU law” have the same meaning as in the European Union (Withdrawal) Act 2018 (see section 20(1) of that Act).

Consequential amendments of other legislation

6. In Schedule 3—

- (a) Part 1 revokes certain retained EU law;
- (b) Part 2 contains amendments of primary legislation (as defined in section 211(7) of the 2018 Act) that are consequential on Schedules 1 and 2;
- (c) Part 3 contains amendments of other legislation that are consequential on those Schedules;
- (d) Part 4 contains modifications of legislation that are consequential on those Schedules;
- (e) Part 5 contains supplementary provision.

Amendments consequential on provisions of the 2018 Act

7. Schedule 4 contains amendments consequential on provisions of the 2018 Act.

Amendment of the Privacy and Electronic Communications Regulations 2003

8.—(1) Regulation 2 of the Privacy and Electronic Communications (EC Directive) Regulations 2003(1) is amended as follows.

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

““consent” by a user or subscriber corresponds to the data subject’s consent in the GDPR (as defined in section 3(10) of the Data Protection Act 2018);”(2).

(3) Omit paragraph (3).

(1) S.I. 2003/2426.

(2) These regulations make a further amendment to this provision (see Sch. 3, para. 3).

Draft Legislation: This is a draft item of legislation and has not yet been made as a UK Statutory Instrument. This draft has been replaced by a new draft, The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 ISBN 978-0-11-117830-0

Date

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