



# Data Protection Act 1998

## 1998 CHAPTER 29

### 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,<sup>F1</sup> . . .
- (d) does not fall within paragraph (a), (b) or (c) but forms part of an accessible record as defined by section 68; [<sup>F2</sup>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,

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*Status: Point in time view as at 01/09/2013. This version of this provision has been superseded.*

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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;

[<sup>F3</sup>“public authority” means a public authority as defined by the Freedom of Information Act 2000 or a Scottish public authority as defined by the Freedom of Information (Scotland) Act 2002;]

“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.
- [<sup>F4</sup>(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 [<sup>F5</sup>or section 3(2), (4) and (5) of the Freedom of Information (Scotland) Act 2002.]
- (6) Where
  - (a) section 7 of the Freedom of Information Act 2000 prevents Parts I to V of that Act [<sup>F6</sup> or]

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[<sup>F6</sup>(b) section 7(1) of the Freedom of Information (Scotland) Act 2002 prevents 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.

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#### Textual Amendments

- F1** In s. 1(1) in definition of "data" word repealed (1.1.2005) by 2000 c. 36, ss. 68(2)(a), 86, 87(3), Sch. 8 Pt. III (with ss. 56, 78); S.I. 2004/1909, **art. 2**; S.I. 2004/3122, **art. 2**
- F2** In s. 1(1) in definition of "data" paragraph (e) and preceding word inserted (1.1.2005) by 2000 c. 36, ss. 68(2)(a), 87(3) (with ss. 56, 78); S.I. 2004/1909, **art. 2**; S.I. 2004/3122, **art. 2**
- F3** In s. 1(1) definition of "public authority" inserted (1.1.2005) by 2000 c. 36, ss. 68(2)(b), 87(3) (with ss. 56, 78); S.I. 2004/1909, **art. 2**; S.I. 2004/3122, **art. 2**; and this same definition substituted (1.1.2005) by The Freedom of Information (Scotland) Act 2002 (Consequential Modifications) Order 2004 (S.I. 2004/3089), **art. 2(2)(a)**
- F4** S. 1(5)(6) inserted (1.1.2005) by 2000 c. 36, ss. 68(3), 87(3) (with ss. 56, 78); S.I. 2004/1909, **art. 2**; S.I. 2004/3122, **art. 2**
- F5** Words in s. 1(5) inserted (1.1.2005) by The Freedom of Information (Scotland) Act 2002 (Consequential Modifications) Order 2004 (S.I. 2004/3089), **art. 2(2)(b)**
- F6** S. 1(6)(b) and preceding word inserted (1.1.2005) by The Freedom of Information (Scotland) Act 2002 (Consequential Modifications) Order 2004 (S.I. 2004/3089), **art. 2(2)(c)**

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