Changes to Legislation: as of 11 November 2026, this Act is up to date with all changes known to be in force.

Number 25 *of* 1988

DATA PROTECTION ACT 1988

REVISED

Updated to 10 November 2025

This Revised Act is an administrative consolidation of the *Data Protection Act 1988.* It is prepared by the Law Reform Commission in accordance with its function under the *Law Reform Commission Act 1975* (3/1975) to keep the law under review and to undertake revision and consolidation of statute law.

All Acts up to and including the *Electricity (Supply) (Amendment) Act 2025* (12/2025), enacted 20 November 2025, and all statutory instruments up to and including the *Data Protection Act 1988 (Section 2B) Regulations 2025* (S.I. No. 537 of 2025), made 10 November 2025, were considered in the preparation of this Revised Act.

Disclaimer: While every care has been taken in the preparation of this Revised Act, the Law Reform Commission can assume no responsibility for and give no guarantees, undertakings or warranties concerning the accuracy, completeness or up to date nature of the information provided and does not accept any liability whatsoever arising from any errors or omissions. Please notify any errors, omissions and comments by email to revisedacts@lawreform.ie.

Number 25 *of* 1988

DATA PROTECTION ACT 1988

REVISED

Updated to 10 November 2025

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FIRST SCHEDULE

CONVENTION FOR THE PROTECTION OF INDIVIDUALS WITH REGARD TO AUTOMATIC PROCESSING OF PERSONAL DATA DONE AT STRASBOURG ON THE 28TH DAY OF JANUARY, 1981

SECOND SCHEDULE

THE DATA PROTECTION COMMISSIONER

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Petty Sessions (Ireland) Act, 1851	1851, c. 93
Prison Act, 1970	1970, No. 11
Public Offices Fees Act, 1879	1879, c. 58
Statutory Instruments Act, 1947	1947, No. 44

Number 25 *of* 1988

DATA PROTECTION ACT 1988

REVISED

Updated to 10 November 2025

AN ACT TO GIVE EFFECT TO THE CONVENTION FOR THE PROTECTION OF INDIVIDUALS WITH REGARD TO AUTOMATIC PROCESSING OF PERSONAL DATA DONE AT STRASBOURG ON THE 28TH DAY OF JANUARY, 1981, AND FOR THAT PURPOSE TO REGULATE IN ACCORDANCE WITH ITS PROVISIONS THE COLLECTION, PROCESSING, KEEPING, USE AND DISCLOSURE OF CERTAIN INFORMATION RELATING TO INDIVIDUALS THAT IS PROCESSED AUTOMATICALLY. [13*th July*, 1988]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

Annotations

Modifications (not altering text):

C1 Application of collectively cited *Data Protection Acts* restricted (11.03.2022) by *European Union (Good Agricultural Practice for Protection of Waters) Regulations 2022* (S.I. No. 113 of 2022), reg. 31, in effect as per reg. 1(2).

Compliance with Data Protection Acts

31. The provision of information by a local authority, the Agency or the Minister for Agriculture, Food and the Marine in accordance with Article 27, 29 or 30 of these Regulations shall not be a breach of the Data Protection Acts, 1988, 2003 and 2018.

C2 Application of collectively cited *Data Protection Acts 1988 and 2003* extended with any necessary modifications (1.05.2020) by *Criminal Justice (Miscellaneous Provisions) Act 2009* (28/2009), s. 23(2), S.I. No. 152 of 2020.

Data Protection.

23.— (1) The Data Protection Commissioner is hereby designated as the national supervisory authority for the purposes of Article 60 of the Council Decision and Article 114 of the Schengen Convention.

(2) The Data Protection Acts 1988 and 2003 shall apply and have effect with any necessary modification to the collection, processing, keeping, use and disclosure of personal data for the purposes of the operation of the Council Decision and the Schengen Convention.

...

C3 Application of collectively cited *Data Protection Acts* restricted (2.09.2019) by *Childcare Support Act 2018* (11/2019), s. 24(1), S.I. No. 348 of 2019.

Processing of personal data

24. (1) Notwithstanding anything contained in the Data Protection Acts 1988 and 2003 or any other enactment, the data controller of a person listed in *Schedule 3* or of a person prescribed for the time being under *subsection (2)* (in this subsection called "the first named person") shall, on

being requested to do so by the data controller of a person so listed or prescribed, process personal data kept by the first named person, or information extracted from such data, to the data controller of the other person so listed or prescribed for the time being, if the data controller of the first named person is satisfied that it will be used for a relevant purpose only.

(2) If a person (not being a person listed in *Schedule 3*, or prescribed for the time being under this subsection) keeps personal data that is relevant to any of the functions of the scheme administrator, and the Minister considers that such supply by the person not so listed or prescribed to a person so listed or prescribed will further the attainment of a relevant purpose, then the Minister, following consultation with the Data Protection Commissioner, may prescribe that person for the purposes of *subsection (1)*.

(3) Any processing of personal data for the purposes of *subsection (1)* shall go no further than is reasonably necessary for the attainment of the relevant purpose.

(4) A data controller may refuse a request under *subsection (1)* if he or she is satisfied that it would be unwarranted in any particular case by reason of prejudice to the fundamental rights and freedoms or legitimate interests of the data subject.

(5) The Minister may, following consultation with the Data Protection Commissioner, make regulations specifying particular circumstances in which *subsection (3)* is, or is not, to be taken as satisfied.

...

C4 Application of Act extended (28.05.2018) by *Vehicle Registration Data (Automated Searching and Exchange) Act 2018* (5/2018), s. 8, S.I. No. 178 of 2018.

Application of Data Protection Act 1988

8. The Data Protection Act 1988, shall apply to the processing of personal data supplied or received under this Act and, for the purposes of the application of the Data Protection Act 1988, references in it to that Act or the provisions of that Act shall, unless the context otherwise requires, be construed as including references to this Act or the provisions of this Act.

C5 Application of Act restricted (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 8, S.I. No. 174 of 2018.

Application of Data Protection Act 1988

8. (1) Subject to this section, the Act of 1988 shall, on and from the date on which this section comes into operation, cease to apply to the processing of personal data (within the meaning of that Act) other than—

(*a*) the processing of such data for the purposes of safeguarding the security of the State, the defence of the State or the international relations of the State, or

(*b*) the processing of such data under the Criminal Justice (Forensic Evidence and DNA Database System) Act 2014 or the Vehicle Registration Data (Automated Searching and Exchange) Act 2018 to the extent that the Act of 1988 is applied in those Acts.

(2) The Act of 1988 shall apply to—

(*a*) a complaint by an individual under section 10 of that Act made before the commencement of this section, and

(*b*) a contravention of that Act that occurred before such commencement.

(3) An investigation under section 10 of the Act of 1988 that was begun but not completed before the commencement of this section shall be completed in accordance with that Act and that Act shall apply to such an investigation.

C6 Reference to "Commissioner" construed (25.05.2018, establishment day) by *Data Protection Act 2018* (7/2018), s. 14(3)), subs. (4) and S.I. No. 175 of 2018.

Transfer of functions of Data Protection Commissioner to Commission

...

(3) A reference in the Act of 1988 (other than in *section 1(3)(c)(iii)* in so far as it refers to the Commissioner of the Garda Síochána) to the Commissioner shall be construed as a reference to the Commission.

(4) This section shall come into operation on the establishment day.

C7 Application of collectively cited *Data Protection Acts 1988 and 2003* extended with any necessary modifications (31.12.2016) by *Customs Act 2015* (18/2015), s. 41(4), (5), S.I. No. 611 of 2016.

Naples II Convention and CIS Decision

41. ...

(4) For the purposes of this Act, the Naples II Convention and the CIS Decision, the Data Protection Acts 1988 and 2003 shall apply and have effect, with any necessary modifications, to the collection, processing, keeping, use or disclosure of personal data.

(5) Without prejudice to the generality of *subsection (4)*, for the purposes of—

(*a*) Article 30 of the CIS Decision, and

(*b*) Article 25 of the Naples II Convention,

section 7 of the Data Protection Act 1988 shall apply as regards the liability of the State for injury caused to a person through the use of the CIS in the State, and for injury caused to a person through the processing of data communicated in the State, respectively.

...

C8 Application of collectively cited *Data Protection Acts 1988 and 2003* restricted (28.01.2014) by *European Union (Good Agricultural Practice for Protection of Waters) Regulations 2014* (S.I. No. 31 of 2014), reg. 31.

Compliance with Data Protection Acts

31. The provision of information by a local authority, the Agency or the Minister for Agriculture, Food and the Marine in accordance with Article 27, 29 or 30 of these Regulations shall not be a breach of the Data Protection Acts, 1988 and 2003.

C9 Application of Act restricted by *Personal Insolvency Act 2012* (44/2012), s. 21A, as inserted (31.07.2013) by *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013), s. 47, S.I. No. 286 of 2013.

Retention of information by Insolvency Service

21A. Notwithstanding the Data Protection Act 1988, the Insolvency Service shall retain such information or data obtained by it under this Act as is necessary for the performance of its functions under this Act.

C10 Application of collectively cited *Data Protection Acts 1988 and 2003* restricted (23.03.2010) by *European Communities (Data Collection in the Fisheries Sector) Regulations 2010* (S.I. No. 132 of 2010), reg. 7.

Obligations on certain public bodies

7. Notwithstanding the Data Protection Acts 1998 and 2003, the Sea Fisheries Protection Authority, the Marine Institute, Bord Iascaigh Mhara and the Minister shall make available to a data collection officer such data relating to activities referred to in Regulations 3, 4 or 5 as is available.

...

C11 Application of collectively cited *Data Protection Acts 1988 and 2003* restricted (21.12.2009) by *National Asset Management Agency Act 2009* (34/2009), s. 201, S.I. No. 545 of 2009.

Operation of Data Protection Acts 1988 and 2003.

201.— To avoid doubt, an obligation on a credit institution or any other person under this Act to disclose information to NAMA, a NAMA group entity or the NTMA extends to personal information, within the meaning of the Data Protection Acts 1988 and 2003.

...

C12 Application of Act restricted and application of Act confirmed (1.09.2008) by *Criminal Justice (Mutual Assistance) Act 2008* (7/2008), ss. 94, 107 and sch. 14, S.I. No. 338 of 2008.

Application in State of Ireland - US Treaty.

94.—(1) The Ireland - US Treaty has the force of law in its application in relation to the State.

...

(5) Article 7, in its application in relation to the use of personal data contained in evidence or information obtained under the Treaty by a person in the State, is without prejudice to the application of section 7 (duty of care owed by data controllers and data processors) of the Data Protection Act 1988 in respect of the use of such data.

(6) The Data Protection Acts 1988 and 2003 apply in relation to such data in respects other than those related to their use.

...

Personal data protection.

107.— (1) The provisions of the relevant international instrument have effect in respect of the use of personal data communicated to or otherwise obtained by a person in the State under the instrument.

2) Subsection (1) is without prejudice to the application of section 7 (duty of care owed by data controllers and data processors) of the Data Protection Act 1988 in respect of the use of such data.

3) The Data Protection Acts 1988 and 2003 apply in relation to such data in respects other than those relating to their use.

...

SCHEDULE 14

Text of Ireland/US Treaty of 18 January 2001, as applied by Instrument of 14 July 2005

...

Article 7

1. The Requesting Party may use any evidence or information obtained from the Requested Party:

(*a*) for the purpose of its criminal investigations and proceedings;

(*b*) for preventing an immediate and serious threat to its public security;

(*c*) in its non-criminal judicial or administrative proceedings directly related to investigations or proceedings:

(i) set forth in subparagraph (a); or

(ii) for which mutual legal assistance was rendered under Article 1 (1 bis)(a) of this Treaty;

(*d*) for any other purpose, if the evidence or information has been made public within the framework of proceedings for which they were transmitted, or in any of the situations described in subparagraphs (a), (b) and (c); and

(*e*) for any other purpose only with the prior consent of the Requested Party.

...

C13 Application of collectively cited *Data Protection Acts 1988 and 2003* restricted (1.11.2009) by *European Communities (Payment Services) Regulations 2009* (S.I. No. 383 of 2009), reg. 94, continued in force.

Processing of personal data.

94. The processing, within the meaning of the Data Protection Acts 1988 and 2003, of personal data by a payment system or payment service provider is permitted for the purposes of the prevention, investigation and detection of payment fraud.

C14 Application of collectively cited *Data Protection Acts 1988 and 2003* restricted (5.12.2005) by *Civil Registration Act 2004* (3/2004), s. 66, S.I. No. 764 of 2005, as amended

- by *Housing (Miscellaneous Provisions) Act 2009* (22/2009), s. 8 and sch. 2 part 8 item 1, not commenced as of date of revision;
- (1.01.2011) by *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010* (24/2010), s. 21, S.I. No. 648 of 2010;
- (1.01.2009) by *Health Act 2008* (21/2008), s. 11, commenced as per s. 1(2);
- (17.12.2008) by *Social Welfare (Miscellaneous Provisions) Act 2008* (22/2008), s. 25, commenced on enactment;
- (1.01.2005) by *Health Act 2004* (42/2004), s. 75 and sch. 6 part 26 item 26, S.I. No. 887 of 2004.

Power of Ard-Chláraitheoir to give information to others.

66.—(1) Notwithstanding anything contained in the Data Protection Acts 1988 to 2003 or any other enactment, an tArd-Chláraitheoir may, after consultation with **[...]** the Minister for Social and Family Affairs, give such information as may be prescribed in relation to births, **[**marriages, civil partnerships, decrees of divorce, decrees of nullity of marriage, decrees of dissolution or decrees of nullity of civil partnership**]**, registered under this Act or under any of the repealed enactments to—

(*a*) the Minister for Defence for the purpose of—

(i) the administration of schemes under the Defence Forces (Pensions) Acts 1932 to 1975, or

(ii) the administration of the Army Pensions Acts 1923 to 1980,

(*b*) the Minister for the Environment, Heritage and Local Government for the purpose of registration in a register under the Electoral Act 1992,

(*c*) the Minister for Foreign Affairs for the purpose of—

(i) determining entitlements to passports, or

(ii) verifying the identity of persons applying for or holding passports,

(*d*) the Minister for Justice, Equality and Law Reform for the purpose of determining the immigration or citizenship status of persons,

(*e*) the Minister for Social and Family Affairs for the purpose of—

(i) determining entitlement to, or control of, benefit under the Social Welfare (Consolidation) Act 1993, or

(ii) section 223 of that Act,

(*f*) the Minister for Transport for the purpose of the grant of driving licences and provisional licences under Part III of the Road Traffic Act 1961,

(*g*) the Minister for the purpose of the enforcement of regulations under section 31 of the Health Act 1947 and the Minister or **[**the Executive**]**, hospital or other body or agency participating in any cancer screening programme (including any programme of breast or cervical cancer screening) authorised by the Minister, for the purpose of compiling and maintaining a record of the names, addresses and relevant dates of persons who, for public health reasons, may be invited to participate in any such programme,

(*h*) the Revenue Commissioners for the purpose of the administration of the Taxes Consolidation Act 1997, the Stamp Duties Consolidation Act 1999 and the Capital Acquisitions Tax Consolidation Act 2003,

(*i*) **[**the Executive**]** for the purpose of determining entitlement to a service provided for, by or under section 45**[**, 45A**]**, 58, 59 or 61 of the Health Act 1970, and

(*j*) a housing authority (within the meaning of the Housing Act 1966) for the purpose of—

(i) the determination of entitlement to houses or grants under the Housing Acts 1966 to 2002,

(ii) the determination of a rent or other payment under section 58 of the Housing Act 1966, or

(iii) the preparation of a housing strategy under the Planning and Development Act 2000.

(2) In this section "information" means personal data (within the meaning of the Data Protection Acts 1988 and 2003) and information extracted from such data.

C15 Application of collectively cited *Data Protection Acts 1988 and 2003* restricted (1.05.2004) by *European Communities (Clinical Trials on Medicinal Products For Human Use) Regulations 2004* (S.I. No. 190 of 2004), reg. 48(3)(d).

Enforcement

48. — ...

(3) ...

(*d*) inspect and copy or extract information from any data (including personal data) within the meaning of the Data Protection Acts 1988 and 2003

...

C16 Application of Act extended with any necessary modifications (24.02.2003) by *European Communities (Directive 2000/31/EC) Regulations 2003* (S.I. No. 68 of 2003), reg. 9(6).

Unsolicited commercial communications.

9. ...

(6) The following provisions of the Act, namely —

(*a*) sections 1, 10, 12, 24 and 25,

(*b*) section 26 in so far as it relates to a requirement specified in an enforcement notice or an information notice or a decision of the Data Protection Commissioner in relation to a complaint under section 10 (1) (a) of the Act,

and

(*c*) sections 27 to 30,

apply for the purpose of this Regulation with the modifications specified in paragraphs (7) to (10) and any other necessary modifications.

(7) References, in the provisions of the Act mentioned in paragraph (6), to that Act or the provisions of that Act shall, unless the context otherwise requires be construed as including references to this Regulation or the provisions of this Regulation.

...

(11) In this Regulation —

"Act" means the Data Protection Act 1988 (No. 25 of 1988);

...

C17 Application of Act extended with any necessary modifications (22.02.2002) by *Customs and Excise (Mutual Assistance) Act 2001* (2/2001), ss. 5 and 9, S.I. No. 59 of 2002.

Application of Data Protection Act, 1988.

5.—(1) For the purposes of this Act, the CIS Convention and the Customs Co-operation Convention, the Data Protection Act, 1988, shall apply and have effect, with any necessary modifications, to the collection, processing, keeping, use or disclosure of personal data included in or received from the Customs Information System.

(2) Without prejudice to the generality of *subsection (1)*, for the purposes of Article 21 of the CIS Convention, section 7 of the Data Protection Act, 1988, shall apply as regards the liability of the State for injury caused to a person through the use of the Customs Information System in the State.

(3) Without prejudice to the generality of *subsection (1)*, for the purposes of Article 25 of the Customs Co-operation Convention, section 7 of the Data Protection Act, 1988, shall apply as regards the liability of the State for injury caused to a person through the processing of data communicated in the State.

...

Offences.

9.—Without prejudice to the generality of *section 5(1)*, any person who uses personal data from the Customs Information System other than for the purpose of the aim specified in Article 2(2) of the CIS Convention shall, save where such use is in accordance with and is subject to the conditions specified in Article 8(1) of that Convention, be guilty of an offence under the Data Protection Act, 1988.

C18 Application of Act restricted (20.11.2000) by *Refugee Act 1996* (17/1996), s. 11(5), S.I. No. 365 of 2000.

Investigation of application by Commissioner.

11.— ...

(5) Nothing in the Data Protection Act, 1988, shall be construed as prohibiting a person from giving to the Commissioner, on request by him or her, such information as is in the person's possession or control relating to the application.

C19 Act applied to certain bodies with any necessary modifications (2.12.1999) by *British-Irish Agreement Act 1999* (1/1999), s. 51, S.I. No. 377 of 1999.

Application of Data Protection Act, 1988.

51.— ...

(2) The Act of 1988 shall apply in relation to the Bodies with any necessary modifications and subject to the subsequent provisions of this section.

...

C20 Application of Act restricted (1.04.1997) by *Health (Provision of Information) Act 1997* (9/1997), s. 1(2), commenced on enactment. [Note that functions of specified bodies including health boards were transferred (1.01.2005) to the Health Service Executive by *Health Act 2004* (42/2004), s. 59, S.I. No. 887 of 2004].

Requests for and provision of information.

1.—...

(2) Nothing in the Data Protection Act, 1988, shall prevent the Minister for Health or a health board, hospital or other body or agency referred to in *subsection (1) (b)* from providing—

(*a*) to the Minister for Health, or to any other such health board, hospital or other body or agency, for the purposes of that programme, or

(*b*) for the purposes of inviting persons to participate in that programme,

any information provided under *subsection (1)*.

C21 Application of Act restricted (1.11.1994) by *Statistics Act 1993* (21/1993), s. 24(2), S.I. No. 323 of 1994.

Invitation to provide information on a voluntary basis.

24.—...

(2) Persons and undertakings may provide information and records, or copies thereof, which they may possess to the Director General or officers of statistics on invitation under the provisions of this Act notwithstanding anything contained in the Data Protection Act, 1988.

Editorial Notes:

E1 Previous affecting provision: application of collectively cited *Data Protection Acts 1988 and 2003* restricted (1.01.2018) by *National Shared Services Office Act 2017* (26/2017), s. 35(1), S.I. No. 579 of 2017; reference to collective citation substituted (25.05.2019) by *Data Protection Act 2018* (7/2018), s. 232, S.I. No. 174 of 2018.

E2 Previous affecting provision: application of collectively cited *Data Protection Acts 1988 and 2003* restricted (19.04.2013) by *Health (Alteration of Criteria for Eligibility) Act 2013* (10/2013), s. 8(4), S.I. No. 133 of 2013; reference to collective citation substituted (25.05.2019) by *Data Protection Act 2018* (7/2018), s. 223, S.I. No. 174 of 2018.

E3 Previous affecting provision: application of collectively cited *Data Protection Acts 1988 and 2003* restricted (27.06.2011) by *Student Support Act 2011* (4/2011), s. 28(1), S.I. No. 303 of 2011; reference to collective citation substituted (25.05.2019) by *Data Protection Act 2018* (7/2018), s. 216, S.I. No. 174 of 2018.

E4 Previous affecting provision: application of collectively cited *Data Protection Acts 1988 and 2003* restricted (20.12.2010) by *European Communities (Good Agricultural Practice for Protection of Waters) Regulations 2010* (S.I. No. 610 of 2010), reg. 31; revoked (28.01.2014) by *European Union (Good Agricultural Practice for Protection of Waters) Regulations 2014* (S.I. No. 31 of 2014), reg. 3.

E5 Previous affecting provision: application of collectively cited *Data Protection Acts 1988 and 2003* restricted (27.10.2009) by *Nursing Homes Support Scheme Act 2009* (15/2009), ss. 26 and 45, S.I. No. 423 of 2009; reference to collective citation substituted (25.05.2019) by *Data Protection Act 2018* (7/2018), s. 205, S.I. No. 174 of 2018.

E6 Previous affecting provision: application of collectively cited *Data Protection Acts 1988 and 2003* restricted (31.03.2009) by *European Communities (Good Agricultural Practice For Protection of Waters) Regulations 2009* (S.I. No. 101 of 2009), reg. 31; revoked (20.12.2010) by *European Communities (Good Agricultural Practice for Protection of Waters) Regulations 2010* (S.I. No. 610 of 2010), reg. 2.

E7 Previous affecting provision: application of Act restricted (11.12.2006) by *Electoral (Amendment) Act 2006* (33/2006), s. 19, commenced on enactment; reference to collective citation substituted (25.05.2019) by *Data Protection Act 2018* (7/2018), s. 210, S.I. No. 174 of 2018.

E8 Previous affecting provision: application of collectively cited *Data Protection Acts 1988 and 2003* restricted (1.08.2006) by *European Communities (Good Agricultural Practice for Protection of Waters) Regulations 2006* (S.I. No. 378 of 2006), reg. 31; revoked (31.03.2009) by *European Communities (Good Agricultural Practice For Protection of Waters) Regulations 2009* (S.I. No. 101 of 2009), reg. 2.

E9 Previous affecting provision: application of collectively cited *Data Protection Acts 1988 and 2003* restricted (1.02.2006) by *European Communities (Good Agricultural Practice for Protection of Waters) Regulations 2005* (S.I. No. 788 of 2005), reg. 31; revoked (1.08.2008) by *European Communities (Good Agricultural Practice for Protection of Waters) Regulations 2006* (S.I. No. 378 of 2006), reg. 2.

E10 Previous affecting provision: application of Act extended with any necessary modifications (1.10.1998) by *Europol Act 1997* (38/1997), s. 6, S.I. No. 345 of 1998, as amended (23.12.2006) by substitution of subs. (1) by *Europol (Amendment) Act 2006* (37/2006), s. 3, commenced on enactment; repealed (1.02.2013) by *Europol Act 2012* (53/2012), s. 17, S.I. No. 15 of 2013.

Preliminary

Interpretation and application of Act.

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

F1**[**"the Act of 2003" means the Data Protection (Amendment) Act 2003**]**

"appropriate authority" has the meaning assigned to it by the Civil Service Regulation Acts, 1956 and 1958;

F1**[** "automated data" means information that—

(*a*) is being processed by means of equipment operating automatically in response to instructions given for that purpose, or

(*b*) is recorded with the intention that it should be processed by means of such equipment;**]**

"back-up data" means data kept only for the purpose of replacing other data in the event of their being lost, destroyed or damaged;

F1**[**"blocking", in relation to data, means so marking the data that it is not possible to process it for purposes in relation to which it is marked;**]**

"civil servant" has the meaning assigned to it by the Civil Service Regulation Acts, 1956 and 1958;

"the Commissioner" has the meaning assigned to it by *section 9* of this Act;

"company" has the meaning assigned to it by the Companies Act, 1963

"the Convention" means the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data done at Strasbourg on the 28th day of January, 1981, the text of which is set out in the *First Schedule* to this Act;

"the Court" means the Circuit Court

F2**[**"data" means automated data and manual data;**]**

"data controller" means a person who, either alone or with others, controls the contents and use of personal data;

"data equipment" means equipment for processing data;

"data material" means any document or other material used in connection with, or produced by, data equipment;

"data processor" means a person who processes personal data on behalf of a data controller but does not include an employee of a data controller who processes such data in the course of his employment;

"data subject" means an individual who is the subject of personal data;

F1**[**"the Directive" means Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data[(1)];**]**

F3**[**...**]**

"disclosure", in relation to personal data, includes the disclosure of information extracted from such data and the transfer of such data but does not include a disclosure made directly or indirectly by a data controller or a data processor to an employee or agent of his for the purpose of enabling the employee or agent to carry out his duties; and, where the identification of a data subject depends partly on the data and partly on other information in the possession of the data controller, the data shall not be regarded as disclosed unless the other information is also disclosed;

F1**[**"the EEA Agreement"means the Agreement on the European Economic Area signed at Oporto on 2 May 1992 as adjusted by the Protocol signed at Brussels on 17 March 1993;**]**

[(1)] O.J. No. L 281/38 of 23.11.95, p.31.

F1**[**"enactment" means a statute or a statutory instrument (within the meaning of the Interpretation Act 1937);**]**

"enforcement notice" means a notice under *section 10* of this Act;

F1**[**"the European Economic Area" has the meaning assigned to it by the EEA Agreement;**]**

F3**[**...**]**

"information notice" means a notice under *section 12* of this Act;

F4**[**"local authority" means a local authority for the purposes of the Local Government Act 2001 (as amended by the Local Government Reform Act 2014);**]**

F1**[**"manual data" means information that is recorded as part of a relevant filing system or with the intention that it should form part of a relevant filing system;**]**
"the Minister" means the Minister for Justice;

F2**[**"personal data" means data relating to a living individual who is or can be identified either from the data or from the data in conjunction with other information that is in, or is likely to come into, the possession of the data controller;**]**

"prescribed", in the case of fees, means prescribed by regulations made by the Minister with the consent of the Minister for Finance and, in any other case, means prescribed by regulations made by the Commissioner with the consent of the Minister;

F2**[**"processing" of or in relation to information or data, means performing any operation or set of operations on the information or data, whether or not by automatic means, including—

(*a*) obtaining, recording or keeping the information or data,

(*b*) collecting, organising, storing, altering or adapting the information or data,

(*c*) retrieving, consulting or using the information or data,

(*d*) disclosing the information or data by transmitting, disseminating or otherwise making it available, or

(*e*) aligning, combining, blocking, erasing or destroying the information or data;**]**

"prohibition notice" means a notice under *section 11* of this Act;

F3**[**...**]**

F5**[**"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;**]**

F1**[**"sensitive personal data" means personal data as to—

(*a*) the racial or ethnic origin, the political opinions or the religious or philosophical beliefs of the data subject,

(*b*) whether the data subject is a member of a trade union,

(*c*) the physical or mental health or condition or sexual life of the data subject,

(*d*) the commission or alleged commission of any offence by the data subject, or

(*e*) any proceedings for an offence committed or alleged to have been committed by the data subject, the disposal of such proceedings or the sentence of any court in such proceedings;**]**

and any cognate words shall be construed accordingly.

(2) For the purposes of this Act, data are inaccurate if they are incorrect or misleading as to any matter of fact.

(3) (*a*) An appropriate authority, being a data controller or a data processor, may, as respects all or part of the personal data kept by the authority, designate a civil servant in relation to whom it is the appropriate authority to be a data controller or a data processor and, while the designation is in force—

(i) the civil servant so designated shall be deemed, for the purposes of this Act, to be a data controller or, as the case may be, a data processor, and

(ii) this Act shall not apply to the authority,

as respects the data concerned.

(*b*) Without prejudice to *paragraph (a)* of this subsection, the Minister for Defence may, as respects all or part of the personal data kept by him in relation to the Defence Forces, designate an officer of the Permanent Defence Force who holds a commissioned rank therein to be a data controller or a data processor and, while the designation is in force—

(i) the officer so designated shall be deemed, for the purposes of this Act, to be a data controller or, as the case may be, a data processor, and

(ii) this Act shall not apply to the Minister for Defence,

as respects the data concerned.

(*c*) For the purposes of this Act, as respects any personal data—

(i) where a designation by the relevant appropriate authority under *paragraph (a)* of this subsection is not in force, a civil servant in relation to whom that authority is the appropriate authority shall be deemed to be its employee and, where such a designation is in force, such a civil servant (other than the civil servant the subject of the designation) shall be deemed to be an employee of the last mentioned civil servant,

(ii) where a designation under *paragraph (b)* of this subsection is not in force, a member of the Defence Forces shall be deemed to be an employee of the Minister for Defence and, where such a designation is in force, such a member (other than the officer the subject of the designation) shall be deemed to be an employee of that officer, and

(iii) a member of the Garda Síochána (other than the Commissioner of the Garda Síochána) shall be deemed to be an employee of the said Commissioner.

F1**[**(3A) A word or expression that is used in this Act and also in the Directive has, unless the context otherwise requires, the same meaning in this Act as it has in the Directive.

(3B) (*a*) Subject to any regulations under *section 15(2)* of this Act, this Act applies to data controllers in respect of the processing of personal data only if—

(i) the data controller is established in the State and the data are processed in the context of that establishment, or

(ii) the data controller is established neither in the State nor in any other state that is a contracting party to the EEA Agreement but makes use of

equipment in the State for processing the data otherwise than for the purpose of transit through the territory of the State.

(*b*) For the purposes of *paragraph (a)* of this subsection, each of the following shall be treated as established in the State:

(i) an individual who is normally resident in the State,

(ii) a body incorporated under the law of the State,

(iii) a partnership or other unincorporated association formed under the law of the State, and

(iv) a person who does not fall within *subparagraphs (i), (ii)* or *(iii)* of this paragraph, but maintains in the State—

(I) an office, branch or agency through which he or she carries on any activity, or

(II) a regular practice,

and the reference to establishment in any other state that is a contracting party to the EEA Agreement shall be construed accordingly.

(*c*) A data controller to whom *paragraph (a)(ii)* of this subsection applies must, without prejudice to any legal proceedings that could be commenced against the data controller, designate a representative established in the State.

(3C) *Section 2* and *sections 2A* and *2B* (which sections were inserted by the Act of 2003) of this Act shall not apply to—

(*a*) data kept solely for the purpose of historical research, or

(*b* other data consisting of archives or departmental records (within the meaning in each case of the National Archives Act 1986),

and the keeping of which complies with such requirements (if any) as may be prescribed for the purpose of safeguarding the fundamental rights and freedoms of data subjects.**]**

(4) This Act does not apply to—

(*a*) personal data that in the opinion of the Minister or the Minister for Defence are, or at any time were, kept for the purpose of safeguarding the security of the State,

(*b*) personal data consisting of information that the person keeping the data is required by law to make available to the public, or

(*c*) personal data kept by an individual and concerned only with the management of his personal, family or household affairs or kept by an individual only for recreational purposes.

F1**[**(5) F3**[**...**]]**

Annotations

Amendments:

F1 Inserted (1.07.2003) by *Data Protection (Amendment) Act 2003* (6/2003), s. 2, S.I. No. 207 of 2003.

F2 Substituted (1.07.2003) by *Data Protection (Amendment) Act 2003* (6/2003), s. 2, S.I. No. 207 of 2003.

F3 Repealed other than for certain excepted purposes (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 7(1)(a), (4), S.I. No. 174 of 2018. The excepted purposes in subs. (4) are 7/2018, s. 8(1)(b), (2) and (3). See C-note below.

F4 Substituted (1.06.2014) by *Local Government Act 2014* (1/2014), s. 5(8) and sch. 2 part 6, S.I. No. 214 of 2014.

F5 Inserted (1.07.2003) by *Data Protection (Amendment) Act 2003* (6/2003), s. 2, S.I. No. 207 of 2003.

Modifications (not altering text):

C22 Certain provisions repealed, but retained for certain excepted purposes, (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 7(1)(a), (4), S.I. No. 174 of 2018. These provisions are subs. (1), definitions of "direct marketing", "financial institution" and "the register", and subs. (5), see previous versions below. The excepted purposes in subs. (4) are 7/2018, s. 8(1)(b) (the processing of such data under the *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014* (11/2014) or the *Vehicle Registration Data (Automated Searching and Exchange) Act 2018* (5/2018) to the extent that the Act of 1988 is applied in those Acts) and s. 8(2), (3) (transitional provisions).

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

F2**[**"direct marketing" includes direct mailing other than direct mailing carried out in the course of political activities by a political party or its members, or a body established by or under statute or a candidate for election to, or a holder of, elective political office;**]**

...

"financial institution" means—

(*a*) a person who holds or has held a licence under section 9 of the Central Bank Act, 1971, or

(*b*) a person referred to in section 7 (4) of that Act;

...

"the register" means the register established and maintained under *section 16* of this Act;

...

F1**[**(5) (*a*) A right conferred by this Act shall not prejudice the exercise of a right conferred by the Freedom of Information Act 1997.

(*b*) The Commissioner and the Information Commissioner shall, in the performance of their functions, co-operate with and provide assistance to each other.**]**

C23 Section applied with modifications by *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014* (11/2014), s. 123(1), (2)(a), partially commenced insofar as the 2014 Act, part 12 ch. 4 (which includes s. 123) relates to an Article 7 request within the meaning of that chapter (20.11.2015) by S.I. No. 508 of 2015, otherwise (3.12.2018) by S.I. No. 503 of 2018.

Application of Act of 1988

123. (1) The Act of 1988 shall, with the modifications specified in *subsection (2)* and any other necessary modifications, apply to the processing of personal data supplied or received pursuant to—

(*a*) Chapter 2,

(*b*) Chapter 3, or

(*c*) an Article 7 request,

and, for the purposes of the foregoing application of the Act of 1988, references in it to that Act or the provisions of that Act shall, unless the context otherwise requires, be construed as including references to—

(i) Chapter 2 or the provisions of that Chapter,

(ii) Chapter 3 or the provisions of that Chapter, and

(iii) Chapter 3 of Part 5 of the Act of 2008 insofar as that Chapter applies to an Article 7 request or the provisions of that Chapter insofar as they apply to such a request.

(2) The modifications of the Act of 1988 referred to in *subsection (1)* are the following, namely—

(*a*) in section 1(1), the insertion of the following definitions:

"Act of 2008" means the Criminal Justice (Mutual Assistance) Act 2008;

"Act of 2014" means the Criminal Justice (Forensic Evidence and DNA Database System) Act 2014;

"Agreement with Iceland and Norway", "Council Decision", "dactyloscopic data", "designated state", "European Union or international instrument", "Member State" and "relevant European Union or international instrument" have the meanings they have in section 109 of the Act of 2014;

"Article 7 request" means a request made or received under Chapter 3 of Part 5 of the Act of 2008 pursuant to Article 7 of the Council Decision or that Article insofar as it is applied by Article 1 of the Agreement with Iceland and Norway;

"Central Authority" has the meaning it has in section 2(1) of the Act of 2008;

"data protection authority", in relation to a designated state, means the authority in that designated state that is designated by that designated state to be the independent data protection authority of that designated state for the purposes of a European Union or international instrument;

"DNA" means deoxyribonucleic acid;

"national contact point", in relation to a relevant European Union or international instrument, has the meaning it has in section 109 of the Act of 2014;

"processing" has the meaning it has in this Act and shall include the sending or receipt, as the case may be, of a notification under section 113 (2), 114 (3), 115 (2), 116 (3), 119 (2) or 120 (2) of the Act of 2014.

...

C24 The definition of "financial institution", defined above, is extended (31.03.2014) by *European Union (Capital Requirements) Regulations 2014* (S.I. No. 158 of 2014), reg. 152.

Continuation of contravention of Regulations

152. Notwithstanding Regulation 7(1), the references, however expressed, to the holder of a licence under section 9 of the Act of 1971, in—

(*a*) sections 19 to 26, section 28, sections 31 to 42 or section 58 of the Act of 1971,

(*b*) section 27, sections 49 to 51, sections 90, 108, 117, 134 or 140 of the Central Bank Act 1989 (No. 16 of 1989), or

(*c*) any other enactment which was in force on 1 January 1993,

shall be construed so as to include any person who, but for the application of Regulation 7(1), was or would have been required to hold a licence under section 9 of the Act of 1971.

C25 Functions transferred and references to "Department of Finance" and "Minister for Finance" construed (29.07.2011) by *Finance (Transfer of Departmental Administration and Ministerial Functions) Order 2011* (S.I. No. 418 of 2011), arts. 2, 3, 5 and sch. 1 part 2, in effect as per art. 1(2), subject to transitional provisions in arts. 6-9.

2. (1) The administration and business in connection with the performance of any functions transferred by this Order are transferred to the Department of Public Expenditure and Reform.

(2) References to the Department of Finance contained in any Act or instrument made thereunder and relating to the administration and business transferred by paragraph (1) shall, on and after the commencement of this Order, be construed as references to the Department of Public Expenditure and Reform.

3. The functions conferred on the Minister for Finance by or under the provisions of —

(*a*) the enactments specified in Schedule 1, and

(*b*) the statutory instruments specified in Schedule 2,

are transferred to the Minister for Public Expenditure and Reform.

...

5. References to the Minister for Finance contained in any Act or instrument under an Act and relating to any functions transferred by this Order shall, from the commencement of this Order, be construed as references to the Minister for Public Expenditure and Reform.

...

Schedule 1

Enactments

...

Part 2

1922 to 2011 Enactments

Number and Year (1)	Short Title (2)	Provision (3)
...	...	...
No. 25 of 1988	Data Protection Act 1988	Sections 1 and 33(1); Second Schedule, paragraph 9
...	...	...

C26 Application of section extended (24.02.2003) by *European Communities (Directive 2000/31/EC) Regulations 2003* (S.I. No. 68 of 2003), reg. 9(6).

Unsolicited commercial communications.

9. ...

(6) The following provisions of the Act, namely —

(*a*) sections 1, 10, 12, 24 and 25,

(*b*) section 26 in so far as it relates to a requirement specified in an enforcement notice or an information notice or a decision of the Data Protection Commissioner in relation to a complaint under section 10 (1) (a) of the Act,

and

(*c*) sections 27 to 30,

apply for the purpose of this Regulation with the modifications specified in paragraphs (7) to (10) and any other necessary modifications.

(7) References, in the provisions of the Act mentioned in paragraph (6), to that Act or the provisions of that Act shall, unless the context otherwise requires be construed as including references to this Regulation or the provisions of this Regulation.

(8) Section 1(1) of the Act applies as if the following definition were inserted: " 'Regulations of 2003' means the European Communities (Directive 2000/31/EC) Regulations 2003;"

...

(11) In this Regulation —

"Act" means the Data Protection Act 1988 (No. 25 of 1988);

...

Editorial Notes:

E11 As provided (13.07.2015) by *Health Identifiers Act 2014* (15/2014), s. 27(1), (2), S.I. No. 294 of 2015, a living individual's individual health identifier held by certain persons is considered personal data for the purposes of the *Data Protection Acts 1988 and 2003*. This shall not be construed to prevent a living individual's individual health identifier held by a person other than the certain persons from being personal data in accordance with the provisions of those Acts.

E12 Previous affecting provision: construction of section extended (6.11.2003) by *European Communities (Electronic Communications Networks and Services) (Data Protection and Privacy) Regulations 2008* (S.I. No. 535 of 2003), reg. 17(1)(a); reg. 17 substituted (13.12.2008) by *European Communities (Electronic Communications Networks and Services) (Data Protection and Privacy) (Amendment) Regulations 2008* (S.I. No. 526 of 2008), reg. 9; revoked and replaced (1.07.2011) by *European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011* (S.I. No. 336 of 2011), reg. 35, subject to transitional provisions in reg. 34.

E13 Previous affecting provision: definitions for "Directive", "EEA Agreement", "Enactment" and "European Economic Area" inserted (1.04.2002) by *European Communities (Data Protection) Regulations 2001* (S.I. No. 626 of 2001), reg. 2(a); substituted as per F-note above.

E14 Previous affecting provision: subs. (5) inserted (1.04.2002) by *European Communities (Data Protection) Regulations 2001* (S.I. No. 626 of 2001), reg. 2(b); substituted as per F-note above.

Protection of Privacy of Individuals with regard to Personal Data

Collection, processing, keeping, use and disclosure of personal data.

2.—F6**[**(1) A data controller shall, as respects personal data kept by him or her, comply with the following provisions:

(*a*) the data or, as the case may be, the information constituting the data shall have been obtained, and the data shall be processed, fairly,

(*b*) the data shall be accurate and complete and, where necessary, kept up to date,

(*c*) the data—

(i) shall have been obtained only for one or more specified, explicit and legitimate purposes,

(ii) shall not be further processed in a manner incompatible with that purpose or those purposes,

(iii) shall be adequate, relevant and not excessive in relation to the purpose or purposes for which they were collected or are further processed, and

(iv) shall not be kept for longer than is necessary for that purpose or those purposes,

(*d*) appropriate security measures shall be taken against unauthorised access to, or unauthorised alteration, disclosure or destruction of, the data, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.**]**

(2) A data processor shall, as respects personal data processed by him, comply with *paragraph (d)* of *subsection (1)* of this section.

(3) *Paragraph (a)* of the said *subsection (1)* does not apply to information intended for inclusion in data, or to data, kept for a purpose mentioned in *section 5 (1) (a)* of this Act, in any case in which the application of that paragraph to the data would be likely to prejudice any of the matters mentioned in the said *section 5 (1) (a)*.

(4) *Paragraph (b)* of the said *subsection (1)* does not apply to backup data.

(5) F7**[**(*a*) *Subparagraphs (ii)* and *(iv)* of *paragraph (c)* of the said *subsection (1)* do not apply to personal data kept for statistical or research or other scientific purposes, and the keeping of which complies with such requirements (if any) as may be prescribed for the purpose of safeguarding the fundamental rights and freedoms of data subjects, and,**]**

(*b*) the data or, as the case may be, the information constituting such data shall not be regarded for the purposes of *paragraph (a)* of the said subsection as having been obtained unfairly by reason only that its use for any such purpose was not disclosed when it was obtained,

if the data are not used in such a way that damage or distress is, or is likely to be, caused to any data subject.

(6) F8**[**...**]**

F9**[**(7) F10**[**...**]**

(8) F10**[**...**]]**

Annotations

Amendments:

F6 Substituted (1.07.2003) by *Data Protection (Amendment) Act 2003* (6/2003), s. 3(a), S.I. No. 207 of 2003. Amendments to section pursuant to 6/2003, s. 23 in respect of manual data held in relevant filing systems on the passing of 6/2003 commenced (24.10.2007) by s. 23(4), subject to transitional provision in subs. (5).

F7 Substituted (1.07.2003) by *Data Protection (Amendment) Act 2003* (6/2003), s. 3(b), S.I. No. 207 of 2003. Amendments to section pursuant to 6/2003, s. 23 in respect of manual data held in relevant filing systems on the passing of 6/2003 commenced (24.10.2007) by s. 23(4), subject to transitional provision in subs. (5).

F8 Deleted (1.07.2003) by *Data Protection (Amendment) Act 2003* (6/2003), s. 3(c), S.I. No. 207 of 2003. Amendments to section pursuant to 6/2003, s. 23 in respect of manual data held in relevant filing systems on the passing of 6/2003 commenced (24.10.2007) by s. 23(4), subject to transitional provision in subs. (5).

F9 Substituted (1.07.2003) by *Data Protection (Amendment) Act 2003* (6/2003), s. 3(d), S.I. No. 207 of 2003. Amendments to section pursuant to 6/2003, s. 23 in respect of manual data held in relevant filing systems on the passing of 6/2003 commenced (24.10.2007) by s. 23(4), subject to transitional provision in subs. (5).

F10 Repealed other than for certain excepted purposes (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 7(1)(b), (4), S.I. No. 174 of 2018. The excepted purposes in subs. (4) are 7/2018, s. 8(1)(b), (2), (3). See C-note below.

Modifications (not altering text):

C27 Subss. (7), (8) repealed, but retained (see below) for certain excepted purposes, (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 7(1)(b), (4), S.I. No. 174 of 2018. The excepted purposes in subs. (4) are 7/2018, s. 8(1)(b) (the processing of such data under the *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014* (11/2014) or the *Vehicle Registration Data (Automated Searching and Exchange) Act 2018* (5/2018) to the extent that the Act of 1988 is applied in those Acts) and s. 8(2), (3) (transitional provisions).

F9**[**(7) Where—

(*a*) personal data are kept for the purpose of direct marketing, and

(*b*) the data subject concerned requests the data controller in writing—

(i) not to process the data for that purpose, or

(ii) to cease processing the data for that purpose,

then—

(I) if the request is under paragraph (*b*)(i) of this subsection, the data controller—

(A) shall, where the data are kept only for the purpose aforesaid, as soon as may be and in any event not more than 40 days after the request has been given or sent to him or her, erase the data, and

(B) shall not, where the data are kept for that purpose and other purposes, process the data for that purpose after the expiration of the period aforesaid,

(II) if the request is under paragraph (*b*)(ii) of this subsection, as soon as may be and in any event not more than 40 days after the request has been given or sent to the data controller, he or she—

(A) shall, where the data are kept only for the purpose aforesaid, erase the data, and

(B) shall, where the data are kept for that purpose and other purposes, cease processing the data for that purpose,

and

(III) the data controller shall notify the data subject in writing accordingly and, where appropriate, inform him or her of those other purposes.

(8) Where a data controller anticipates that personal data, including personal data that is required by law to be made available to the public, kept by him or her will be processed for the purposes of direct marketing, the data controller shall inform the persons to whom the data relates that they may object, by means of a request in writing to the data controller and free of charge, to such processing.**]**

C28 Section applied with modifications by *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014* (11/2014), s. 123(1), (2)(b), partially commenced insofar as the 2014 Act, part 12 ch. 4 (which includes s. 123) relates to an Article 7 request within the meaning of that chapter (20.11.2015) by S.I. No. 508 of 2015, otherwise (3.12.2018) by S.I. No. 503 of 2018.

Application of Act of 1988

123. (1) The Act of 1988 shall, with the modifications specified in *subsection (2)* and any other necessary modifications, apply to the processing of personal data supplied or received pursuant to—

(*a*) Chapter 2,

(*b*) Chapter 3, or

(*c*) an Article 7 request,

and, for the purposes of the foregoing application of the Act of 1988, references in it to that Act or the provisions of that Act shall, unless the context otherwise requires, be construed as including references to—

(i) Chapter 2 or the provisions of that Chapter,

(ii) Chapter 3 or the provisions of that Chapter, and

(iii) Chapter 3 of Part 5 of the Act of 2008 insofar as that Chapter applies to an Article 7 request or the provisions of that Chapter insofar as they apply to such a request.

(2) The modifications of the Act of 1988 referred to in *subsection (1)* are the following, namely—

...

(*b*) in section 2, the insertion of the following subsections after subsection (1):

"(1A) A data controller (including a national contact point) shall in order to comply with subsection (1) (b) as respects personal data kept by him or her also comply with section 125 of the Act of 2014 in respect of those data.

(1B) For the purposes of subparagraphs (i) and (ii) of subsection (1) (c), the processing of personal data supplied or received pursuant to—

(*a*) Chapter 2 of Part 12 of the Act of 2014, or

(*b*) Chapter 3 of that Part of that Act,

is deemed to be a purpose compatible with the purpose for which those data were obtained.",

...

C29 Application of section extended with modification (27.01.2014) by *Credit Reporting Act 2013* (45/2013), s. 19(2), (4), S.I. No. 19 of 2014.

Data protection

19. ...

(2) Sections 2 , 4 and 6 of the Data Protection Act 1988 shall have effect as if—

(*a*) references to personal data included relevant credit data, and

(*b*) a person to whom this section applies were a living individual, and sections 9, 10, 12 and 24 to 31 of that Act apply accordingly.

(3) ...

(4) This section applies to any person with an annual turnover of not more than €3,000,000 (and to whom sections 2, 4 and 6 of the Data Protection Act 1988 would not apply apart from this section).

...

Editorial Notes:

E15 Subs. (1)(d) applied to a deceased individual's relevant information as it does to a living individual's relevant information (13.07.2015) by *Health Identifiers Act 2014* (15/2014), s. 27(3), S.I. No. 294 of 2015.

F11[Processing of personal data.

2A.—(1) Personal data shall not be processed by a data controller unless *section 2* of this Act (as amended by the Act of 2003) is complied with by the data controller and at least one of the following conditions is met:

(*a*) the data subject has given his or her consent to the processing or, if the data subject, by reason of his or her physical or mental incapacity or age, is or is likely to be unable to appreciate the nature and effect of such consent, it is given by a parent or guardian or a grandparent, uncle, aunt, brother or sister of the data subject and the giving of such consent is not prohibited by law,

(*b*) the processing is necessary—

(i) for the performance of a contract to which the data subject is a party,

(ii) in order to take steps at the request of the data subject prior to entering into a contract,

(iii) for compliance with a legal obligation to which the data controller is subject other than an obligation imposed by contract, or

(iv) to prevent—

(I) injury or other damage to the health of the data subject, or

(II) serious loss of or damage to property of the data subject,

or otherwise to protect his or her vital interests where the seeking of the consent of the data subject or another person referred to in *paragraph (a)* of this subsection is likely to result in those interests being damaged,

(*c*) the processing is necessary—

(i) for the administration of justice,

(ii) for the performance of a function conferred on a person by or under an enactment,

(iii) for the performance of a function of the Government or a Minister of the Government, or

(iv) for the performance of any other function of a public nature performed in the public interest by a person,

(*d*) the processing is necessary for the purposes of the legitimate interests pursued by the data controller or by a 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 fundamental rights and freedoms or legitimate interests of the data subject.

(2) The Minister may, after consultation with the Commissioner, by regulations specify particular circumstances in which *subsection (1)(d)* of this section is, or is not, to be taken as satisfied.**]**

Annotations

Amendments:

F11 Inserted (1.07.2003) by *Data Protection Amendment Act 2003* (6/2003), s. 4, S.I. No. 207 of 2003. Commenced (24.10.2007) in respect of manual data held in relevant filing systems on the passing of 6/2003 by s. 23(4), subject to transitional provision in subs. (5).

Editorial Notes:

E16 Power pursuant to subss. (1)(d), (2) exercised (30.03.2016) by *Data Protection Act 1988 (Section 2A) Regulations 2016* (S.I. No. 220 of 2016). Continued in force (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 68(1), S.I. No. 174 of 2018.

E17 Power pursuant to subs. (1)(d), (2) exercised (22.06.2013) by *Data Protection Act 1988 (Section 2A) Regulations 2013* (S.I. No. 313 of 2013). Continued in force (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 68(1), S.I. No. 174 of 2018.

E18 Previous affecting provision: section inserted (1.04.2002) by *European Communities (Data Protection) Regulations 2001* (S.I. No. 626 of 2001), reg. 3; substituted as per F-note above.

F12**[**Processing of sensitive personal data.

2B.—(1) Sensitive personal data shall not be processed by a data controller unless:

(*a*) *sections 2* and *2A* (as amended and inserted, respectively, by the Act of 2003) are complied with, and

(*b*) in addition, at least one of the following conditions is met:

(i) the consent referred to in paragraph (*a*) of *subsection (1)* of *section 2A* (as inserted by the *Act of 2003*) of this Act is explicitly given,

(ii) the processing is necessary for the purpose of exercising or performing any right or obligation which is conferred or imposed by law on the data controller in connection with employment,

(iii) the processing is necessary to prevent injury or other damage to the health of the data subject or another person or serious loss in respect of, or damage to, property or otherwise to protect the vital interests of the data subject or of another person in a case where—

(I) consent to the processing cannot be given by or on behalf of the data subject in accordance with *section 2A(1)(a)* (inserted by the Act of 2003) of this Act, or

(II) the data controller cannot reasonably be expected to obtain such consent,

or the processing is necessary to prevent injury to, or damage to the health of, another person, or serious loss in respect of, or damage to, the property of another person, in a case where such consent has been unreasonably withheld,

(iv) the processing—

(I) is carried out in the course of its legitimate activities by any body corporate, or any unincorporated body of persons, that—

(A) is not established, and whose activities are not carried on, for profit, and

(B) exists for political, philosophical, religious or trade union purposes,

(II) is carried out with appropriate safeguards for the fundamental rights and freedoms of data subjects,

(III) relates only to individuals who either are members of the body or have regular contact with it in connection with its purposes, and

(IV) does not involve disclosure of the data to a third party without the consent of the data subject,

(v) the information contained in the data has been made public as a result of steps deliberately taken by the data subject,

(vi) the processing is necessary—

(I) for the administration of justice,

(II) for the performance of a function conferred on a person by or under an enactment, or

(III) for the performance of a function of the Government or a Minister of the Government,

(vii) the processing—

(I) is required for the purpose of obtaining legal advice or for the purposes of, or in connection with, legal proceedings or prospective legal proceedings, or

(II) is otherwise necessary for the purposes of establishing, exercising or defending legal rights,

(viii) the processing is necessary for medical purposes and is undertaken by—

(I) a health professional, or

(II) a person who in the circumstances owes a duty of confidentiality to the data subject that is equivalent to that which would exist if that person were a health professional,

(ix) the processing is necessary in order to obtain information for use, subject to and in accordance with the Statistics Act 1993, only for statistical, compilation and analysis purposes,

(x) the processing is carried out by political parties, or candidates for election to, or holders of, elective political office, in the course of electoral activities for the purpose of compiling data on people's political opinions and complies with such requirements (if any) as may be prescribed for the purpose of safeguarding the fundamental rights and freedoms of data subjects,

(xi) the processing is authorised by regulations that are made by the Minister and are made for reasons of substantial public interest,

(xii) the processing is necessary-for the purpose of the assessment, collection or payment of any tax, duty, levy or other moneys owed or payable to the State and the data has been provided by the data subject solely for that purpose,

(xiii) the processing is necessary for the purposes of determining entitlement to or control of, or any other purpose connected with the administration of any benefit, pension, assistance, allowance, supplement or payment under the Social Welfare (Consolidation) Act 1993, or any nonstatutory scheme administered by the Minister for Social, Community and Family Affairs.

(2) The Minister may by regulations made after consultation with the Commissioner—

(*a*) exclude the application of *subsection (1)(b)(ii)* of this section in such cases as may be specified, or

(*b*) provide that, in such cases as may be specified, the condition in the said *subsection (1)(b)(ii)* is not to be regarded as satisfied unless such further conditions as may be specified are also satisfied.

(3) The Minister may by regulations make such provision as he considers appropriate for the protection of data subjects in relation to the processing of personal data as to—

(*a*) the commission or alleged commission of any offence by data subjects,

(*b*) any proceedings for an offence committed or alleged to have been committed by data subjects, the disposal of such proceedings or the sentence of any court in such proceedings,

(*c*) any act or omission or alleged act or omission of data subjects giving rise to administrative sanctions,

(*d*) any civil proceedings in a court or other tribunal to which data subjects are parties or any judgment, order or decision of such a tribunal in any such proceedings,

and processing of personal data shall be in compliance with any regulations under this subsection.

(4) In this section—

"health professional" includes a registered medical practitioner, within the meaning of the Medical Practitioners Act 1978, a registered dentist, within the meaning of the Dentists Act 1985 or a member of any other class of health worker or social worker standing specified by regulations made by the Minister after consultation with the Minister for Health and Children and any other Minister of the Government who, having regard to his or her functions, ought, in the opinion of the Minister, to be consulted;

"medical purposes" includes the purposes of preventive medicine, medical diagnosis, medical research, the provision of care and treatment and the management of healthcare services.**]**

Annotations

Amendments:

F12 Inserted (1.07.2003) by *Data Protection Amendment Act 2003* (6/2003), s. 4, S.I. No. 207 of 2003. Amendments to section pursuant to 6/2003, s. 23 in respect of manual data held in relevant filing systems on the passing of 6/2003 commenced (24.10.2007) by s. 23(4), subject to transitional provision in subs. (5).

Modifications (not altering text):

C30 Term "registered medical practitioner" construed (3.7.2008) by *Medical Practitioners Act 2007* (25/2007), s. 108(1), S.I. No. 231 of 200.

Construction of references to registered medical practitioner and Medical Council, etc.

108.— (1) Every reference to a registered medical practitioner contained in any enactment or any statutory instrument shall be construed as a reference to a registered medical practitioner within the meaning of section 2.

...

Editorial Notes:

E19 Power pursuant to subs. (1)(b)(xi) exercised (10.11.2025) by *Data Protection Act 1988 (Section 2B) Regulations 2025* (S.I. No. 537 of 2025).

E20 Power pursuant to subs. (1)(b)(xi) exercised (7.09.2023) by *Data Protection Act 1988 (Section 2B) Regulations 2023* (S.I. No. 443 of 2023).

E21 Power pursuant to subs. (1)(b)(xi) exercised (12.07.2022) by *Data Protection Act 1988 (Section 2B) Regulations 2022* (S.I. No. 354 of 2022).

E22 Power pursuant to subs. (1)(b)(xi) exercised (30.07.2016) by *Data Protection Act 1988 (Section 2 B) (No. 2) Regulations 2016* (S.I. No. 427 of 2016).

E23 Power pursuant to subs. (1)(b)(xi) exercised (30.07.2016) by *Data Protection Act 1988 (Section 2B) Regulations 2016* (S.I. No. 426 of 2016); revoked other than for certain excepted purposes (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 7(3), (4) and sch. 1 item 10, S.I. No. 174 of 2018. The excepted purposes in subs. (4) are 7/2018, s. 8(1)(b) (the processing of such data under the *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014* (11/2014) or the *Vehicle Registration Data (Automated Searching and Exchange) Act 2018* (5/2018) to the extent that the Act of 1988 is applied in those Acts) and s. 8(2), (3) (transitional provisions).

E24 Power pursuant to subs. (1)(b)(xi) exercised (10.06.2015) by *Data Protection Act 1988 (Section 2B) Regulations 2015* (S.I. No. 240 of 2015).

E25 Power pursuant to subs. (1)(b)(xi) exercised (15.06.2012) by *Data Protection Act 1988 (Section 2B) Regulations 2012* (S.I. No. 209 of 2012).

E26 Power pursuant to subs. (1)(b)(xi) exercised (27.09.2011) by *Data Protection Act 1988 (Section 2B) Regulations 2011* (S.I. No. 486 of 2011).

F13**[**Security measures for personal data.

2C.—(1) In determining appropriate security measures for the purposes of *section 2(1)(d)* of this Act, in particular (but without prejudice to the generality of that provision), where the processing involves the transmission of data over a network, a data controller—

(*a*) may have regard to the state of technological development and the cost of implementing the measures, and

(*b*) shall ensure that the measures provide a level of security appropriate to—

(i) the harm that might result from unauthorised or unlawful processing, accidental or unlawful destruction or accidental loss of, or damage to, the data concerned, and

(ii) the nature of the data concerned.

(2) A data controller or data processor shall take all reasonable steps to ensure that—

(*a*) persons employed by him or her, and

(*b*) other persons at the place of work concerned,

are aware of and comply with the relevant security measures aforesaid.

(3) Where processing of personal data is carried out by a data processor on behalf of a data controller, the data controller shall—

(*a*) ensure that the processing is carried out in pursuance of a contract in writing or in another equivalent form between the data controller and the data processor and that the contract provides that the data processor carries out the processing only on and subject to the instructions of the data controller and that the data processor complies with obligations equivalent to those imposed on the data controller by *section 2(1)(d)* of this Act,

(*b*) ensure that the data processor provides sufficient guarantees in respect of the technical security measures, and organisational measures, governing the processing, and

(*c*) take reasonable steps to ensure compliance with those measures.**]**

Annotations

Amendments:

F13 Inserted (1.07.2003) by *Data Protection Amendment Act 2003* (6/2003), s. 4, S.I. No. 207 of 2003.

Modifications (not altering text):

C31 Section applied with modifications by *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014* (11/2014), s. 123(1), (2)(c), partially commenced insofar as the 2014 Act, part 12 ch. 4 (which includes s. 123) relates to an Article 7 request within the meaning of that chapter (20.11.2015) by S.I. No. 508 of 2015, otherwise (3.12.2018) by S.I. No. 503 of 2018.

Application of Act of 1988

123. (1) The Act of 1988 shall, with the modifications specified in subsection (2) and any other necessary modifications, apply to the processing of personal data supplied or received pursuant to—

(*a*) Chapter 2,

(*b*) Chapter 3, or

(*c*) an Article 7 request,

and, for the purposes of the foregoing application of the Act of 1988, references in it to that Act or the provisions of that Act shall, unless the context otherwise requires, be construed as including references to—

(i) Chapter 2 or the provisions of that Chapter,

(ii) Chapter 3 or the provisions of that Chapter, and

(iii) Chapter 3 of Part 5 of the Act of 2008 insofar as that Chapter applies to an Article 7 request or the provisions of that Chapter insofar as they apply to such a request.

(2) The modifications of the Act of 1988 referred to in *subsection (1)* are the following, namely—

...

(*c*) in section 2C, the substitution of the following subsection for subsection (1):

"(1) In determining appropriate security measures for the purposes of section 2(1)(d) (but without prejudice to the generality of that provision), a data controller—

(*a*) shall, in relation to the processing of personal data supplied or received pursuant to—

(i) Chapter 2 of Part 12 of the Act of 2014, or

(ii) Chapter 3 of that Part of that Act,

comply with the technical specifications of the automated search and comparison procedure required by the relevant European Union or international instrument, and

(*b*) shall ensure that the measures provide a level of security appropriate to—

(i) the harm that might result from unauthorised or unlawful processing, accidental or unlawful destruction or accidental loss of, or damage to, or accidental alteration of, the data concerned, and

(ii) the nature of the data concerned.",

...

Editorial Notes:

E27 Section applied to a deceased individual's relevant information as it does to a living individual's relevant information (13.07.2015) by *Health Identifiers Act 2014* (15/2014), s. 27(3), S.I. No. 294 of 2015.

F14[Fair processing of personal data.

2D.—(1) Personal data shall not be treated, for the purposes of *section 2(1)(a)* of this Act, 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 or her, at least the information specified in *subsection (2)* of this section,

(*b*) in any other case, the data controller ensures, so far as practicable, that the data subject has, is provided with, or has made readily available to him or her, at least the information specified in *subsection (3)* of this section—

(i) not later than the time when the data controller first processes the data, or

(ii) if disclosure of the data to a third party is envisaged, not later than the time of such disclosure.

(2) The information referred to in *subsection (1)(a)* of this section is:

(*a*) the identity of the data controller,

(*b*) if he or she has nominated a representative for the purposes of this Act, the identity of the representative,

(*c*) the purpose or purposes for which the data are intended to be processed, and

(*d*) any other 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 to be fair to the data subject such as information as to the recipients or categories of recipients of the data, as to whether replies to questions asked for the purpose of the collection of the

data are obligatory, as to the possible consequences of failure to give such replies and as to the existence of the right of access to and the right to rectify the data concerning him or her.

(3) The information referred to in *subsection (1)(b)* of this section is:

(*a*) the information specified in *subsection (2)* of this section,

(*b*) the categories of data concerned, and

(*c*) the name of the original data controller.

(4) The said *subsection (1)(b)* does not apply—

(*a*) where, in particular for processing for statistical purposes or for the purposes of historical or scientific research, the provision of the information specified therein proves impossible or would involve a disproportionate effort, or

(*b*) in any case where the processing of the information contained or to be contained in the data by the data controller is necessary for compliance with a legal obligation to which the data controller is subject other than an obligation imposed by contract,

if such conditions as may be specified in regulations made by the Minister after consultation with the Commissioner are complied with.**]**

Annotations

Amendments:

F14 Inserted (1.07.2003) by *Data Protection Amendment Act 2003* (6/2003), s. 4, S.I. No. 207 of 2003.

Right to establish existence of personal data.

3.—An individual who believes that a person keeps personal data shall, if he so requests the person in writing—

(*a*) be informed by the person whether he keeps any such data, and

(*b*) if he does, be given by the person a description of the data and the purposes for which they are kept,

as soon as may be and in any event not more than 21 days after the request has been given or sent to him.

Right of access.

4.—(1) F15**[**(*a*) Subject to the provisions of this Act, an individual shall, if he or she so requests a data controller by notice in writing—

(i) be informed by the data controller whether the data processed by or on behalf of the data controller include personal data relating to the individual,

(ii) if it does, be supplied by the data controller with a description of—

(I) the categories of data being processed by or on behalf of the data controller,

(II) the personal data constituting the data of which that individual is the data subject,

(III) the purpose or purposes of the processing, and

(IV) the recipients or categories of recipients to whom the data are or may be disclosed,

(iii) have communicated to him or her in intelligible form—

(I) the information constituting any personal data of which that individual is the data subject, and

(II) any information known or available to the data controller as to the source of those data unless the communication of that information is contrary to the public interest,

and

(iv) where the processing by automatic means of the data of which the individual is the data subject has constituted or is likely to constitute the sole basis for any decision significantly affecting him or her, be informed free of charge by the data controller of the logic involved in the processing,

as soon as may be and in any event not more than 40 days after compliance by the individual with the provisions of this section and, where any of the information is expressed in terms that are not intelligible to the average person without explanation, the information shall be accompanied by an explanation of those terms.

(*b*) A request under *paragraph (a)* of this subsection that does not relate to all of its subparagraphs shall, in the absence of any indication to the contrary, be treated as relating to all of them.**]**

(*c*) (i) A fee may be payable to the data controller concerned in respect of such a request as aforesaid and the amount thereof shall not exceed such amount as may be prescribed or an amount that in the opinion of the Commissioner is reasonable, having regard to the estimated cost to the data controller of compliance with the request, whichever is the lesser.

(ii) A fee paid by an individual to a data controller under *subparagraph (i)* of this paragraph shall be returned to him if his request is not complied with or the data controller rectifies or supplements, or erases part of, the data concerned (and thereby materially modifies the data) or erases all of the data on the application of the individual or in accordance with an enforcement notice or an order of a court.

(2) F16**[**...**]**

(3) An individual making a request under this section shall supply the data controller concerned with such information as he may reasonably require in order to satisfy himself of the identity of the individual and to locate any relevant personal data or information.

(4) F16**[**...**]**

F17**[**(4A) (*a*) Where personal data relating to a data subject consist of an expression of opinion about the data subject by another person, the data may be disclosed to the data subject without obtaining the consent of that person to the disclosure.

(*b*) *Paragraph (a)* of this subsection does not apply—

(i) to personal data held by or on behalf of the person in charge of an institution referred to in *section 5(1)(c)* of this Act and consisting of an expression of opinion by another person about the data subject if the data subject is being or was detained in such an institution, or

(ii) if the expression of opinion referred to in that paragraph was given in confidence or on the understanding that it would be treated as confidential.**]**

(5) Information supplied pursuant to a request under *subsection (1)* of this section may take account of any amendment of the personal data concerned made since the receipt of the request by the data controller (being an amendment that would have been made irrespective of the receipt of the request) but not of any other amendment.

(6) F16**[**...**]**

(7) A notification of a refusal of a request made by an individual under and in compliance with the preceding provisions of this section shall be in writing and shall include a statement of the reasons for the refusal and an indication that the individual may complain to the Commissioner about the refusal.

(8) (*a*) If and whenever the Minister considers it desirable in the interests of data subjects F18**[** or in the public interest**]** to do so and by regulations so declares, the application of this section to personal data—

(i) relating to physical or mental health, or

(ii) kept for, or obtained in the course of, carrying out social work by a Minister of the Government, a local authority, a health board or a specified voluntary organisation or other body,

may be modified by the regulations in such manner, in such circumstances, subject to such safeguards and to such extent as may be specified therein.

(*b*) Regulations under *paragraph (a)* of this subsection shall be made only after consultation with the Minister for Health and any other Minister of the Government who, having regard to his functions, ought, in the opinion of the Minister, to be consulted and may make different provision in relation to data of different descriptions.

F19**[**(9) The obligations imposed by *subsection (1)(a)(iii)* (inserted by the Act of 2003) of this section shall be complied with by supplying the data subject with a copy of the information concerned 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.

(10) Where a data controller has previously complied with a request under *subsection (1)* of this section, the data controller is not obliged to comply with a subsequent identical or similar request under that subsection by the same individual unless, in the opinion of the data controller, a reasonable interval has elapsed between compliance with the previous request and the making of the current request.

(11) In determining for the purposes of *subsection (10)* of this section whether the reasonable interval specified in that subsection has elapsed, 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.

(12) *Subsection (1)(a)(iv)* of this section is not to be regarded as requiring the provision of information as to the logic involved in the taking of a decision if and to the extent only that such provision would adversely affect trade secrets or intellectual property (in particular any copyright protecting computer software).

F19**[**(13) F16**[**...**]]]**

Annotations

Amendments:

F15 Substituted (1.07.2003) by *Data Protection (Amendment) Act 2003* (6/2003), s. 5(a), S.I. No. 207 of 2003.

F16 Repealed other than for certain excepted purposes (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 7(1)(c), (4), S.I. No. 174 of 2018. The excepted purposes in subs. (4) are 7/2018, s. 8(1)(b), (2) and (3). See C-note below.

F17 Inserted (1.07.2003) by *Data Protection (Amendment) Act 2003* (6/2003), s. 5(b), S.I. No. 207 of 2003.

F18 Inserted (1.07.2003) by *Data Protection (Amendment) Act 2003* (6/2003), s. 5(c), S.I. No. 207 of 2003.

F19 Inserted (18.07.2014) by *Data Protection (Amendment) Act 2003* (6/2003), s. 5(d); subs. (13) S.I. No. 338 of 2014.

Modifications (not altering text):

C32 Subss. (2), (4), (6), (13) repealed, but retained (see below) for certain excepted purposes, (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 7(1)(c), (4), S.I. No. 174 of 2018. The excepted purposes in subs. (4) are 7/2018, s. 8(1)(b) (the processing of such data under the *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014* (11/2014) or the *Vehicle Registration Data (Automated Searching and Exchange) Act 2018* (5/2018) to the extent that the Act of 1988 is applied in those Acts) and s. 8(2), (3) (transitional provisions).

(2) Where pursuant to provision made in that behalf under this Act there are separate entries in the register in respect of data kept by a data controller for different purposes, *subsection (1)* of this section shall apply as if it provided for the making of a separate request and the payment of a separate fee in respect of the data to which each entry relates.

...

(4) Nothing in *subsection (1)* of this section obliges a data controller to disclose to a data subject personal data relating to another individual unless that other individual has consented to the disclosure:

Provided that, where the circumstances are such that it would be reasonable for the data controller to conclude that, if any particulars identifying that other individual were omitted, the data could then be disclosed as aforesaid without his being thereby identified to the data subject, the data controller shall be obliged to disclose the data to the data subject with the omission of those particulars.

...

(6) (*a*) A request by an individual under *subsection (1)* of this section in relation to the results of an examination at which he was a candidate shall be deemed, for the purposes of this section, to be made on—

(i) the date of the first publication of the results of the examination, or

(ii) the date of the request,

whichever is the later; and *paragraph (a)* of the said *subsection (1)* shall be construed and have effect in relation to such a request as if for "40 days" there were substituted "60 days".

(*b*) In this subsection "examination" means any process for determining the knowledge, intelligence, skill or ability of a person by reference to his performance in any test, work or other activity.

...

F19**[**(13) (*a*) A person shall not, in connection with—

(i) the recruitment of another person as an employee,

(ii) the continued employment of another person, or

(iii) a contract for the provision of services to him or her by another person,

require that other person—

(I) to make a request under *subsection (1)* of this section, or

(II) to supply him or her with data relating to that other person obtained as a result of such a request.

(*b*) A person who contravenes *paragraph (a)* of this subsection shall be guilty of an offence.**]**

C33 Section applied with modifications by *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014* (11/2014), s. 123(1), (2)(d), partially commenced insofar as the 2014 Act, part 12 ch. 4 (which includes s. 123) relates to an Article 7 request within the meaning of that chapter (20.11.2015) by S.I. No. 508 of 2015, otherwise (3.12.2018) by S.I. No. 503 of 2018.

Application of Act of 1988

123. (1) The Act of 1988 shall, with the modifications specified in *subsection (2)* and any other necessary modifications, apply to the processing of personal data supplied or received pursuant to—

(*a*) Chapter 2,

(*b*) Chapter 3, or

(*c*) an Article 7 request,

and, for the purposes of the foregoing application of the Act of 1988, references in it to that Act or the provisions of that Act shall, unless the context otherwise requires, be construed as including references to—

(i) Chapter 2 or the provisions of that Chapter,

(ii) Chapter 3 or the provisions of that Chapter, and

(iii) Chapter 3 of Part 5 of the Act of 2008 insofar as that Chapter applies to an Article 7 request or the provisions of that Chapter insofar as they apply to such a request.

(2) The modifications of the Act of 1988 referred to in *subsection (1)* are the following, namely—

...

(*d*) in section 4, the addition of the following subsection:

"(14) Notwithstanding section 5, this section applies to the processing of personal data supplied or received pursuant to—

(*a*) Chapter 2 of Part 12 of the Act of 2014,

(*b*) Chapter 3 of that Part of that Act,

(*c*) an Article 7 request.",

...

C34 Application of section extended with modifications (27.01.2014) by *Credit Reporting Act 2013* (45/2013), s. 19(2), (4), S.I. No. 19 of 2014.

Data protection

19. ...

(2) Sections 2 , 4 and 6 of the Data Protection Act 1988 shall have effect as if—

(*a*) references to personal data included relevant credit data, and

(*b*) a person to whom this section applies were a living individual, and sections 9, 10, 12 and 24 to 31 of that Act apply accordingly.

(3) ...

(4) This section applies to any person with an annual turnover of not more than €3,000,000 (and to whom sections 2, 4 and 6 of the Data Protection Act 1988 would not apply apart from this section).

...

C35 Application of section restricted (1.03.2013) by *Personal Insolvency Act 2012* (44/2012), s. 186, S.I. No. 63 of 2013.

Restriction of Data Protection Act 1988.

186.— Section 4 (as amended by section 5 of the Data Protection (Amendment) Act 2003) of the Data Protection Act 1988 shall not apply to data processed by—

(*a*) the Insolvency Service,

(*b*) an inspector appointed under section 176, or

(*c*) the Complaints Committee,

in the performance of functions assigned to those persons under this Act in so far as those functions relate to carrying out an investigation under this Part.

C36 Application of section restricted (6.07.2012) by *Property Services (Regulation) Act 2011* (40/2011), s. 93, S.I. No. 198 of 2012.

Restriction of Data Protection Act 1988.

93.— Section 4 (as amended by section 5 of the Data Protection (Amendment) Act 2003) of the Data Protection Act 1988 shall not apply to data processed by the Authority in the performance of its functions under this Act in so far as those functions relate to carrying out an investigation.

C37 Application of section restricted (18.07.2004) by *Commissions of Investigation Act 2004* (23/2004), s. 39, commenced on enactment.

Restriction of Data Protection Act 1988.

39.—Section 4 of the Data Protection Act 1988 does not apply to personal data provided to a commission for as long as the data is in the custody of—

(*a*) the commission,

(*b*) the specified Minister after being deposited with him or her under *section 43(2)*,

(*c*) a tribunal of inquiry after being made available to it under *section 45*, or

(*d*) a body after being transferred to it on the dissolution of a tribunal of inquiry to which the data was made available under *section 45*.

C38 Application of section restricted (16.12.2002) by *Residential Institutions Redress Act 2002* (13/2002), s. 30, S.I. No. 520 of 2005.

Restriction of Data Protection Act, 1988.

30.—Section 4 of the Data Protection Act, 1988 does not apply to personal data provided to the Board while the data is in the custody of the Board or the Review Committee.

C39 Application of section restricted (23.05.2000, establishment day) by *Commission to Inquire into Child Abuse Act 2000* (7/2000), s. 33, S.I. No. 149 of 2000.

Restriction of Data Protection Act. 1988.

33.—Section 4 of the Data Protection Act, 1988, does not apply to personal data provided to the Commission or a Committee while the data is in the custody of the Commission or a Committee, or in the case of such data provided to the Confidential Committee, of a body to which it is transferred by the Commission upon the dissolution of the Commission.

C40 Application of section restricted (19.04.1989) by *Data Protection (Access Modification) (Social Work) Regulations 1989* (S.I. No. 83 of 1989), reg. 4. Continued in force (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 68(3)(a), S.I. No. 174 of 2018, until the first set of regulation are made under s. 60(5)(b) of that Act. Note that s. 68(3)(b) amends these regulations and replaces references to s. 4 with references to the Data Protection Regulation, and s. 68(3)(c) provides for transitional arrangements in relation to requests for social work data.

4. (1) Information constituting social work data shall not be supplied by or on behalf of a data controller to the data subject concerned in response to [a request under Article 15 of the Data Protection Regulation] if it would be likely to cause serious harm to [the physical or mental health or emotional condition of the data subject, but this restriction on providing information applies only to the extent to which, and for as long as, that likelihood pertains.]

(2) Nothing in paragraph (1) of this Regulation excuses a data controller from supplying so much of the information sought by the request as can be supplied without causing the harm referred to in that paragraph.

(3) If the social work data include information supplied to a data controller by an individual (other than an employee or agent of the data controller) while carrying out social work, the data controller shall not supply that information to the data subject [under Article 15 of the Data Protection Regulation] without first consulting that individual.

C41 Application of section restricted (19.04.1989) by *Data Protection (Access Modification) (Health) Regulations 1989* (S.I. No. 82 of 1989), regs. 4-6. Continued in force (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 68(2)(a), S.I. No 174 of 2018, until the first set of regulations are made under s. 60(5)(a) of that Act. Note that s. 68(2)(b) amends these regulations and replaces references to s. 4 with references to the Data Protection Regulation, and s. 68(2)(c) provides for transitional arrangements in relation to requests for health data.

4. (1) Information constituting health data shall not be supplied by or on behalf of a data controller to the data subject concerned in response to [a request under Article 15 of the Data Protection Regulation] if it would be likely to cause serious harm to [the physical or mental health of the data subject, but this restriction on providing information applies only to the extent to which, and for so long as, that likelihood pertains.]

(2) Nothing in paragraph (1) of this Regulation excuses a data controller from supplying so much of the information sought by the request as can be supplied without causing the harm referred to in that paragraph.

5. (1) A data controller who is not a [health practitioner] shall not—

(*a*) supply information constituting health data in response to [a request under the said Article 15 of the Data Protection Regulation], ...

(*b*) withhold any such information on the grounds specified in Regulation 4 (1) of these Regulations,

unless he has first consulted the person who appears to him to be the appropriate [health practitioner].

(2) In this Regulation "the appropriate health professional" means—

(*a*) the person who is the registered medical practitioner, [within the meaning of section 2 of the Medical Practitioners Act 2007 or a medical practitioner practising medicine pursuant to section 50 of that Act], currently or most recently responsible for the clinical care of the data subject in connection with the matters to which the information, the subject of the request, relates,

(*b*) where there is more than one such person, the person who is the most suitable to advise on those matters,

(*c*) where there is no person available falling within either subparagraph (a) or (b) of this paragraph, a health professional who has the necessary experience and qualifications to advise on those matters.

6. [...]

C42 Application of section restricted (19.04.1989) by *Data Protection Act 1988 (Restriction of Section 4) Regulations 1989* (S.I. No. 81 of 1989), reg. 3 and sch. *Adoption Act 1952* repealed (1.11.2010) by *Adoption Act 2010* (21/2010), s. 7(1) and sch. part 1, S.I. No. 511 of 2010; revoked other than for certain excepted purposes (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 7(3), (4) and sch. 1 item 3, S.I. No. 174 of 2018. The excepted purposes in subs. (4) are 7/2018, s. 8(1)(b) (the processing of such data under the *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014* (11/2014) or the *Vehicle Registration Data (Automated Searching and Exchange) Act 2018*

(5/2018) to the extent that the Act of 1988 is applied in those Acts) and s. 8(2), (3) (transitional provisions).

3. The prohibition and restrictions on the disclosure, and the authorisations of the withholding, of information contained in the provision of the enactments specified in the Schedule to these Regulations shall prevail in the interests of the data subjects concerned and any other individuals concerned.

SCHEDULE

Section 22 (5) of the Adoption Act, 1952 (No. 25 of 1952).

Section 9 of the Ombudsman Act, 1980 (No. 26 of 1980).

Editorial Notes:

E28 Power pursuant to section exercised (19.04.1989) by *Data Protection (Access Modification) (Social Work) Regulations 1989* (S.I. No. 83 of 1989). Continued in force (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 68(3)(a), S.I. No. 174 of 2018, until the first set of regulation are made under s. 60(5)(b) of that Act. Note that s. 68(3)(b) amends these regulations and replaces references to s. 4 with references to the Data Protection Regulation, and s. 68(3)(c) provides for transitional arrangements in relation to requests for social work data.

E29 Power pursuant to section exercised (19.04.1989) by *Data Protection (Access Modification) (Health) Regulations 1989* (S.I. No. 82 of 1989). Continued in force (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 68(2)(a), S.I. No 174 of 2018, until the first set of regulations are made under s. 60(5)(a) of that Act. Note that s. 68(2)(b) amends these regulations and replaces references to s. 4 with references to the Data Protection Regulation, and s. 68(2)(c) provides for transitional arrangements in relation to requests for health data.

E30 Power pursuant to section exercised (16.12.1988) by *Data Protection (Fees) Regulations 1988* (S.I. No. 347 of 1988); regs. 5 and 6 revoked (4.04.1990) by *Data Protection (Fees) Regulations 1990* (S.I. No. 80 of 1990), reg. 5.

Restriction of right of access.

5.—(1) *Section 4* of this Act does not apply to personal data—

(*a*) kept for the purpose of preventing, detecting or investigating offences, apprehending or prosecuting offenders or assessing or collecting any tax, duty or other moneys owed or payable to the State, a local authority or a health board, in any case in which the application of that section to the data would be likely to prejudice any of the matters aforesaid,

(*b*) to which, by virtue of *paragraph (a)* of this subsection, the said *section 4* does not apply and which are kept for the purpose of discharging a function conferred by or under any enactment and consisting of information obtained for such a purpose from a person who had it in his possession for any of the purposes mentioned in *paragraph (a)* of this subsection,

(*c*) in any case in which the application of that section would be likely to prejudice the security of, or the maintenance of good order and discipline in—

(i) a prison,

F20**[**(ii) a place of detention provided under section 2 of the Prisons Act 1970, or

(iii) a military prison or detention barrack within the meaning of the Defence Act 1954,**]**

(iv) F21**[**...**]**

(*d*) F22**[**...**]**

(*e*) in respect of which the application of that section would be contrary to the interests of protecting the international relations of the State,

(*f*) consisting of an estimate of, or kept for the purpose of estimating, the amount of the liability of the data controller concerned on foot of a claim for the payment of a sum of money, whether in respect of damages or compensation, in any case in which the application of the section would be likely to prejudice the interests of the data controller in relation to the claim,

(*g*) in respect of which a claim of privilege could be maintained in proceedings in a court in relation to communications between a client and his professional legal advisers or between those advisers,

F23**[**(*gg*) kept by the Commissioner or the Information Commissioner for the purposes of his or her functions,**]**

(*h*) kept only for the purpose of preparing statistics or carrying out research if the data are not used or disclosed (other than to a person to whom a disclosure of such data may be made in the circumstances specified in *section 8* of this Act) for any other purpose and the resulting statistics or the results of the research are not made available in a form that identifies any of the data subjects, or

(*i*) that are back-up data.

(2) Regulations under *subsections (1) (d)* and *(3) (b)* of this section shall be made only after consultation with any other Minister of the Government who, having regard to his functions, ought, in the opinion of the Minister, to be consulted.

(3) (*a*) Subject to *paragraph (b)* of this subsection, *section 4* of this Act, as modified by any other provisions thereof, shall apply notwithstanding any provision of or made under any enactment or rule of law that is in force immediately before the passing of this Act and prohibits or restricts the disclosure, or authorises the withholding, of information.

(*b*) If and whenever the Minister is of opinion that a prohibition, restriction or authorisation referred to in *paragraph (a)* of this subsection in relation to any information ought to prevail in the interests of the data subjects concerned or any other individuals and by regulations so declares, then, while the regulations are in force, the said *paragraph (a)* shall not apply as respects the provision or rule of law concerned and accordingly *section 4* of this Act, as modified as aforesaid, shall not apply in relation to that information.

Annotations

Amendments:

F20 Substituted (7.04.2017) by *Prisons Act 2015* (57/2015), s. 14(a), S.I. No. 134 of 2017.

F21 Deleted (7.04.2017) by *Prisons Act 2015* (57/2015), s. 14(b), S.I. No. 134 of 2017.

F22 Repealed other than for certain excepted purposes (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 7(1)(d), (4), S.I. No. 174 of 2018. The excepted purposes in subs. (4) are 7/2018, s. 8(1)(b), (2) and (3). See C-note below.

F23 Inserted (1.07.2003) by *Data Protection (Amendment) Act 2003* (6/2003), s. 6, S.I. No. 207 of 2003.

Modifications (not altering text):

C43 Subs. (1)(d) repealed, but retained (see below) for certain excepted purposes, (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 7(1)(d), (4), S.I. No. 174 of 2018. The excepted purposes in subs. (4) are 7/2018, s. 8(1)(b) (the processing of such data under the *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014* (11/2014) or the *Vehicle Registration Data (Automated*

Searching and Exchange) Act 2018 (5/2018) to the extent that the Act of 1988 is applied in those Acts) and s. 8(2), (3) (transitional provisions).

(*d*) kept for the purpose of performing such functions conferred by or under any enactment as may be specified by regulations made by the Minister, being functions that, in the opinion of the Minister, are designed to protect members of the public against financial loss occasioned by—

(i) dishonesty, incompetence or malpractice on the part of persons concerned in the provision of banking, insurance, investment or other financial services or in the management of companies or similar organisations, or

(ii) the conduct of persons who have at any time been adjudicated bankrupt,

in any case in which the application of that section to the data would be likely to prejudice the proper performance of any of those functions,

Editorial Notes:

E31 Power pursuant to subss. (1)(d) and (2) exercised (21.10.2009) by *Data Protection Act 1988 (Section 5(1)(d)) (Specification) Regulations 2009* (S.I. No. 421 of 2009); revoked other than for certain excepted purposes (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 7(3), (4) and sch. 1 item 9, S.I. No. 174 of 2018. The excepted purposes in subs. (4) are 7/2018, s. 8(1)(b) (the processing of such data under the *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014* (11/2014) or the *Vehicle Registration Data (Automated Searching and Exchange) Act 2018* (5/2018) to the extent that the Act of 1988 is applied in those Acts) and s. 8(2), (3) (transitional provisions).

E32 Power pursuant to subss. (1)(d) and (2) exercised (7.04.1993) by *Data Protection Act 1988 (Section 5(1)(d)) (Specification) Regulations 1993* (S.I. No. 95 of 1993); revoked other than for certain excepted purposes (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 7(3), (4) and sch. 1 item 5, S.I. No. 174 of 2018. The excepted purposes in subs. (4) are 7/2018, s. 8(1)(b) (the processing of such data under the *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014* (11/2014) or the *Vehicle Registration Data (Automated Searching and Exchange) Act 2018* (5/2018) to the extent that the Act of 1988 is applied in those Acts) and s. 8(2), (3) (transitional provisions).

E33 Power pursuant to subss. (2) and (3)(b) exercised (19.04.1989) by *Data Protection Act 1988 (Restriction of Section 4) Regulations 1989* (S.I. No. 81 of 1989); revoked other than for certain excepted purposes (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 7(3), (4) and sch. 1 item 4, S.I. No. 174 of 2018. The excepted purposes in subs. (4) are 7/2018, s. 8(1)(b) (the processing of such data under the *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014* (11/2014) or the *Vehicle Registration Data (Automated Searching and Exchange) Act 2018* (5/2018) to the extent that the Act of 1988 is applied in those Acts) and s. 8(2), (3) (transitional provisions).

E34 Previous affecting provision: power pursuant to subss. (1)(d) and (2) exercised (19.04.1989) by *Data Protection Act 1988 (Section 5(1)(d)) (Specification) Regulations 1989* (S.I. No. 84 of 1989); revoked (7.04.1993) by *Data Protection Act 1988 (Section 5(1)(d) (Specification) Regulations 1993* (S.I. No. 95 of 1993), reg. 4.

Right of rectification or erasure.

6.—(1) An individual shall, if he so requests in writing a data controller who keeps personal data relating to him, be entitled to have rectified or, where appropriate, F24**[**blocked or**]** erased any such data in relation to which there has been a contravention by the data controller of *section 2 (1)* of this Act; and the data controller shall comply with the request as soon as may be and in any event not more than 40 days after it has been given or sent to him:

Provided that the data controller shall, as respects data that are inaccurate or not kept up to date, be deemed—

(*a*) to have complied with the request if he supplements the data with a statement (to the terms of which the individual has assented) relating to the matters dealt with by the data, and

(*b*) if he supplements the data as aforesaid, not to be in contravention of *paragraph (b)* of the said *section 2 (1)*.

F25**[**(2) Where a data controller complies, or is deemed to have complied, with a request under *subsection (1)* of this section, he or she shall, as soon as may be and in any event not more than 40 days after the request has been given or sent to him or her, notify—

(*a*) the individual making the request, and

(*b*) if such compliance materially modifies the data concerned, any person to whom the data were disclosed during the period of 12 months immediately before the giving or sending of the request unless such notification proves impossible or involves a disproportionate effort,**]**

Annotations

Amendments:

F24 Inserted (1.07.2003) by *Data Protection (Amendment) Act 2003* (6/2003), s. 7(a), S.I. No. 207 of 2003.

F25 Substituted (1.07.2003) by *Data Protection (Amendment) Act 2003* (6/2003), s. 7(b), S.I. No. 207 of 2003; subs. (2)(b) commenced (18.07.2014) by S.I. No. 338 of 2014.

Modifications (not altering text):

C44 Application of section extended with modification (27.01.2014) by *Credit Reporting Act 2013* (45/2013), s. 19(2), (4), S.I. No. 19 of 2014.

Data protection

19. ...

(2) Sections 2, 4 and 6 of the Data Protection Act 1988 shall have effect as if—

(*a*) references to personal data included relevant credit data, and

(*b*) a person to whom this section applies were a living individual, and sections 9, 10, 12 and 24 to 31 of that Act apply accordingly.

(3) ...

(4) This section applies to any person with an annual turnover of not more than €3,000,000 (and to whom sections 2, 4 and 6 of the Data Protection Act 1988 would not apply apart from this section).

...

F26**[**Right of data subject to object to processing likely to cause damage or distress.

6A.—(1) Subject to *subsection (3)* and unless otherwise provided by any enactment, an individual is entitled at any time, by notice in writing served on a data controller, to request him or her to cease within a reasonable time, or not to begin, processing or processing for a specified purpose or in a specified manner any personal data in respect of which he or she is the data subject if the processing falls within *subsection (2)* of this section 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 likely to cause substantial damage or distress to him or her or to another person, and

(*b*) the damage or distress is or would be unwarranted.

(2) This subsection applies to processing that is necessary—

(*a*) for the performance of a task carried out in the public interest or in the exercise of official authority vested in the data controller or in a third party to whom the data are or are to be disclosed, or

(*b*) for the purposes of the legitimate interests pursued by the data controller to whom the data are or are to be disclosed, unless those interests are overridden by the interests of the data subject in relation to fundamental rights and freedoms and, in particular, his or her right to privacy with respect to the processing of personal data.

(3) *Subsection (1)* does not apply—

(*a*) in a case where the data subject has given his or her explicit consent to the processing,

(*b*) if the processing is necessary—

(i) for the performance of a contract to which the data subject is a party,

(ii) in order to take steps at the request of the data subject prior to his or her entering into a contract,

(iii) for compliance with any legal obligation to which the data controller or data subject is subject other than one imposed by contract, or

(iv) to protect the vital interests of the data subject,

(*c*) to processing carried out by political parties or candidates for election to, or holders of elective political office, in the course of electoral activities, or

(*d*) in such other cases, if any, as may be specified in regulations made by the Minister after consultation with the Commissioner.

(4) Where a notice under *subsection (1)* of this section is served on a data controller, he or she shall, as soon as practicable and in any event not later than 20 days after the receipt of the notice, serve a notice on the individual concerned—

(*a*) stating that he or she has complied or intends to comply with the request concerned, or

(*b*) stating that he or she is of opinion that the request is unjustified to any extent and the reasons for the opinion and the extent (if any) to which he or she has complied or intends to comply with it.

(5) If the Commissioner is satisfied, on the application to him or her in that behalf of an individual who has served a notice under *subsection (1)* of this section that appears to the Commissioner to be justified, or to be justified to any extent, that the data controller concerned has failed to comply with the notice or to comply with it to that extent and that not less than 40 days have elapsed since the receipt of the notice by him or her, the Commissioner may, by an enforcement notice served on the data controller, order him or her to take such steps for complying with the request, or for complying with it to that extent, as the Commissioner thinks fit and specifies in the enforcement notice, and that notice shall specify the reasons for the Commissioner being satisfied as aforesaid.**]**

Annotations

Amendments:

F26 Inserted (1.07.2003) by *Data Protection (Amendment) Act 2003* (6/2003), s. 8, S.I. No. 207 of 2003.

Modifications (not altering text):

C45 Application of section restricted by *Communications Regulation (Postal Services) Act 2011* (21/2015), s. 66C(2); as inserted (6.07.2015) by *Communications Regulation (Postal Services) (Amendment) Act 2015* (20/2015), s. 2(b), S.I. No. 337 of 2015.

Personal data protection

66C. (1) Nothing in this Part shall be construed as authorising the processing of personal data contrary to the provisions of the Data Protection Acts 1988 to 2003.

(2) Section 6A of the Act of 1988 shall not apply in respect of such processing of personal data as is required for purposes related to the carrying out of a legitimate postcode activity.

F27**[**Rights in relation to automated decision taking.

6B.—(1) Subject to *subsection (2)* of this section, a decision which produces legal effects concerning a data subject or otherwise significantly affects a data subject may not be based solely on processing by automatic means of personal data in respect of which he or she is the data subject and which is intended to evaluate certain personal matters relating to him or her such as, for example (but without prejudice to the generality of the foregoing), his or her performance at work, creditworthiness, reliability or conduct.

(2) *Subsection (1)* of this section does not apply—

(*a*) in a case in which a decision referred to in that subsection—

(i) is made 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

(ii) is authorised or required by any enactment and the data subject has been informed of the proposal to make the decision, and

(iii) either—

(I) the effect of the decision is to grant a request of the data subject, or

(II) adequate steps have been taken to safeguard the legitimate interests of the data subject by, for example (but without prejudice to the generality of the foregoing), the making of arrangements to enable him or her to make representations to the data controller in relation to the proposal,

or

(*b*) if the data subject consents to the processing referred to in *subsection (1)*.**]**

Annotations

Amendments:

F27 Inserted (1.07.2003) by *Data Protection (Amendment) Act 2003* (6/2003), s. 8, S.I. No. 207 of 2003.

Duty of care owed by data controllers and data processors.

7.—For the purposes of the law of torts and to the extent that that law does not so provide, a person, being a data controller or a data processor, shall, so far as regards the collection by him of personal data or information intended for inclusion in such data or his dealing with such data, owe a duty of care to the data subject concerned:

Provided that, for the purposes only of this section, a data controller shall be deemed to have complied with the provisions of *section 2 (1) (b)* of this Act if and so long as the personal data concerned accurately record data or other information received or obtained by him from the data subject or a third party and include (and, if the data are disclosed, the disclosure is accompanied by)—

(*a*) an indication that the information constituting the data was received or obtained as aforesaid,

(*b*) if appropriate, an indication that the data subject has informed the data controller that he regards the information as inaccurate or not kept up to date, and

(*c*) any statement with which, pursuant to this Act, the data are supplemented.

Annotations

Modifications (not altering text):

C46 Section applied with modifications by *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014* (11/2014), s. 123(1), (2)(e), partially commenced insofar as the 2014 Act, part 12 ch. 4 (which includes s. 123) relates to an Article 7 request within the meaning of that chapter (20.11.2015) by S.I. No. 508 of 2015, otherwise (3.12.2018) by S.I. No. 503 of 2018.

Application of Act of 1988

123. (1) The Act of 1988 shall, with the modifications specified in subsection (2) and any other necessary modifications, apply to the processing of personal data supplied or received pursuant to—

(*a*) Chapter 2,

(*b*) Chapter 3, or

(*c*) an Article 7 request,

and, for the purposes of the foregoing application of the Act of 1988, references in it to that Act or the provisions of that Act shall, unless the context otherwise requires, be construed as including references to—

(i) Chapter 2 or the provisions of that Chapter,

(ii) Chapter 3 or the provisions of that Chapter, and

(iii) Chapter 3 of Part 5 of the Act of 2008 insofar as that Chapter applies to an Article 7 request or the provisions of that Chapter insofar as they apply to such a request.

(2) The modifications of the Act of 1988 referred to in *subsection (1)* are the following, namely—

...

(*e*) in *section 7*—

(i) the proviso shall not apply to a data controller in respect of personal data received or obtained by him or her from a body in a designated state pursuant to a European Union or international instrument,

(ii) the designation of the section (as modified by *subparagraph (i)*) as *subsection (1)* of that section, and

(iii) the addition of the following subsections:

"(2) A data controller shall not use the inaccuracy of personal data received by him or her from a body in a designated state pursuant to a European Union or international

instrument as a ground to avoid or reduce his or her liability to the data subject concerned under subsection (1).

(3) Where—

(a) the Minister or the Commissioner of the Garda Síochána pays damages to a data subject under this section for damage caused to the data subject by reason of inaccurate data received by the national contact point in relation to DNA data or the national contact point in relation to dactyloscopic data, as may be appropriate, from a body in a designated state pursuant to Chapter 2 or 3 of Part 12 of the Act of 2014, or

(b) the Minister, the Commissioner of the Garda Síochána or the Director of Public Prosecutions pays damages to a data subject under this section for damage caused to the data subject by reason of inaccurate data received by the Central Authority, the Garda Síochána or the Director of Public Prosecutions, as may be appropriate, from a body in a Member State or Iceland or Norway pursuant to an Article 7 request,

the Minister, the Commissioner of the Garda Síochána or the Director of Public Prosecutions, as the case may be, may seek a refund of the amount that he or she paid in damages to the data subject concerned from the body in the designated state concerned.

(4) Where—

(a) a body in a designated state applies to the national contact point in relation to DNA data or the national contact point in relation to dactyloscopic data for a refund of damages paid by it, or on its behalf, on foot of a decision or finding of a court or other tribunal or the data protection authority in that designated state for damage caused to a data subject by reason of inaccurate data sent by the national contact point concerned to that body pursuant to Chapter 2 or 3 of Part 12 of the Act of 2014, or

(b) a body in a Member State or Iceland or Norway applies to the Minister or the Director of Public Prosecutions for a refund of damages paid by it, or on its behalf, on foot of a decision or finding of a court or other tribunal or the data protection authority in that Member State or Iceland or Norway, as the case may be, for damage caused to a data subject by reason of inaccurate data sent by the Minister or the Director of Public Prosecutions, as the case may be, to that body pursuant to an Article 7 request,

the Minister or the Commissioner of the Garda Síochána, as may be appropriate, in the circumstances referred to in paragraph (a), or the Minister or the Director of Public Prosecutions, as may be appropriate, in the circumstances referred to in paragraph (b), shall refund to the body in the designated state concerned the amount paid in damages by it, or on its behalf, to the data subject concerned.",

...

Disclosure of personal data in certain cases.

8.—Any restrictions in this Act on the F28**[**processing**]** of personal data do not apply if the F28**[**processing**]** is—

(*a*) in the opinion of a member of the Garda Síochána not below the rank of chief superintendent or an officer of the Permanent Defence Force who holds an army rank not below that of colonel and is designated by the Minister for Defence under this paragraph, required for the purpose of safeguarding the security of the State,

(*b*) required for the purpose of preventing, detecting or investigating offences, apprehending or prosecuting offenders or assessing or collecting any tax, duty or other moneys owed or payable to the State, a local authority or a health board, in any case in which the application of those restrictions would be likely to prejudice any of the matters aforesaid,

(*c*) required in the interests of protecting the international relations of the State,

(*d*) required urgently to prevent injury or other damage to the health of a person or serious loss of or damage to property,

(*e*) required by or under any enactment or by a rule of law or order of a court,

(*f*) required for the purposes of obtaining legal advice or for the purposes of, or in the course of, legal proceedings in which the person making the F28**[**processing**]** is a party or a witness,

(*g*) F29**[**...**]**

(*h*) made at the request or with the consent of the data subject or a person acting on his behalf.

Annotations

Amendments:

F28 Substituted (1.07.2003) by *Data Protection (Amendment) Act 2003* (6/2003), s. 9(a), S.I. No. 207 of 2003.

F29 Deleted(1.07.2003) by *Data Protection (Amendment) Act 2003* (6/2003), s. 9(b), S.I. No. 207 of 2003.

Modifications (not altering text):

C47 Section applied with modifications by *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014* (11/2014), s. 123(1), (2)(f), partially commenced insofar as the 2014 Act, part 12 ch. 4 (which includes s. 123) relates to an Article 7 request within the meaning of that chapter (20.11.2015) by S.I. No. 508 of 2015, otherwise (3.12.2018) by S.I. No. 503 of 2018.

Application of Act of 1988

123. (1) The Act of 1988 shall, with the modifications specified in subsection (2) and any other necessary modifications, apply to the processing of personal data supplied or received pursuant to—

(*a*) Chapter 2,

(*b*) Chapter 3, or

(*c*) an Article 7 request,

and, for the purposes of the foregoing application of the Act of 1988, references in it to that Act or the provisions of that Act shall, unless the context otherwise requires, be construed as including references to—

(i) Chapter 2 or the provisions of that Chapter,

(ii) Chapter 3 or the provisions of that Chapter, and

(iii) Chapter 3 of Part 5 of the Act of 2008 insofar as that Chapter applies to an Article 7 request or the provisions of that Chapter insofar as they apply to such a request.

(2) The modifications of the Act of 1988 referred to in *subsection (1)* are the following, namely—

...

(*f*) *section 8(b)* —

(i) insofar as it relates to the purpose of detecting or investigating offences, shall not apply to the processing of data pursuant to *Chapter 2*,

(ii) insofar as it relates to the purpose of preventing, detecting or investigating offences, shall not apply to the processing of personal data pursuant to *Chapter 3*, or

(iii) insofar as it relates to the purpose of detecting or investigating offences or apprehending or prosecuting offenders, shall not apply to the processing of personal data pursuant to an Article 7 request,

which are or have been supplied by or to a data controller in the State pursuant to a European Union or international instrument, and

...

C48 Statutory powers of officer under section exempted from application of *Freedom of Information Act 2014* by *Freedom of Information Act 2014* (30/2014), s. 42(c)(ii)(VII), commenced on enactment.

Restriction of Act

42. This Act does not apply to— ...

(*c*) a record held by— ...

(ii) the Defence Forces relating to— ...

(VII) the Data Protection Acts 1988 and 2003 in respect of the statutory powers of an officer under section 8 of the Data Protection Act 1988,

...

The Data Protection Commissioner

The Commissioner.

9.—F30**[**...**]**

Annotations

Amendments:

F30 Repealed other than for certain excepted purposes (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 7(1)(e), (4), S.I. No. 174 of 2018. The excepted purposes in subs. (4) are 7/2018, s. 8(1)(b), (2) and (3). See C-note below.

F31 Inserted (1.07.2003) by *Data Protection (Amendment) Act 2003* (6/2003), s. 10, S.I. No. 207 of 2003.

F32 Inserted (1.04.2002) by *European Communities (Data Protection) Regulations 2001* (S.I. No. 626 of 2001), reg. 4.

Modifications (not altering text):

C49 Section repealed, but retained (see below) for certain excepted purposes (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 7(1)(e), (4), S.I. No. 174 of 2018. The excepted purposes in subs. (4) are 7/2018, s. 8(1)(b) (the processing of such data under the *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014* (11/2014) or the *Vehicle Registration Data (Automated Searching and Exchange) Act 2018* (5/2018) to the extent that the Act of 1988 is applied in those Acts) and s. 8(2), (3) (transitional provisions). Note *Data Protection Act 2018* (7/2018), s. 14(3): A reference in the Act of 1988 (other than in section 1(3)(c)(iii) in so far as it refers to the Commissioner of the Garda Síochána) to the Commissioner shall be construed as a reference to the Commission.

9.—(1) For the purposes of this Act, there shall be a person (referred to in this Act as the Commissioner) who shall be known as an Coimisinéir Cosanta Sonraí or, in the English language, the Data Protection Commissioner; the Commissioner shall perform the functions conferred on him by this Act.

F31**[**(1A) (*a*) The lawfulness of the processing of personal data (including their transmission to the Central Unit of Eurodac established pursuant to the Council Regulation) in accordance with the Council Regulation shall be monitored by the Commissioner.

(*b*) In paragraph (*a*) of this subsection, "the Council Regulation" means Council Regulation (EC) No. 2725/2000 of 11 December 2000[(2)] concerning the establishment of Eurodac for the comparison of fingerprints for the effective application of the Dublin Convention.

[(2)] O.J. No. L 316, 15.12.00, p. 0001-0010.

(1B) The Commissioner shall arrange for the dissemination in such form and manner as he or she considers appropriate of—

(*a*) any Community finding (within the meaning of subsection (2)(*b*) (inserted by the *Act of 2003*) of section 11 of this Act),

(*b*) any decision of the European Commission or the European Council under the procedure provided for in Article 31(2) of the Directive that is made for the purposes of paragraph 3 or 4 of Article 26 of the Directive, and

(*c*) such other information as may appear to him or her to be expedient to give to data controllers in relation to the protection of the rights and freedoms of data subjects in respect of the processing of personal data in countries and territories outside the European Economic Area.

(1C) The Commissioner shall be the supervisory authority in the State for the purposes of the Directive.

(1D) The Commissioner shall also perform any functions in relation to data protection that the Minister may confer on him or her by regulations for the purpose of enabling the Government to give effect to any international obligations of the State.**]**

(2) The provisions of the *Second Schedule* to this Act shall have effect in relation to the Commissioner.

F32**[**(3) The Commissioner shall be the supervisory authority in the State for the purposes of Articles 4, 17, 25 and 26 of the Directive.**]**

C50 Section applied with modifications by *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014* (11/2014), s. 123(1), (2)(g), partially commenced insofar as the 2014 Act, part 12 ch. 4 (which includes s. 123) relates to an Article 7 request within the meaning of that chapter (20.11.2015) by S.I. No. 508 of 2015, otherwise (3.12.2018) by S.I. No. 503 of 2018.

Application of Act of 1988

123. (1) The Act of 1988 shall, with the modifications specified in subsection (2) and any other necessary modifications, apply to the processing of personal data supplied or received pursuant to—

(*a*) Chapter 2,

(*b*) Chapter 3, or

(*c*) an Article 7 request,

and, for the purposes of the foregoing application of the Act of 1988, references in it to that Act or the provisions of that Act shall, unless the context otherwise requires, be construed as including references to—

(i) Chapter 2 or the provisions of that Chapter,

(ii) Chapter 3 or the provisions of that Chapter, and

(iii) Chapter 3 of Part 5 of the Act of 2008 insofar as that Chapter applies to an Article 7 request or the provisions of that Chapter insofar as they apply to such a request.

(2) The modifications of the Act of 1988 referred to in *subsection (1)* are the following, namely—

...

(*g*) in section 9, the insertion of the following subsection after *subsection (1D)*:

"(1E) (*a*) The Commissioner shall be the competent data protection authority in the State for the purposes of a European Union or international instrument.

(*b*) The lawfulness of the processing of personal data supplied or received pursuant to—

(i) Chapter 2 of Part 12 of the Act of 2014,

(ii) Chapter 3 of that Part of that Act, and

(iii) an Article 7 request,

shall be monitored by the Commissioner.

(*c*) The performance by the Commissioner of his or her function under paragraph (b) shall include the carrying out of random checks on the processing of personal data referred to in that paragraph.

(*d*) The Commissioner may request the data protection authority of a designated state to perform its functions under the law of that designated state with regard to checking the lawfulness of the processing of personal data supplied by the State to that designated state pursuant to the relevant European Union or international instrument.

(*e*) The Commissioner may receive information from the data protection authority of a designated state arising from the performance by it of the functions referred to in paragraph (d) with regard to the processing of the personal data concerned.

(*f*) The Commissioner shall, at the request of the data protection authority of a designated state, perform his or her functions under paragraphs (a) to (c) of this subsection and he or she shall furnish information to that authority with regard to the processing of the personal data the subject of the request.".

C51 Application of section extended with modification (27.01.2014) by *Credit Reporting Act 2013* (45/2013), S.I. No. 19 of 2014.

Data protection

19. ...

(2) Sections 2 , 4 and 6 of the Data Protection Act 1988 shall have effect as if—

(*a*) references to personal data included relevant credit data, and

(*b*) a person to whom this section applies were a living individual, and sections 9, 10, 12 and 24 to 31 of that Act apply accordingly.

(3) ...

(4) This section applies to any person with an annual turnover of not more than €3,000,000 (and to whom sections 2, 4 and 6 of the Data Protection Act 1988 would not apply apart from this section).

...

Editorial Notes:

E35 Power pursuant to section exercised (25.05.1993) by *Data Protection Commissioner Superannuation Scheme 1993* (S.I. No. 141 of 1993). Continued in force (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 67, S.I. No. 174 of 2018, as if made under 7/2018, s. 22 and (a) a person who was a member of the scheme ... shall continue to be a member, and (b) the provisions of that section shall apply accordingly.

Enforcement of data protection.

10.—(1) (*a*) The Commissioner may investigate, or cause to be investigated, whether any of the provisions of this Act have been, are being or are likely to be contravened F33**[**...**]** in relation to an individual either where the individual complains to him of a contravention of any of those provisions or he is otherwise of opinion that there may be such a contravention.

(*b*) Where a complaint is made to the Commissioner under *paragraph (a)* of this subsection, the Commissioner shall—

(i) investigate the complaint or cause it to be investigated, unless he is of opinion that it is frivolous or vexatious, and

F34**[**(ii) if he or she is unable to arrange, within a reasonable time, for the amicable resolution by the parties concerned of the matter the subject of the complaint, notify in writing the individual who made the complaint of his or her decision in relation to it and that the individual may, if aggrieved by the decision, appeal against it to the Court under section 26

of this Act within 21 days from the receipt by him or her of the notification.**]**

F35**[**(1A) The Commissioner may carry out or cause to be carried out such investigations as he or she considers appropriate in order to ensure compliance with the provisions of this Act and to identify any contravention thereof.**]**

(2) If the Commissioner is of opinion that a person F36**[**...**]** has contravened or is contravening a provision of this Act (other than a provision the contravention of which is an offence), the Commissioner may, by notice in writing (referred to in this Act as an enforcement notice) served on the person, require him to take such steps as are specified in the notice within such time as may be so specified to comply with the provision concerned.

(3) Without prejudice to the generality of *subsection (2)* of this section, if the Commissioner is of opinion that a data controller has contravened *section 2 (1)* of this Act, the relevant enforcement notice may require him—

F34**[**(*a*) to block, rectify, erase or destroy any of the data concerned, or**]**

(*b*) to supplement the data with such statement relating to the matters dealt with by them as the Commissioner may approve of; and as respects data that are inaccurate or not kept up to date, if he supplements them as aforesaid, he shall be deemed not to be in contravention of *paragraph (b)* of the said *section 2 (1)*.

(4) An enforcement notice shall—

(*a*) specify any provision of this Act that, in the opinion of the Commissioner, has been or is being contravened and the reasons for his having formed that opinion, and

(*b*) subject to *subsection (6)* of this section, state that the person concerned may appeal to the Court under *section 26* of this Act against the requirement specified in the notice within 21 days from the service of the notice on him.

(5) Subject to *subsection (6)* of this section, the time specified in an enforcement notice for compliance with a requirement specified therein shall not be expressed to expire before the end of the period of 21 days specified in *subsection (4) (b)* of this section and, if an appeal is brought against the requirement, the requirement need not be complied with and *subsection (9)* of this section shall not apply in relation thereto, pending the determination or withdrawal of the appeal.

(6) If the Commissioner—

(*a*) by reason of special circumstances, is of opinion that a requirement specified in an enforcement notice should be complied with urgently, and

(*b*) includes a statement to that effect in the notice,

subsections (4) (b) and *(5)* of this section shall not apply in relation to the notice, but the notice shall contain a statement of the effect of the provisions of *section 26* (other than *subsection (3)*) of this Act and shall not require compliance with the requirement before the end of the period of 7 days beginning on the date on which the notice is served.

(7) On compliance by a data controller with a requirement under *subsection (3)* of this section, he shall, as soon as may be and in any event not more than 40 days after such compliance, notify—

(*a*) the data subject concerned, and

F34**[**(*b*) if such compliance materially modifies the data concerned, any person to whom the data were disclosed during the period beginning 12 months before

the date of the service of the enforcement notice concerned and ending immediately before such compliance unless such notification proves impossible or involves a disproportionate effort,

of the blocking, rectification, erasure, destruction or statement concerned.**]**

(8) The Commissioner may cancel an enforcement notice and, if he does so, shall notify in writing the person on whom it was served accordingly.

(9) A person who, without reasonable excuse, fails or refuses to comply with a requirement specified in an enforcement notice shall be guilty of an offence.

Annotations

Amendments:

F33 Deleted (1.07.2003) by *Data Protection (Amendment) Act 2003* (6/2003), s. 11(a)(i), S.I. No. 207 of 2003.

F34 Substituted (1.07.2003) by *Data Protection (Amendment) Act 2003* (6/2003), s. 11(a)(ii), (d) and (e), S.I. No. 207 of 2003; subs. (7)(b), substituted by s. 11(e), commenced (18.07.2014) by S.I. No. 337 of 2014.

F35 Inserted (1.07.2003) by *Data Protection (Amendment) Act 2003* (6/2003), s. 11(b), S.I. No. 207 of 2003.

F36 Deleted (1.07.2003) by *Data Protection (Amendment) Act 2003* (6/2003), s. 11(c), S.I. No. 207 of 2003.

Modifications (not altering text):

C52 Application of section extended with modification (27.01.2014) by *Credit Reporting Act 2013* (45/2013), s. 19(2), (4), S.I. No. 19 of 2014.

Data protection

19. ...

(2) Sections 2 , 4 and 6 of the Data Protection Act 1988 shall have effect as if—

(*a*) references to personal data included relevant credit data, and

(*b*) a person to whom this section applies were a living individual, and sections 9, 10, 12 and 24 to 31 of that Act apply accordingly.

(3) ...

(4) This section applies to any person with an annual turnover of not more than €3,000,000 (and to whom sections 2, 4 and 6 of the Data Protection Act 1988 would not apply apart from this section).

...

C53 Application of section extended with any necessary modifications (24.02.2003) by *European Communities (Directive 2000/31/EC) Regulations 2003* (S.I. No. 68 of 2003), reg. 9(6).

Unsolicited commercial communications.

9. ...

(6) The following provisions of the Act, namely —

(*a*) sections 1, 10, 12, 24 and 25,

(*b*) section 26 in so far as it relates to a requirement specified in an enforcement notice or an information notice or a decision of the Data Protection Commissioner in relation to a complaint under section 10 (1) (a) of the Act,

and

(*c*) sections 27 to 30,

apply for the purpose of this Regulation with the modifications specified in paragraphs (7) to (10) and any other necessary modifications.

(7) References, in the provisions of the Act mentioned in paragraph (6), to that Act or the provisions of that Act shall, unless the context otherwise requires be construed as including references to this Regulation or the provisions of this Regulation.

...

(9) Section 10 of the Act applies as if —

(*a*) in subsection (1)(a), "in relation to a person either where the person complains" were substituted for "by a data controller or a data processor in relation to an individual either where the individual complains",

(*b*) in subsection (1)(b), the following subparagraph were substituted for subparagraph (ii):

"(ii) if he or she is unable to arrange, within a reasonable time, for the amicable resolution by the parties concerned of the matter the subject of the complaint, notify in writing the person who made the complaint of his or her decision in relation to it and that the person may, if aggrieved by the decision, appeal against it to the Court under section 26 of this Act within 21 days from the receipt by the person of the notification.",

(*c*) the following subsection were inserted after subsection (1):

"(1A) The Commissioner may carry out or cause to be carried out such investigations as he or she considers appropriate in order to ensure compliance with Regulation 9 of the Regulations of 2003 and to identify any contravention thereof.",

(*d*) in subsection (2), there were deleted, "being a data controller or a data processor,",

(*e*) in subsection (3), there were substituted the following paragraph for paragraph (a):

"(*a*) to block, rectify, erase or destroy any of the data concerned, or", and ,

(*f*) in subsection (7), there were substituted the following for so much of the subsection as follows paragraph (a):

"(*b*) if such compliance materially modifies the data concerned, any person to whom the data were disclosed during the previous 12 months before the date of the service of the enforcement notice concerned and ending immediately before such compliance unless such notification proves impossible or involves a disproportionate effort,

of the blocking, rectification, erasure, destruction or statement concerned.".

...

(11) In this Regulation —

"Act" means the Data Protection Act 1988 (No. 25 of 1988);

Editorial Notes:

E36 Previous affecting provision: subs. 7(b) as enacted not commenced; substituted as per F-Note above.

E37 Previous affecting provision: application of section extended (from the date on which the declaration by the State under Article 32 (4) of the Customs Co-operation Convention took effect to 24 October 2007) by *Customs and Excise (Mutual Assistance) Act 2001 (Section 8) (Protection of Manual Data) Regulations 2004* (S.I. No. 254 of 2004), reg. 10(2).

E38 Previous affecting provision: construction of section extended (6.11.2003) by *European Communities (Electronic Communications Networks and Services) (Data Protection and Privacy) Regulations 2008* (S.I. No. 535 of 2003), reg. 17(1)(a); reg. 17 substituted (13.12.2008) by *European Communities (Electronic Communications Networks and Services) (Data Protection and Privacy) (Amendment) Regulations 2008* (S.I. No. 526 of 2008), reg. 9; revoked and replaced (1.07.2011) by *European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011* (S.I. No. 336 of 2011), reg. 35, subject to transitional provisions in reg. 34.

E39 Previous affecting provision: non-textual amendments identical to those made by *Data Protection (Amendment) Act 2003* above were made by the *European Communities (Directive 2000/31/EC) Regulations 2003* (S.I. No. 68 of 2003), reg. 9(9).

E40 Previous affecting provision: application of ss. 10, 12, 24, 25, 26 (insofar as it relates to a requirement specified in an enforcement notice or an information notice or a decision of the Commissioner in relation to a complaint under section 10(1)(a)) and ss. 27 to 31 extended with any necessary modifications (8.05.2002) by *European Communities (Data Protection and Privacy in Telecommunications) Regulations 2002* (S.I. No. 192 of 2002), reg. 12; revoked (6.11.2003) by *European Communities (Electronic Communications Networks and Services) (Data Protection and Privacy) Regulations 2003* (S.I. No. 535 of 2003), reg. 24.

Prohibition on transfer of personal data outside State.

F37**[11.**—(1) The transfer of personal data to a country or territory outside the European Economic Area may not take place unless that country or territory ensures an adequate level of protection for the privacy and the fundamental rights and freedoms of data subjects in relation to the processing of personal data having regard to all the circumstances surrounding the transfer and, in particular, but without prejudice to the generality of the foregoing, to—

(*a*) the nature of the data,

(*b*) the purposes for which and the period during which the data are intended to be processed,

(*c*) the country or territory of origin of the information contained in the data,

(*d*) the country or territory of final destination of that information,

(*e*) the law in force in the country or territory referred to in *paragraph (d)*,

(*f*) any relevant codes of conduct or other rules which are enforceable in that country or territory,

(*g*) any security measures taken in respect of the data in that country or territory, and

(*h*) the international obligations of that country or territory.

(2) (*a*) Where in any proceedings under this Act a question arises—

(i) whether the adequate level of protection specified in *subsection (1)* of this section is ensured by a country or territory outside the European Economic Area to which personal data are to be transferred, and

(ii) a Community finding has been made in relation to transfers of the kind in question,

the question shall be determined in accordance with that finding.

(*b*) In *paragraph (a)* of this subsection "Community finding" means a finding of the European Commission made for the purposes of paragraph (4) or (6) of Article 25 of the Directive under the procedure provided for in Article 31(2) of the Directive in relation to whether the adequate level of protection specified in *subsection (1)* of this section is ensured by a country or territory outside the European Economic Area.

(3) F38**[**...**]**

(4) (*a*) This section shall not apply to a transfer of data if—

(i) the transfer of the data or the information constituting the data is required or authorised by or under—

(I) any enactment, or

(II) any convention or other instrument imposing an international obligation on the State,

(ii) the data subject has given his or her consent to the transfer,

(iii) the transfer is necessary—

(I) for the performance of a contract between the data subject and the data controller, or

(II) for the taking of steps at the request of the data subject with a view to his or her entering into a contract with the data controller,

(iv) the transfer is necessary—

(I) for the conclusion of a contract between the data controller and a person other than the data subject that—

(A) is entered into at the request of the data subject, and

(B) is in the interests of the data subject, or

(II) for the performance of such a contract,

(v) the transfer is necessary for reasons of substantial public interest,

(vi) the transfer is necessary for the purpose of obtaining legal advice or for the purpose of or in connection with legal proceedings or prospective legal proceedings or is otherwise necessary for the purposes of establishing or defending legal rights,

(vii) the transfer is necessary in order to prevent injury or other damage to the health of the data subject or serious loss of or damage to property of the data subject or otherwise to protect his or her vital interests, and informing the data subject of, or seeking his or her consent to, the transfer is likely to damage his or her vital interests,

(viii) the transfer is of part only of the personal data on a register established by or under an enactment, being—

(I) a register intended for consultation by the public, or

(II) a register intended for consultation by persons having a legitimate interest in its subject matter,

and, in the case of a register referred to in *clause (II)* of this subparagraph, the transfer is made, at the request of, or to, a person referred to in that clause and any conditions to which such consultation is subject are complied with by any person to whom the data are or are to be transferred, or

(ix) the transfer has been authorised by the Commissioner where the data controller adduces adequate safeguards with respect to the privacy and fundamental rights and freedoms of individuals and for the exercise by individuals of their relevant rights under this Act or the transfer is made on terms of a kind approved by the Commissioner as ensuring such safeguards.

(*b*) F38**[**...**]**

(*c*) The Commissioner shall comply with any decision of the European Commission under the procedure laid down in Article 31.2 of the Directive made for the purposes of paragraph 3 or 4 of Article 26 of the Directive.

(5) The Minister may, after consultation with the Commissioner, by regulations specify—

(*a*) the circumstances in which a transfer of data is to be taken for the purposes of *subsection (4)(a)(v)* of this section to be necessary for reasons of substantial public interest, and

(*b*) the circumstances in which such a transfer which is not required by or under an enactment is not to be so taken.

(6) Where, in relation to a transfer of data to a country or territory outside the European Economic Area, a data controller adduces the safeguards for the data subject concerned referred to in *subsection (4)(a)(ix)* of this section by means of a contract embodying the contractual clauses referred to in paragraph 2 or 4 of Article 26 of the Directive, the data subject shall have the same right—

(*a*) to enforce a clause of the contract conferring rights on him or her or relating to such rights, and

(*b*) to compensation or damages for breach of such a clause,

that he or she would have if he or she were a party to the contract.

(7) The Commissioner may, subject to the provisions of this section, prohibit the transfer of personal data from the State to a place outside the State unless such transfer is required or authorised by or under any enactment or required by any convention or other instrument imposing an international obligation on the State.

(8) In determining whether to prohibit a transfer of personal data under this section, the Commissioner shall also consider whether the transfer would be likely to cause damage or distress to any person and have regard to the desirability of facilitating international transfers of data.

(9) A prohibition under *subsection (7)* of this section shall be effected by the service of a notice (referred to in this Act as a prohibition notice) on the person proposing to transfer the data concerned.

(10) A prohibition notice shall—

(*a*) prohibit the transfer concerned either absolutely or until the person aforesaid has taken such steps as are specified in the notice for protecting the interests of the data subjects concerned,

(*b*) specify the time when it is to take effect,

(*c*) specify the grounds for the prohibition, and

(*d*) subject to *subsection (12)* of this section, state that the person concerned may appeal to the Court under section 26 of this Act against the prohibition specified in the notice within 21 days from the service of the notice on him or her.

(11) Subject to *subsection (12)* of this section, the time specified in a prohibition notice for compliance with the prohibition specified therein shall not be expressed to expire before the end of the period of 21 days specified in *subsection (10)(d)* of this section and, if an appeal is brought against the prohibition, the prohibition need not be complied with and *subsection (15)* of this section shall not apply in relation thereto, pending the determination or withdrawal of the appeal.

(12) If the Commissioner—

(*a*) by reason of special circumstances, is of opinion that a prohibition specified in a prohibition notice should be complied with urgently, and

(*b*) includes a statement to that effect in the notice,

subsections (10)(d) and *(11)* of this section shall not apply in relation to the notice but the notice shall contain a statement of the effect of the provisions of *section 26* (other than *subsection (3)*) of this Act and shall not require compliance with the prohibition before the end of the period of 7 days beginning on the date on which the notice is served.

(13) The Commissioner may cancel a prohibition notice and, if he or she does so, shall notify in writing the person on whom it was served accordingly.

(14) (*a*) This section applies, with any necessary modifications, to a transfer of information from the State to a place outside the State for conversion into personal data as it applies to a transfer of personal data from the State to such a place.

(*b*) In *paragraph (a)* of this subsection "information" means information (not being data) relating to a living individual who can be identified from it.

(15) A person who, without reasonable excuse, fails or refuses to comply with a prohibition specified in a prohibition notice shall be guilty of an offence.**]**

Annotations

Amendments:

F37 Substituted (1.07.2003) by *Data Protection (Amendment) Act 2003* (6/2003), s. 12, S.I. No. 207 of 2003.

F38 Repealed other than for certain excepted purposes (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 7(1)(f), (4), S.I. No. 174 of 2018. The excepted purposes in subs. (4) are 7/2018, s. 8(1)(b), (2) and (3). See C-note below.

Modifications (not altering text):

C54 Subs. (3) and subs. (4)(b) repealed, but retained (see below) for certain excepted purposes, (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 7(1)(f), (4), S.I. No. 174 of 2018. The excepted purposes in subs. (4) are 7/2018, s. 8(1)(b) (the processing of such data under the *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014* (11/2014) or the *Vehicle Registration Data (Automated Searching and Exchange) Act 2018* (5/2018) to the extent that the Act of 1988 is applied in those Acts) and s. 8(2), (3) (transitional provisions).

(3) The Commissioner shall inform the Commission and the supervisory authorities of the other Member States of any case where he or she considers that a country or territory outside the European Economic Area does not ensure the adequate level of protection referred to in *subsection (1)* of this section.

(4) ...

(*b*) The Commissioner shall inform the European Commission and the supervisory authorities of the other states in the European Economic Area of any authorisation or approval under *paragraph (a)(ix)* of this subsection.

Editorial Notes:

E41 Previous affecting provision: section substituted (1.04.2002) by *European Communities (Data Protection) Regulations 2001* (S.I. No. 626 of 2001), reg. 5; substituted as per F-note above.

Power to require information.

12.—(1) The Commissioner may, by notice in writing (referred to in this Act as an information notice) served on a person, require the person to furnish to him in writing within such time as may be specified in the notice such information in relation to matters specified in the notice as is necessary or expedient for the performance by the Commissioner of his functions.

(2) Subject to *subsection (3)* of this section—

(*a*) an information notice shall state that the person concerned may appeal to the Court under *section 26* of this Act against the requirement specified in the notice within 21 days from the service of the notice on him, and

(*b*) the time specified in the notice for compliance with a requirement specified therein shall not be expressed to expire before the end of the period of 21 days specified in *paragraph (a)* of this subsection and, if an appeal is brought against the requirement, the requirement need not be complied with and *subsection (5)* of this section shall not apply in relation thereto, pending the determination or withdrawal of the appeal.

(3) If the Commissioner—

(*a*) by reason of special circumstances, is of opinion that a requirement specified in an information notice should be complied with urgently, and

(*b*) includes a statement to that effect in the notice,

subsection (2) of this section shall not apply in relation to the notice, but the notice shall contain a statement of the effect of the provisions of *section 26* (other than *subsection (3)*) of this Act and shall not require compliance with the requirement before the end of the period of 7 days beginning on the date on which the notice is served.

(4) (*a*) No enactment or rule of law prohibiting or restricting the disclosure of information shall preclude a person from furnishing to the Commissioner any information that is necessary or expedient for the performance by the Commissioner of his functions.

(*b*) *Paragraph (a)* of this subsection does not apply to information that in the opinion of the Minister or the Minister for Defence is, or at any time was, kept for the purpose of safeguarding the security of the State or information that is privileged from disclosure in proceedings in any court.

(5) A person who, without reasonable excuse, fails or refuses to comply with a requirement specified in an information notice or who in purported compliance with such a requirement furnishes information to the Commissioner that the person knows to be false or misleading in a material respect shall be guilty of an offence.

Annotations

Modifications (not altering text):

C55 Application of section extended with modification (27.01.2014) by *Credit Reporting Act 2013* (45/2013), s. 19(2), (4), S.I. No. 19 of 2014.

Data protection

19. ...

(2) Sections 2 , 4 and 6 of the Data Protection Act 1988 shall have effect as if—

(*a*) references to personal data included relevant credit data, and

(*b*) a person to whom this section applies were a living individual, and sections 9, 10, 12 and 24 to 31 of that Act apply accordingly.

(3) ...

(4) This section applies to any person with an annual turnover of not more than €3,000,000 (and to whom sections 2, 4 and 6 of the Data Protection Act 1988 would not apply apart from this section).

...

C56 Application of section extended with any necessary modifications (24.02.2003) by *European Communities (Directive 2000/31/EC) Regulations 2003* (S.I. No. 68 of 2003), reg. 9(6).

Unsolicited commercial communications.

9. ...

(6) The following provisions of the Act, namely —

(*a*) sections 1, 10, 12, 24 and 25,

(*b*) section 26 in so far as it relates to a requirement specified in an enforcement notice or an information notice or a decision of the Data Protection Commissioner in relation to a complaint under section 10 (1) (a) of the Act,

and

(*c*) sections 27 to 30,

apply for the purpose of this Regulation with the modifications specified in paragraphs (7) to (10) and any other necessary modifications.

(7) References, in the provisions of the Act mentioned in paragraph (6), to that Act or the provisions of that Act shall, unless the context otherwise requires be construed as including references to this Regulation or the provisions of this Regulation.

...

(11) In this Regulation —

"Act" means the Data Protection Act 1988 (No. 25 of 1988);

Editorial Notes:

E42 Previous affecting provision: section applied to extend performance of Commissioner's functions (from the date on which the declaration by the State under Article 32 (4) of the Customs Co-operation Convention took effect to 24 October 2007) by *Customs and Excise (Mutual Assistance) Act 2001 (Section 8) (Protection of Manual Data) Regulations 2004* (S.I. No. 254 of 2004), reg. 10(3).

E43 Previous affecting provision: construction of section extended (6.11.2003) by *European Communities (Electronic Communications Networks and Services) (Data Protection and Privacy) Regulations 2008* (S.I. No. 535 of 2003), reg. 17(1)(a); reg. 17 substituted (13.12.2008) by *European Communities (Electronic Communications Networks and Services) (Data Protection and Privacy) (Amendment) Regulations 2008* (S.I. No. 526 of 2008), reg. 9; revoked and replaced (1.07.2011) by *European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011* (S.I. No. 336 of 2011), reg. 35 subject to transitional provisions in reg. 34.

E44 Previous affecting provision: application of ss. 10, 12, 24, 25, 26 (insofar as it relates to a requirement specified in an enforcement notice or an information notice or a decision of the Commissioner in relation to a complaint under section 10(1)(a)) and ss. 27 to 31 extended with any necessary modifications (8.05.2002) by *European Communities (Data Protection and Privacy in Telecommunications) Regulations 2002* (S.I. No. 192 of 2002), reg. 12; revoked (6.11.2003) by *European Communities (Electronic Communications Networks and Services) (Data Protection and Privacy) Regulations 2003* (S.I. No. 535 of 2003), reg. 24.

F39[Prior checking of processing by Commissioner.

12A.—(1) This section applies to any processing that is of a prescribed description, being processing that appears to the Commissioner to be particularly likely—

(*a*) to cause substantial damage or substantial distress to data subjects, or

(*b*) otherwise significantly to prejudice the rights and freedoms of data subjects.

(2) The Commissioner, on receiving—

(*a*) an application under *section 17* of this Act by a person to whom *section 16* of this Act applies for registration in the register and any prescribed information and any other information that he or she may require, or

(*b*) a request from a data controller in that behalf,

shall consider and determine—

(i) whether any of the processing to which the application or request relates is processing to which this section applies,

(ii) if it does, whether the processing to which this section applies is likely to comply with the provisions of this Act.

(3) Subject to *subsection (4)* of this section, the Commissioner shall, within the period of 90 days from the day on which he or she receives an application or a request referred to in *subsection (2)* of this section, serve a notice on the data controller concerned stating the extent to which, in the opinion of the Commissioner, the proposed processing is likely or unlikely to comply with the provisions of this Act.

(4) Before the end of the period referred to in *subsection (3)*, the Commissioner may, by reason of special circumstances, extend that period once only, by notice in writing served on the data controller concerned, by such further period not exceeding 90 days as the Commissioner may specify in the notice.

(5) If, for the purposes of his or her functions under this section, the Commissioner serves an information notice on the data controller concerned before the end of the period referred to in *subsection (3)* of this section or that period as extended under *subsection (4)* of this section—

(*a*) the period from the date of service of the notice to the date of compliance with the requirement in the notice, or

(*b*) if the requirement is set aside under *section 26* of this Act, the period from the date of such service to the date of such setting aside,

shall be added to the period referred to in the said *subsection (3)* or that period as so extended as aforesaid.

(6) Processing to which this section applies shall not be carried on unless—

(*a*) the data controller has—

(i) previously made an application under *section 17* of this Act and furnished the information specified in that section to the Commissioner, or

(ii) made a request under *subsection (2)* of this section,

and

(*b*) the data controller has complied with any information notice served on him or her in relation to the matter, and

(*c*)(i) the period of 90 days from the date of the receipt of the application or request referred to in *subsection (3)* of this section (or that period as extended under subsections (4) and (5) of this section or either of them) has elapsed without the receipt by the data controller of a notice under the said *subsection (3)*, or

(ii) the data controller has received a notice under the said *subsection (3)* stating that the particular processing proposed to be carried on is likely to comply with the provisions of this Act, or

(iii) the data controller—

(I) has received a notice under the said *subsection (3)* stating that, if the requirements specified by the Commissioner (which he or she is hereby authorised to specify) and appended to the notice are complied with

by the data controller, the processing proposed to be carried on is likely to comply with the provisions of this Act, and

(II) has complied with those requirements.

(7) A person who contravenes *subsection (6)* of this section shall be guilty of an offence.

(8) An appeal against a notice under *subsection (3)* of this section or a requirement appended to the notice may be made to and heard and determined by the Court under section 26 of this Act and that section shall apply as if such a notice and such a requirement were specified in *subsection (1)* of the said *section 26*.

(9) The Minister, after consultation with the Commissioner, may by regulations amend *subsections (3)*, *(4)* and *(6)* of this section by substituting for the number of days for the time being specified therein a different number specified in the regulations.

(10) A data controller shall pay to the Commissioner such fee (if any) as may be prescribed in respect of the consideration by the Commissioner, in relation to proposed processing by the data controller, of the matters referred to in *paragraphs (i)* and *(ii)* of *subsection (2)* of this section and different fees may be prescribed in relation to different categories of processing.

(11) In this section a reference to a data controller includes a reference to a data processor.**]**

Annotations

Amendments:

F39 Inserted (1.07.2003) by *Data Protection (Amendment) Act 2003* (6/2003), s. 13, S.I. No. 207 of 2003.

Editorial Notes:

E45 Power pursuant to section exercised (8.10.2007) by *Data Protection (Processing of Genetic Data) Regulations 2007* (S.I. No. 687 of 2007); revoked other than for certain excepted purposes (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 7(3), (4) and sch. 1 item 8, S.I. No. 174 of 2018. The excepted purposes in subs. (4) are 7/2018, s. 8(1)(b) (the processing of such data under the *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014* (11/2014) or the *Vehicle Registration Data (Automated Searching and Exchange) Act 2018* (5/2018) to the extent that the Act of 1988 is applied in those Acts) and s. 8(2), (3) (transitional provisions).

E46 Power pursuant to subs. (10) exercised (1.10.2007) by *Data Protection (Fees) Regulations 2007* (S.I. No. 658 of 2007); revoked other than for certain excepted purposes (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 7(3), (4) and sch. 1 item 7, S.I. No. 174 of 2018. The excepted purposes in subs. (4) are 7/2018, s. 8(1)(b) (the processing of such data under the *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014* (11/2014) or the *Vehicle Registration Data (Automated Searching and Exchange) Act 2018* (5/2018) to the extent that the Act of 1988 is applied in those Acts) and s. 8(2), (3) (transitional provisions).

Codes of practice. **13.**—F40**[**...**]**

Annotations

Amendments:

F40 Repealed other than for certain excepted purposes (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 7(1)(g), (4), S.I. No. 174 of 2018. The excepted purposes in subs. (4) are 7/2018, s. 8(1)(b), (2), (3). See C-note below.

F41 Substituted (1.07.2003) by *Data Protection (Amendment) Act 2003* (6/2003), s. 14(1)(a), S.I. No. 207 of 2003.

F42 Inserted (1.07.2003) by *Data Protection (Amendment) Act 2003* (6/2003), s. 14(1)(b), S.I. No. 207 of 2003.

Modifications (not altering text):

C57 Section repealed, but retained (see below) for certain excepted purposes, (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 7(1)(g), (4), S.I. No. 174 of 2018. The excepted purposes in subs. (4) are 7/2018, s. 8(1)(b) (the processing of such data under the *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014* (11/2014) or the *Vehicle Registration Data (Automated Searching and Exchange) Act 2018* (5/2018) to the extent that the Act of 1988 is applied in those Acts) and s. 8(2), (3) (transitional provisions).

13.—(1) The Commissioner shall encourage trade associations and other bodies representing categories of data controllers to prepare codes of practice to be complied with by those categories in dealing with personal data.

F41**[**(2) The Commissioner shall—

(*a*) where a code of practice (referred to subsequently in this section as a code) so prepared is submitted to him or her for consideration, consider the code and, after such consultation with such data subjects or persons representing data subjects and with the relevant trade associations or other bodies aforesaid as appears to him or her to be appropriate—

(i) if he or she is of opinion that the code provides for the data subjects concerned a measure of protection with regard to personal data relating to them that conforms with that provided for by *section 2*, *sections 2A* to *2D* (inserted by the Act of 2003) and *sections 3* and *4* (other than *subsection (8)*) and *6* of this Act, approve of the code and encourage its dissemination to the data controllers concerned, and

(ii) in any event notify the association or body concerned of his or her decision to approve or not to approve the code,

(*b*) where he or she considers it necessary or desirable to do so and after such consultation with any trade associations or other bodies referred to in *subsection (1)* of this section having an interest in the matter and data subjects or persons representing data subjects as he or she considers appropriate, prepare, and arrange for the dissemination to such persons as he or she considers appropriate of, codes of practice for guidance as to good practice in dealing with personal data, and *subsection (3)* of this section shall apply to a code of practice prepared under this subsection as it applies to a code,

(*c*) in such manner and by such means as he or she considers most effective for the purposes of this paragraph, promote the following of good practice by data controllers and, in particular, so perform his or her functions under this Act as to promote compliance with this Act by data controllers,

(*d*) arrange for the dissemination in such form and manner as he or she considers appropriate of such information as appears to him or her to be expedient to give to the public about the operation of this Act, about the practices in processing of personal data (including compliance with the requirements of this Act) that appear to the Commissioner to be desirable having regard to the interests of data subjects and other persons likely to be affected by such processing and about other matters within the scope of his or her functions under this Act, and may give advice to any person in relation to any of those matters.**]**

(3) Any such code that is so approved of may be laid by the Minister before each House of the Oireachtas and, if each such House passes a resolution approving of it, then—

(*a*) in so far as it relates to dealing with personal data by the categories of data controllers concerned—

(i) it shall have the force of law in accordance with its terms, and

(ii) upon its commencement, references (whether specific or general) in this Act to any of the provisions of the said sections shall be construed (or, if the code is in substitution for a code having the force of law by virtue of this subsection, continue to be construed) as if they were also references to the relevant provisions of the code for the time being having the force of law,

and

(*b*) it shall be deemed to be a statutory instrument to which the Statutory Instruments Act, 1947, primarily applies.

(4) This section shall apply in relation to data processors as it applies in relation to categories of data controllers with the modification that the references in this section to the said sections shall be construed as references to *section 2 (1) (d)* of this Act and with any other necessary modifications.

F42**[**(5) The Commissioner shall be paid by a person in relation to whom a service is provided under this section such fee (if any) as may be prescribed and different fees may be prescribed in relation to different such services and different classes of persons.

(6) In proceedings in any court or other tribunal, any provision of a code, or a code of practice, approved under *subsection (3)* of this section that appears to the court or other tribunal concerned to be relevant to the proceedings may be taken into account in determining the question concerned.**]**

C58 Application of section extended (1.07.2011) by *European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011* (S.I. No. 336 of 2011), reg. 28.

Power to include requirements under these Regulations in codes of practice under the Act of 1988

28. The Commissioner's functions under section 13 of the Act of 1988 extend to requirements imposed under these Regulations.

Editorial Notes:

E47 *Data Protection (Amendment) Act 2003* (6/2003), s. 14(2) provides for the continuation in force of a code of practice approved under s. 13(2) before its amendment. It appears that no such code of practice exists.

E48 Previous affecting provision: power of Commissioner extended (6.11.2003) by *European Communities (Electronic Communications Networks and Services) (Data Protection and Privacy) Regulations 2003* (S.I. No. 535 of 2003), reg. 17L as inserted (20.12.2008) by *European Communities (Electronic Communications Networks and Services) (Data Protection and Privacy) (Amendment) Regulations 2008* (S.I. No. 526 of 2008), reg. 9; revoked (1.07.2011) by *European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011* (S.I. No. 336 of 2011), reg. 35, subject to transitional provisions in reg. 34.

Annual report.

14.—F43**[**...**]**

Annotations

Amendments:

F43 Repealed other than for certain excepted purposes (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 7(1)(g), (4), S.I. No. 174 of 2018. The excepted purposes in subs. (4) are 7/2018, s. 8(1)(b), (2), (3). See C-note below.

F44 Substituted (6.11.2003) by *European Communities (Electronic Communications Networks and Services) (Data Protection and Privacy) Regulations 2003* (S.I. No. 535 of 2003), reg. 23(1) as amended (20.12.2008) by *European Communities (Electronic Communications Networks and Services) (Data Protection and Privacy) (Amendment) Regulations 2008* (S.I. No. 526 of 2008), reg. 10 which provides that "[t]he reference in Regulation 23(1) of the Principal Regulations to the Data Protection Acts 1988 and 2003 is to be read as, and is to be always taken to have been, a reference to the Data Protection Act 1988 (as amended by the Data Protection Act 2003)".

F45 Inserted (1.07.2003) by *Data Protection (Amendment) Act 2003* (6/2003), s. 15, S.I. No. 207 of 2003.

Modifications (not altering text):

C59 Section repealed, but retained (see below) for certain excepted purposes, (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 7(1)(g), (4), S.I. No. 174 of 2018. The excepted purposes in subs. (4) are 7/2018, s. 8(1)(b) (the processing of such data under the *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014* (11/2014) or the *Vehicle Registration Data (Automated Searching and Exchange) Act 2018* (5/2018) to the extent that the Act of 1988 is applied in those Acts) and s. 8(2), (3) (transitional provisions).

14.—(1) The Commissioner shall in each year after the year in which the first Commissioner is appointed prepare a report in relation to his F44**[**activities under the European Communities (Electronic Communications Networks and Services) (Data Protection and Privacy) Regulations 2003 and this Act**]** in the preceding year and cause copies of the report to be laid before each House of the Oireachtas.

(2) Notwithstanding *subsection (1)* of this section, if, but for this subsection, the first report under that subsection would relate to a period of less than 6 months, the report shall relate to that period and to the year immediately following that period and shall be prepared as soon as may be after the end of that year.

F45**[**(3) For the purposes of the law of defamation, a report under subsection (1) shall be absolutely privileged.**]**

Editorial Notes:

E49 The *European Communities (Electronic Communications Networks and Services) (Data Protection and Privacy) Regulations 2003* mentioned in subs. (1) were repealed and replaced (1.07.2011) by *European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011*, S.I. No. 336 of 2011, reg. 35, subject to transitional provisions in reg. 34.

E50 Previous affecting provision: subs. (1) amended (8.05.2002) by *European Communities (Data Protection and Privacy in Telecommunications) Regulations 2002* (S.I. No. 192 of 2002), reg. 19; amendment substituted as per F-note above.

Mutual assistance between parties to Convention.

15.—(1) The Commissioner is hereby designated for the purposes of Chapter IV (which relates to mutual assistance) of the Convention.

(2) The Minister may make any regulations that he considers necessary or expedient for the purpose of enabling the said Chapter IV to have full effect.

Registration

The register.

16.—F46**[**...**]**

Annotations

Amendments:

F46 Repealed other than for certain excepted purposes (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 7(1)(g), (4), S.I. No. 174 of 2018. The excepted purposes in subs. (4) are 7/2018, s. 8(1)(b), (2), (3). See C-note below.

F47 Substituted (1.10.2007) by *Data Protection (Amendment) Act 2003* (6/2003), s. 16, S.I. No. 656 of 2007.

Modifications (not altering text):

C60 Section repealed, but retained (see below) for certain excepted purposes, (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 7(1)(g), (4), S.I. No. 174 of 2018. The excepted purposes in subs. (4) are 7/2018, s. 8(1)(b) (the processing of such data under the *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014* (11/2014) or the *Vehicle Registration Data (Automated Searching and Exchange) Act 2018* (5/2018) to the extent that the Act of 1988 is applied in those Acts) and s. 8(2), (3) (transitional provisions).

16.—F47**[**(1) In this section "person to whom this section applies" means a data controller and a data processor (other than such (if any) categories of data controller and data processor as may be specified in regulations made by the Minister after consultation with the Commissioner) except in so far as—

(*a*) they carry out—

(i) processing whose sole purpose is the keeping in accordance with law of a register that is intended to provide information to the public and is open to consultation either by the public in general or by any person demonstrating a legitimate interest,

(ii) processing of manual data (other than such categories, if any, of such data as may be prescribed), or

(iii) any combination of the foregoing categories of processing,

or

(*b*) the data controller is a body that is not established or conducted for profit and is carrying out processing for the purposes of establishing or maintaining membership of or support for the body or providing or administering activities for individuals who are either members of the body or have regular contact with it.**]**

(2) The Commissioner shall establish and maintain a register (referred to in this Act as the register) of persons to whom this section applies and shall make, as appropriate, an entry or entries in the register in respect of each person whose application for registration therein is accepted by the Commissioner.

(3) (*a*) Members of the public may inspect the register free of charge at all reasonable times and may take copies of, or of extracts from, entries in the register.

(*b*) A member of the public may, on payment to the Commissioner of such fee (if any) as may be prescribed, obtain from the Commissioner a copy (certified by him or by a member of his staff to be a true copy) of, or of an extract from, any entry in the register.

(*c*) In any proceedings—

(i) a copy of, or of an extract from, an entry in the register certified by the Commissioner or by a member of his staff to be a true copy shall be evidence of the entry or extract, and

(ii) a document purporting to be such a copy, and to be certified, as aforesaid shall be deemed to be such a copy and to be so certified unless the contrary is proved.

(*d*) In any proceedings—

(i) a certificate signed by the Commissioner or by a member of his staff and stating that there is not an entry in the register in respect of a specified person as a data controller or as a data processor shall be evidence of that fact, and

(ii) a document purporting to be such a certificate, and to be signed, as aforesaid shall be deemed to be such a certificate and to be so signed unless the contrary is proved.

Editorial Notes:

E51 Power pursuant to subs. (1) exercised (1.10.2007) by *Data Protection Act 1988 (Section 16(1)) Regulations 2007* (S.I. No. 657 of 2007); revoked other than for certain excepted purposes (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 7(3), (4) and sch. 1 item 6, S.I. No. 174 of 2018. The excepted purposes in subs. (4) are 7/2018, s. 8(1)(b) (the processing of such data under the *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014* (11/2014) or the *Vehicle Registration Data (Automated Searching and Exchange) Act 2018* (5/2018) to the extent that the Act of 1988 is applied in those Acts) and s. 8(2), (3) (transitional provisions).

E52 Power pursuant to section exercised (16.12.1988) by *Data Protection (Fees) Regulations 1988* (S.I. No. 347 of 1988); regs. 5 and 6 revoked (4.04.1990) by *Data Protection (Fees) Regulations 1990* (S.I. No. 80 of 1990), reg. 5.

E53 Previous affecting provision: power pursuant to subs. (1)(e) exercised (10.1.2001) by *Data Protection (Registration) Regulations 2001* (S.I. No. 2 of 2001); revoked (1.10.2007) by *Data Protection Act 1988 (Section 16(1)) Regulations 2007* (S.I. No. 657 of 2007), reg. 5.

Applications for registration.

17.—F48**[**...**]**

Annotations

Amendments:

F48 Repealed other than for certain excepted purposes (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 7(1)(g), (4), S.I. No. 174 of 2018. The excepted purposes in subs. (4) are 7/2018, s. 8(1)(b), (2), (3). See C-note below.

F49 Substituted (1.07.2003) by *Data Protection (Amendment) Act 2003* (6/2003), s. 17(a)(i) and (b), S.I. No. 207 of 2003.

F50 Inserted (1.07.2003) by *Data Protection (Amendment) Act 2003* (6/2003), s. 17(a)(ii), S.I. No. 207 of 2003.

Modifications (not altering text):

C61 Section repealed, but retained (see below) for certain excepted purposes, (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 7(1)(g), (4), S.I. No. 174 of 2018. The excepted purposes in subs. (4) are 7/2018, s. 8(1)(b) (the processing of such data under the *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014* (11/2014) or the *Vehicle Registration Data (Automated Searching and Exchange) Act 2018* (5/2018) to the extent that the Act of 1988 is applied in those Acts) and s. 8(2), (3) (transitional provisions).

17.—(1) (*a*) A person wishing to be registered in the register or to have a registration continued under *section 18* of this Act or to have the particulars in an entry in the register altered shall make an application in writing in that behalf to the Commissioner and shall furnish to him such information as may be prescribed and any other information that he may require.

F49**[**(*b*) Where a data controller intends to keep personal data for two or more related purposes, he or she shall make an application for registration in respect of those purposes and, subject to the provisions of this Act, entries shall be made in the register in accordance with any such application,**]**

F50**[**(*c*) Where a data controller intends to keep personal data for two or more unrelated purposes, he shall make an application for separate registration in respect of each of those purposes and, subject to the provisions of this Act, entries shall be made in the register in accordance with each such application.**]**

(2) Subject to *subsection (3)* of this section, the Commissioner shall accept an application for registration, made in the prescribed manner and in respect of which such fee as may be prescribed has been paid, from a person to whom *section 16* of this Act applies unless he is of opinion that—

(*a*) the particulars proposed for inclusion in an entry in the register are insufficient or any other information required by the Commissioner either has not been furnished or is insufficient, or

(*b*) the person applying for registration is likely to contravene any of the provisions of this Act.

F49**[**(3) The Commissioner shall not accept such an application for registration as aforesaid from a data controller who keeps sensitive personal data unless he or she is of opinion that appropriate safeguards for the protection of the privacy of the data subjects are being, and will continue to be, provided by him or her.**]**

(4) Where the Commissioner refuses an application for registration, he shall, as soon as may be, notify in writing the person applying for registration of the refusal and the notification shall—

(*a*) specify the reasons for the refusal, and

(*b*) state that the person may appeal to the Court under *section 26* of this Act against the refusal within 21 days from the receipt by him of the notification.

(5) If—

(*a*) the Commissioner, by reason of special circumstances, is of opinion that a refusal of an application for registration should take effect urgently, and

(*b*) the notification of the refusal includes a statement to that effect and a statement of the effect of the provisions of *section 26* (other than *subsection (3)*) of this Act,

paragraph (b) of *subsection (4)* of this section shall not apply in relation to the notification and *paragraph (b)* of *subsection (6)* of this section shall be construed and have effect as if for the words from and including "21 days" to the end of the paragraph there were substituted "7 days beginning on the date on which the notification was received,".

(6) Subject to *subsection (5)* of this section, a person who has made an application for registration shall—

(*a*) until he is notified that it has been accepted or it is withdrawn, or

(*b*) if he is notified that the application has been refused, until the end of the period of 21 days within which an appeal may be brought under *section 26* of this Act against the refusal and, if such an appeal is brought, until the determination or withdrawal of the appeal,

be treated for the purposes of *section 19* of this Act as if the application had been accepted and the particulars contained in it had been included in an entry in the register on the date on which the application was made.

(7) *Subsections (2)* to *(6)* of this section apply, with any necessary modifications, to an application for continuance of registration and an application for alteration of the particulars in an entry in the register as they apply to an application for registration.

Editorial Notes:

E54 Power pursuant to section exercised (1.10.2007) by *Data Protection (Fees) Regulations 2007* (S.I. No. 658 of 2007); revoked other than for certain excepted purposes (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 7(3), (4) and sch. 1 item 7, S.I. No. 174 of 2018. The excepted purposes in subs. (4) are 7/2018, s. 8(1)(b) (the processing of such data under the *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014* (11/2014) or the *Vehicle Registration Data (Automated Searching and Exchange) Act 2018* (5/2018) to the extent that the Act of 1988 is applied in those Acts) and s. 8(2), (3) (transitional provisions).

E55 Power pursuant to section exercised (16.12.1988) by *Data Protection (Fees) Regulations 1988* (S.I. No. 347 of 1988); regs. 5 and 6 revoked (4.04.1990) by *Data Protection (Fees) Regulations 1990* (S.I. No. 80 of 1990), reg. 5.

E56 Previous affecting provision: power pursuant to section exercised (19.05.1996) by *Data Protection (Fees) Regulations 1996* (S.I. No. 105 of 1996); revoked (1.10.2007) by *Data Protection (Fees) Regulations 2007* (S.I. 658 of 2007), reg. 6.

E57 Previous affecting provision: power pursuant to section exercised (4.04.1990) by *Data Protection (Fees) Regulations 1990* (S.I. No. 80 of 1990); revoked (19.05.1996) by *Data Protection (Fees) Regulations 1996* (S.I. No. 105 of 1996), reg. 5.

Duration and continuance of registration.

18.—F51**[**...**]**

Annotations

Amendments:

F51 Repealed other than for certain excepted purposes (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 7(1)(g), (4), S.I. No. 174 of 2018. The excepted purposes in subs. (4) are 7/2018, s. 8(1)(b), (2), (3). See C-note below.

F52 Substituted (1.07.2003) by *Data Protection (Amendment) Act 2003* (6/2003), s. 18, S.I. No. 207 of 2003.

Modifications (not altering text):

C62 Section repealed, but retained (see below) for certain excepted purposes, (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 7(1)(g), (4), S.I. No. 174 of 2018. The excepted purposes in subs. (4) are 7/2018, s. 8(1)(b) (the processing of such data under the *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014* (11/2014) or the *Vehicle Registration Data (Automated Searching and Exchange) Act 2018* (5/2018) to the extent that the Act of 1988 is applied in those Acts) and s. 8(2), (3) (transitional provisions).

18.—(1) A registration (whether it is the first registration or a registration continued under this section) shall be for the prescribed period and on the expiry thereof the relevant entry shall be removed from the register unless the registration is continued as aforesaid.

F52**[**(2) The prescribed period (which shall not be less than one year) shall be calculated—

(*a*) in the case of a first registration from the date on which the relevant entry was made in the register, and

(*b*) in the case of a registration which has been continued under this section, from the day following the expiration of the latest prescribed period.**]**

(3) The Commissioner shall, subject to the provisions of this Act, continue a registration, whether it has previously been continued under this section or not.

(4) Notwithstanding the foregoing provisions of this section, the Commissioner may at any time, at the request of the person to whom an entry relates, remove it from the register.

Editorial Notes:

E58 Power pursuant to section exercised (15.12.1988) by *Data Protection (Registration Period) Regulations 1988* (S.I. No. 350 of 1988); revoked other than for certain excepted purposes (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 7(3), (4) and sch. 1 item 2, S.I. No. 174 of 2018. The excepted purposes in subs. (4) are 7/2018, s. 8(1)(b) (the processing of such data under the *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014* (11/2014) or the *Vehicle Registration Data (Automated Searching and Exchange) Act 2018* (5/2018) to the extent that the Act of 1988 is applied in those Acts) and s. 8(2), (3) (transitional provisions).

Effect of registration.

19.—F53**[...]**

Annotations

Amendments:

F53 Repealed other than for certain excepted purposes (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 7(1)(g), (4), S.I. No. 174 of 2018. The excepted purposes in subs. (4) are 7/2018, s. 8(1)(b), (2), (3). See C-note below.

Modifications (not altering text):

C63 Section repealed, but retained (see below) for certain excepted purposes, (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 7(1)(g), (4), S.I. No. 174 of 2018. The excepted purposes in subs. (4) are 7/2018, s. 8(1)(b) (the processing of such data under the *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014* (11/2014) or the *Vehicle Registration Data (Automated Searching and Exchange) Act 2018* (5/2018) to the extent that the Act of 1988 is applied in those Acts) and s. 8(2), (3) (transitional provisions).

19.—(1) A data controller to whom *section 16* of this Act applies shall not keep personal data unless there is for the time being an entry in the register in respect of him.

(2) A data controller in respect of whom there is an entry in the register shall not—

(*a*) keep personal data of any description other than that specified in the entry,

(*b*) keep or use personal data for a purpose other than the purpose or purposes described in the entry,

(*c*) if the source from which such data, and any information intended for inclusion in such data, are obtained is required to be described in the entry, obtain such data or information from a source that is not so described,

(*d*) disclose such data to a person who is not described in the entry (other than a person to whom a disclosure of such data may be made in the circumstances specified in *section 8* of this Act),

(*e*) directly or indirectly transfer such data to a place outside the State other than one named or described in the entry.

(3) An employee or agent (not being a data processor) of a data controller mentioned in *subsection (2)* of this section shall, as respects personal data kept or, as the case may be, to be kept by the data controller, be subject to the same restrictions in relation to the use, source, disclosure or transfer of the data as those to which the data controller is subject under that subsection.

(4) A data processor to whom *section 16* applies shall not process personal data unless there is for the time being an entry in the register in respect of him.

(5) If and whenever a person in respect of whom there is an entry in the register changes his address, he shall thereupon notify the Commissioner of the change.

(6) A person who contravenes *subsection (1), (4)* or *(5)*, or knowingly contravenes any other provision, of this section shall be guilty of an offence.

Regulations for registration.

20.—F54**[...]**

Miscellaneous

Annotations

Amendments:

F54 Repealed other than for certain excepted purposes (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 7(1)(g), (4), S.I. No. 174 of 2018. The excepted purposes in subs. (4) are 7/2018, s. 8(1)(b), (2), (3). See C-note below.

Modifications (not altering text):

C64 Section repealed, but retained (see below) for certain excepted purposes, (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 7(1)(g), (4), S.I. No. 174 of 2018. The excepted purposes in subs. (4) are 7/2018, s. 8(1)(b) (the processing of such data under the *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014* (11/2014) or the *Vehicle Registration Data (Automated Searching and Exchange) Act 2018* (5/2018) to the extent that the Act of 1988 is applied in those Acts) and s. 8(2), (3) (transitional provisions).

20.—(1) The following matters, and such other matters (if any) as may be necessary or expedient for the purpose of enabling *sections 16* to *19* of this Act to have full effect, may be prescribed:

(*a*) the procedure to be followed in relation to applications by persons for registration, continuance of registration or alteration of the particulars in an entry in the register or for withdrawal of such applications,

(*b*) the information required to be furnished to the Commissioner by such persons, and

(*c*) the particulars to be included in entries in the register,

and different provision may be made in relation to the matters aforesaid as respects different categories of persons.

(2) A person who in purported compliance with a requirement prescribed under this section furnishes information to the Commissioner that the person knows to be false or misleading in a material respect shall be guilty of an offence.

Editorial Notes:

E59 Power pursuant to section exercised (9.01.1989) by *Data Protection (Registration) Regulations 1988* (S.I. No. 351 of 1988); revoked other than for certain excepted purposes (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 7(3), (4) and sch. 1 item 3, S.I. No. 174 of 2018. The excepted purposes in subs. (4) are 7/2018, s. 8(1)(b) (the processing of such data under the *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014* (11/2014) or the *Vehicle Registration Data (Automated Searching and Exchange) Act 2018* (5/2018) to the extent that the Act of 1988 is applied in those Acts) and s. 8(2), (3) (transitional provisions).

Unauthorised disclosure by data processor.

21.—(1) Personal data processed by a data processor shall not be disclosed by him, or by an employee or agent of his, without the prior authority of the data controller on behalf of whom the data are processed.

(2) A person who knowingly contravenes *subsection (1)* of this section shall be guilty of an offence.

Disclosure of personal data obtained without authority.

22.—(1) A person who—

(*a*) obtains access to personal data, or obtains any information constituting such data, without the prior authority of the data controller or data processor by whom the data are kept, and

(*b*) discloses the data or information to another person,

shall be guilty of an offence.

(2) *Subsection (1)* of this section does not apply to a person who is an employee or agent of the data controller or data processor concerned.

F55**[**Journalism, literature and art.

22A.—F56**[**...**]]**

Annotations

Amendments:

F55 Inserted (1.07.2003) by *Data Protection (Amendment) Act 2003* (6/2003), s. 21, S.I. No. 207 of 2003.

F56 Repealed other than for certain excepted purposes (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 7(1)(g), (4), S.I. No. 174 of 2018. The excepted purposes in subs. (4) are 7/2018, s. 8(1)(b), (2), (3). See C-note below.

Editorial Notes:

Modifications (not altering text):

C65 Section repealed, but retained (see below) for certain excepted purposes, (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 7(1)(g), (4), S.I. No. 174 of 2018. The excepted purposes in subs. (4) are 7/2018, s. 8(1)(b) (the processing of such data under the *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014* (11/2014) or the *Vehicle Registration Data (Automated Searching and Exchange) Act 2018* (5/2018) to the extent that the Act of 1988 is applied in those Acts) and s. 8(2), (3) (transitional provisions).

22A.—(1) Personal data that are processed only for journalistic, artistic or literary purposes shall be exempt from compliance with any provision of this Act specified in *subsection (2)* of this section if—

(*a*) the processing is undertaken solely with a view to the publication 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, such publication would be in the public interest, and

(*c*) the data controller reasonably believes that, in all the circumstances, compliance with that provision would be incompatible with journalistic, artistic or literary purposes.

(2) The provisions referred to in *subsection (1)* of this section are—

(*a*) *section 2* (as amended by the Act of 2003), other than subsection (1)(*d*),

(*b*) *sections 2A*, *2B* and *2D* (which sections were inserted by the Act of 2003),

(*c*) *section 3*,

(*d*) *sections 4* and *6* (which sections were amended by the Act of 2003), and

(*e*) *sections 6A* and *6B* (which sections were inserted by the Act of 2003).

(3) In considering for the purposes of *subsection (1)(b)* of this section whether publication of the material concerned would be in the public interest, regard may be had to any code of practice approved under *subsections (1)* or *(2)* of *section 13* (as amended by the Act of 2003) of this Act.

(4) In this section "publication", in relation to journalistic, artistic or literary material, means the act of making the material available to the public or any section of the public in any form or by any means.

E60 The side-note is taken from the amending section in the absence of one included in the amendment.

Provisions in relation to certain non-residents and to data kept or processed outside State.

23.—F57**[**...**]**

Annotations

Amendments:

F57 Repealed (1.04.2002) by *European Communities (Data Protection) Regulations 2001* (S.I. No. 626 of 2001), reg. 6 and (1.10.2007) by *Data Protection (Amendment) Act 2003* (6/2003), s. 22(1), S.I. No. 656 of 2007.

Powers of authorised officers.

24.—F58**[**(1) In this section "authorised officer" has the same meaning that it has in section 2(1) of the Data Protection Act 2018.**]**

(2) An authorised officer may, for the purpose of obtaining any information that is necessary or expedient for the performance by the Commissioner of his functions, on production of the officer's authorisation, if so required—

(*a*) at all reasonable times enter premises that he reasonably believes to be occupied by a data controller or a data processor, inspect the premises and any data therein (other than data consisting of information specified in *section 12 (4) (b)* of this Act) and inspect, examine, operate and test any data equipment therein,

(*b*) require any person on the premises, being a data controller, a data processor or an employee of either of them, to disclose to the officer any such data and produce to him any data material (other than data material consisting of information so specified) that is in that person's power or control and to give to him such information as he may reasonably require in regard to such data and material,

(*c*) either on the premises or elsewhere, inspect and copy or extract information from such data, or inspect and copy or take extracts from such material, and

(*d*) require any person mentioned in *paragraph (b)* of this subsection to give to the officer such information as he may reasonably require in regard to the procedures employed for complying with the provisions of this Act, the sources from which such data are obtained, the purposes for which they are kept, the persons to whom they are disclosed and the data equipment in the premises.

(3) F59**[**...**]**

(4) F59**[**...**]**

(5) F59**[**...**]**

(6) A person who obstructs or impedes an authorised officer in the exercise of a power, or, without reasonable excuse, does not comply with a requirement, under this section or who in purported compliance with such a requirement gives information to an authorised officer that he knows to be false or misleading in a material respect shall be guilty of an offence.

Annotations

Amendments:

F58 Substituted other than for certain excepted purposes (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 172(1)(a), (2), S.I. No. 174 of 2018. The excepted purposes in subs. (2) are 7/2018, s. 8(1)(b), (2), (3). See C-note below.

F59 Repealed (1.10.2007) by *Data Protection (Amendment) Act 2003* (6/2003), s. 22(1), S.I. No. 656 of 2007.

Modifications (not altering text):

C66 Subs. (1) substituted, but previous version (below) retained for certain excepted purposes, (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 172(1)(a), (2), S.I. No. 174 of 2018. The excepted purposes in subs. (2) are 7/2018, s. 8(1)(b) (the processing of such data under the *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014* (11/2014) or the *Vehicle Registration Data (Automated Searching and Exchange) Act 2018* (5/2018) to the extent that the Act of 1988 is applied in those Acts) and s. 8(2), (3) (transitional provisions).

24.—(1) In this section "authorised officer" means a person authorised in writing by the Commissioner to exercise, for the purposes of this Act, the powers conferred by this section.

C67 Application of section extended with modification (27.01.2014) by *Credit Reporting Act 2013* (45/2013), s. 19(2), (4), S.I. No. 19 of 2014.

Data protection

19. ...

(2) Sections 2 , 4 and 6 of the Data Protection Act 1988 shall have effect as if—

(*a*) references to personal data included relevant credit data, and

(*b*) a person to whom this section applies were a living individual, and sections 9, 10, 12 and 24 to 31 of that Act apply accordingly.

(3) ...

(4) This section applies to any person with an annual turnover of not more than €3,000,000 (and to whom sections 2, 4 and 6 of the Data Protection Act 1988 would not apply apart from this section).

...

C68 Application of section extended with any necessary modifications (24.02.2003) by *European Communities (Directive 2000/31/EC) Regulations 2003* (S.I. No. 68 of 2003), reg. 9(6).

Unsolicited commercial communications.

9. ...

(6) The following provisions of the Act, namely —

(*a*) sections 1, 10, 12, 24 and 25,

(*b*) section 26 in so far as it relates to a requirement specified in an enforcement notice or an information notice or a decision of the Data Protection Commissioner in relation to a complaint under section 10 (1) (a) of the Act,

and

(*c*) sections 27 to 30,

apply for the purpose of this Regulation with the modifications specified in paragraphs (7) to (10) and any other necessary modifications.

(7) References, in the provisions of the Act mentioned in paragraph (6), to that Act or the provisions of that Act shall, unless the context otherwise requires be construed as including references to this Regulation or the provisions of this Regulation.

...

(10) Section 24 of the Act applies as if —

(*a*) in subsection (2)(a), there were substituted "a person to whom the Regulations of 2003 apply" for "a data controller or a data processor",

(*b*) in subsection (2)(b), there were substituted "being a person to whom the Regulations of 2003 apply or an employee of such a person" for "being a data controller, a data processor or an employee of either of them",

(*c*) there were deleted subsections (3), (4) and (5).

(11) In this Regulation —

"Act" means the Data Protection Act 1988 (No. 25 of 1988);

Editorial Notes:

E61 Previous affecting provision: section applied with modifications (from the date on which the declaration by the State under Article 32(4) of the Customs Co-operation Convention took effect to 24 October 2007) by *Customs and Excise (Mutual Assistance) Act 2001 (Section 8) (Protection of Manual Data) Regulations 2004* (S.I. No. 254 of 2004), reg. 10(2).

E62 Previous affecting provision: construction of section extended (6.11.2003) by *European Communities (Electronic Communications Networks and Services) (Data Protection and Privacy) Regulations 2008* (S.I. No. 535 of 2003), reg. 17(1)(a); reg. 17 substituted (13.12.2008) by *European Communities (Electronic Communications Networks and Services) (Data Protection and Privacy) (Amendment) Regulations 2008* (S.I. No. 526 of 2008), reg. 9; revoked and replaced (1.07.2011) by *European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011* (S.I. No. 336 of 2011), reg. 35 subject to transitional provisions in reg. 34.

E63 Previous affecting provision: application of ss. 10, 12, 24, 25, 26 (insofar as it relates to a requirement specified in an enforcement notice or an information notice or a decision of the Commissioner in relation to a complaint under section 10(1)(a)) and ss. 27 to 31 extended with any necessary modifications (8.05.2002) by *European Communities (Data Protection and Privacy in Telecommunications) Regulations 2002* (S.I. No. 192 of 2002), reg. 12; revoked (6.11.2003) by *European Communities (Electronic Communications Networks and Services) (Data Protection and Privacy) Regulations 2003* (S.I. No. 535 of 2003), reg. 24.

Service of notices.

25.—Any notice authorised by this Act to be served on a person by the Commissioner may be served—

(*a*) if the person is an individual—

(i) by delivering it to him or

(ii) by sending it to him by post addressed to him at his usual or last-known place of residence or business, or

(iii) by leaving it for him at that place,

(*b*) if the person is a body corporate or an unincorporated body of persons, by sending it to the body by post to, or addressing it to and leaving it at, in the case of a company, its registered office (within the meaning of the Companies Act, 1963) and, in any other case, its principal place of business.

Annotations

Modifications (not altering text):

C69 Application of section extended with modification (27.01.2014) by *Credit Reporting Act 2013* (45/2013), s. 19(2), (4), S.I. No. 19 of 2014.

Data protection

19. ...

(2) Sections 2, 4 and 6 of the Data Protection Act 1988 shall have effect as if—

(*a*) references to personal data included relevant credit data, and

(*b*) a person to whom this section applies were a living individual, and sections 9, 10, 12 and 24 to 31 of that Act apply accordingly.

(3) ...

(4) This section applies to any person with an annual turnover of not more than €3,000,000 (and to whom sections 2, 4 and 6 of the Data Protection Act 1988 would not apply apart from this section).

...

C70 Application of section extended with any necessary modifications (24.02.2003) by *European Communities (Directive 2000/31/EC) Regulations 2003* (S.I. No. 68 of 2003), reg. 9(6).

Unsolicited commercial communications.

9. ...

(6) The following provisions of the Act, namely —

(*a*) sections 1, 10, 12, 24 and 25,

(*b*) section 26 in so far as it relates to a requirement specified in an enforcement notice or an information notice or a decision of the Data Protection Commissioner in relation to a complaint under section 10 (1) (a) of the Act,

and

(*c*) sections 27 to 30,

apply for the purpose of this Regulation with the modifications specified in paragraphs (7) to (10) and any other necessary modifications.

(7) References, in the provisions of the Act mentioned in paragraph (6), to that Act or the provisions of that Act shall, unless the context otherwise requires be construed as including references to this Regulation or the provisions of this Regulation.

...

(11) In this Regulation —

"Act" means the Data Protection Act 1988 (No. 25 of 1988);

...

Editorial Notes:

E64 Previous affecting provision: construction of section extended (6.11.2003) by *European Communities (Electronic Communications Networks and Services) (Data Protection and Privacy) Regulations 2008* (S.I. No. 535 of 2003), reg. 17(1)(a); reg. 17 substituted (13.12.2008) by *European Communities (Electronic Communications Networks and Services) (Data Protection and Privacy) (Amendment) Regulations 2008* (S.I. No. 526 of 2008), reg. 9; revoked and replaced (1.07.2011) by *European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011* (S.I. No. 336 of 2011), reg. 35 subject to transitional provisions in reg. 34.

E65 Previous affecting provision: application of ss. 10, 12, 24, 25, 26 (insofar as it relates to a requirement specified in an enforcement notice or an information notice or a decision of the Commissioner in relation to a complaint under section 10(1)(a)) and ss. 27 to 31 extended with any necessary modifications (8.05.2002) by *European Communities (Data Protection and Privacy in Telecommunications) Regulations 2002* (S.I. No. 192 of 2002), reg. 12; revoked (6.11.2003) by *European Communities (Electronic Communications Networks and Services) (Data Protection and Privacy) Regulations 2003* (S.I. No. 535 of 2003), reg. 24.

Appeals to Circuit Court.

26.—(1) An appeal may be made to and heard and determined by the Court against—

(*a*) a requirement specified in an enforcement notice or an information notice,

(*b*) a prohibition specified in a prohibition F60**[**notice, and**]**

(*c*) F61**[**...**]**

(*d*) a decision of the Commissioner in relation to a complaint under *section 10 (1) (a)* of this Act,

and such an appeal shall be brought within 21 days from the service on the person concerned of the relevant notice or, as the case may be, the receipt by such person of the notification of the relevant refusal or decision.

(2) The jurisdiction conferred on the Court by this Act shall be exercised by the judge for the time being assigned to the circuit where the appellant ordinarily resides or carries on any profession, business or occupation or, at the option of the appellant, by a judge of the Court for the time being assigned to the Dublin circuit.

(3) (*a*) Subject to *paragraph (b)* of this subsection, a decision of the Court under this section shall be final.

(*b*) An appeal may be brought to the High Court on a point of law against such a decision; and references in this Act to the determination of an appeal shall be construed as including references to the determination of any such appeal to the High Court and of any appeal from the decision of that Court.

(4) Where—

(*a*) a person appeals to the Court pursuant to F62**[***paragraph (a) or (b)* of *subsection (1)* of this section**]**,

(*b*) the appeal is brought within the period specified in the notice or notification mentioned in *paragraph (c)* of this subsection, and

(*c*) the Commissioner has included a statement in the relevant notice or notification to the effect that by reason of special circumstances he is of opinion that the requirement or prohibition specified in the notice should be complied with, or the refusal specified in the notification should take effect, urgently,

then, notwithstanding any provision of this Act, if the Court, on application to it in that behalf, so determines, non-compliance by the person F62**[**with a requirement or prohibition specified in the notice**]** during the period ending with the determination or withdrawal of the appeal or during such other period as may be determined as aforesaid shall not constitute an offence.

Annotations

Amendments:

F60 Substituted other than for certain excepted purposes (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 172(1)(b)(i)(I), (2), S.I. No. 174 of 2018. The excepted purposes in subs. (2) are 7/2018, s. 8(1)(b), (2), (3). See C-note below.

F61 Deleted other than for certain excepted purposes (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 172(1)(b)(i)(II), (2), S.I. No. 174 of 2018. The excepted purposes in subs. (2) are 7/2018, s. 8(1)(b), (2), (3). See C-note below.

F62 Substituted other than for certain excepted purposes (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 172(1)(b)(ii), (2), S.I. No. 174 of 2018. The excepted purposes in subs. (2) are 7/2018, s. 8(1)(b), (2), (3). See C-note below.

Modifications (not altering text):

C71 Subs. (1)(b) amended, (c) deleted and subs. (4)(a), (4) amended, but previous versions (below) retained for certain excepted purposes, (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 172(1)(b), (2), S.I. No. 174 of 2018. The excepted purposes in subs. (2) are 7/2018, s. 8(1)(b) (the processing of such data under the *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014* (11/2014) or the *Vehicle Registration Data (Automated Searching and Exchange) Act 2018* (5/2018) to the extent that the Act of 1988 is applied in those Acts) and s. 8(2), (3) (transitional provisions).

26.—(1) ...

(*b*) a prohibition specified in a prohibition notice,

(*c*) a refusal by the Commissioner under *section 17* of this Act, notified by him under that section, and

...

(4) Where—

(*a*) a person appeals to the Court pursuant to *paragraph (a), (b)* or *(c)* of *subsection (1)* of this section,

...

then, notwithstanding any provision of this Act, if the Court, on application to it in that behalf, so determines, non-compliance by the person with a requirement or prohibition specified in the notice, or, as the case may be, a contravention by him of *section 19* of this Act, during the period ending with the determination or withdrawal of the appeal or during such other period as may be determined as aforesaid shall not constitute an offence.

C72 Application of section extended with modification (27.01.2014) by *Credit Reporting Act 2013* (45/2013), s. 19(2), (4), S.I. No. 19 of 2014.

Data protection

19. ...

(2) Sections 2, 4 and 6 of the Data Protection Act 1988 shall have effect as if—

(*a*) references to personal data included relevant credit data, and

(*b*) a person to whom this section applies were a living individual, and sections 9, 10, 12 and 24 to 31 of that Act apply accordingly.

(3) ...

(4) This section applies to any person with an annual turnover of not more than €3,000,000 (and to whom sections 2, 4 and 6 of the Data Protection Act 1988 would not apply apart from this section).

...

Editorial Notes:

E66 Previous affecting provision: construction of section extended (6.11.2003) by *European Communities (Electronic Communications Networks and Services) (Data Protection and Privacy) Regulations 2008* (S.I. No. 535 of 2003), reg. 17(1)(a); reg. 17 substituted (13.12.2008) by *European Communities (Electronic Communications Networks and Services) (Data Protection and Privacy) (Amendment) Regulations 2008* (S.I. No. 526 of 2008), reg. 9.

Evidence in proceedings.

27.—(1) In any proceedings—

(*a*) a certificate signed by the Minister or the Minister for Defence and stating that in his opinion personal data are, or at any time were, kept for the purpose of safeguarding the security of the State shall be evidence of that opinion,

(*b*) a certificate—

(i) signed by a member of the Garda Síochána not below the rank of chief superintendent or an officer of the Permanent Defence Force who holds an army rank not below that of colonel and is designated by the Minister for Defence under *section 8 (a)* of this Act, and

(ii) stating that in the opinion of the member or, as the case may be, the officer a disclosure of personal data is required for the purpose aforesaid,

shall be evidence of that opinion, and

(*c*) a document purporting to be a certificate under *paragraph (a)* or *(b)* of this subsection and to be signed by a person specified in the said *paragraph (a)* or *(b)*, as appropriate, shall be deemed to be such a certificate and to be so signed unless the contrary is proved.

(2) Information supplied by a person in compliance with a request under *section 3* or *4 (1)* of this Act, a requirement under this Act or a direction of a court in proceedings under this Act shall not be admissible in evidence against him or his spouse in proceedings for an offence under this Act.

Annotations

Modifications (not altering text):

C73 Application of section extended with modification (27.01.2014) by *Credit Reporting Act 2013* (45/2013), s. 19(2), (4), S.I. No. 19 of 2014.

Data protection

19. ...

(2) Sections 2, 4 and 6 of the Data Protection Act 1988 shall have effect as if—

(*a*) references to personal data included relevant credit data, and

(*b*) a person to whom this section applies were a living individual, and sections 9, 10, 12 and 24 to 31 of that Act apply accordingly.

(3) ...

(4) This section applies to any person with an annual turnover of not more than €3,000,000 (and to whom sections 2, 4 and 6 of the Data Protection Act 1988 would not apply apart from this section).

...

C74 Application of section extended with any necessary modifications (24.02.2003) by *European Communities (Directive 2000/31/EC) Regulations 2003* (S.I. No. 68 of 2003), reg. 9(6).

Unsolicited commercial communications.

9. ...

(6) The following provisions of the Act, namely —

(*a*) sections 1, 10, 12, 24 and 25,

(*b*) section 26 in so far as it relates to a requirement specified in an enforcement notice or an information notice or a decision of the Data Protection Commissioner in relation to a complaint under section 10 (1) (a) of the Act,

and

(*c*) sections 27 to 30,

apply for the purpose of this Regulation with the modifications specified in paragraphs (7) to (10) and any other necessary modifications.

(7) References, in the provisions of the Act mentioned in paragraph (6), to that Act or the provisions of that Act shall, unless the context otherwise requires be construed as including references to this Regulation or the provisions of this Regulation.

...

(11) In this Regulation —

"Act" means the Data Protection Act 1988 (No. 25 of 1988);

...

Editorial Notes:

E67 Previous affecting provision: construction of section extended (6.11.2003) by *European Communities (Electronic Communications Networks and Services) (Data Protection and Privacy) Regulations 2008* (S.I. No. 535 of 2003), reg. 17(1)(a); reg. 17 substituted (13.12.2008) by *European Communities (Electronic Communications Networks and Services) (Data Protection and Privacy) (Amendment) Regulations 2008* (S.I. No. 526 of 2008), reg. 9.

E68 Previous affecting provision: application of ss. 10, 12, 24, 25, 26 (insofar as it relates to a requirement specified in an enforcement notice or an information notice or a decision of the Commissioner in relation to a complaint under section 10(1)(a)) and ss. 27 to 31 extended with any necessary modifications (8.05.2002) by *European Communities (Data Protection and Privacy in Telecommunications) Regulations 2002* (S.I. No. 192 of 2002), reg. 12; revoked (6.11.2003) by *European Communities (Electronic Communications Networks and Services) (Data Protection and Privacy) Regulations 2003* (S.I. No. 535 of 2003), reg. 24.

Hearing of proceedings.

28.—The whole or any part of any proceedings under this Act may, at the discretion of the court, be heard otherwise than in public.

Annotations

Modifications (not altering text):

C75 Application of section extended with modification (27.01.2014) by *Credit Reporting Act 2013* (45/2013), s. 19(2), (4), S.I. No. 19 of 2014.

Data protection

19. ...

(2) Sections 2, 4 and 6 of the Data Protection Act 1988 shall have effect as if—

(*a*) references to personal data included relevant credit data, and

(*b*) a person to whom this section applies were a living individual, and sections 9, 10, 12 and 24 to 31 of that Act apply accordingly.

(3) ...

(4) This section applies to any person with an annual turnover of not more than €3,000,000 (and to whom sections 2, 4 and 6 of the Data Protection Act 1988 would not apply apart from this section).

...

C76 Application of section extended with any necessary modifications (24.02.2003) by *European Communities (Directive 2000/31/EC) Regulations 2003* (S.I. No. 68 of 2003), reg. 9(6).

Unsolicited commercial communications.

9. ...

(6) The following provisions of the Act, namely —

(*a*) sections 1, 10, 12, 24 and 25,

(*b*) section 26 in so far as it relates to a requirement specified in an enforcement notice or an information notice or a decision of the Data Protection Commissioner in relation to a complaint under section 10 (1) (a) of the Act,

and

(*c*) sections 27 to 30,

apply for the purpose of this Regulation with the modifications specified in paragraphs (7) to (10) and any other necessary modifications.

(7) References, in the provisions of the Act mentioned in paragraph (6), to that Act or the provisions of that Act shall, unless the context otherwise requires be construed as including references to this Regulation or the provisions of this Regulation.

...

(11) In this Regulation —

"Act" means the Data Protection Act 1988 (No. 25 of 1988);

...

Editorial Notes:

E69 Previous affecting provision: construction of section extended (6.11.2003) by *European Communities (Electronic Communications Networks and Services) (Data Protection and Privacy) Regulations 2008* (S.I. No. 535 of 2003), reg. 17(1)(a); reg. 17 substituted (13.12.2008) by *European Communities (Electronic Communications Networks and Services) (Data Protection and Privacy) (Amendment) Regulations 2008* (S.I. No. 526 of 2008), reg. 9; revoked and replaced (1.07.2011) by *European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011* (S.I. No. 336 of 2011), reg. 35 subject to transitional provisions in reg. 34.

E70 Previous affecting provision: application of ss. 10, 12, 24, 25, 26 (insofar as it relates to a requirement specified in an enforcement notice or an information notice or a decision of the Commissioner in relation to a complaint under section 10(1)(a)) and ss. 27 to 31 extended with any necessary modifications (8.05.2002) by *European Communities (Data Protection and Privacy in Telecommunications) Regulations 2002* (S.I. No. 192 of 2002), reg. 12; revoked (6.11.2003) by *European Communities (Electronic Communications Networks and Services) (Data Protection and Privacy) Regulations 2003* (S.I. No. 535 of 2003), reg. 24.

Offences by directors, etc., of bodies corporate.

29.—(1) Where an offence under this Act has been committed by a body corporate and is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of a person, being a director, manager, secretary or other officer of that body corporate, or a person who was purporting to act in any such capacity, that person, as well as the body corporate, shall be guilty of that offence and be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, *subsection (1)* of this section shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director or manager of the body corporate.

Annotations

Modifications (not altering text):

C77 Application of section extended with modification (27.01.2014) by *Credit Reporting Act 2013* (45/2013), s. 19(2), (4), S.I. No. 19 of 2014.

Data protection

19. ...

(2) Sections 2, 4 and 6 of the Data Protection Act 1988 shall have effect as if—

(*a*) references to personal data included relevant credit data, and

(*b*) a person to whom this section applies were a living individual, and sections 9, 10, 12 and 24 to 31 of that Act apply accordingly.

(3) ...

(4) This section applies to any person with an annual turnover of not more than €3,000,000 (and to whom sections 2, 4 and 6 of the Data Protection Act 1988 would not apply apart from this section).

...

C78 Application of section extended with any necessary modifications (24.02.2003) by *European Communities (Directive 2000/31/EC) Regulations 2003* (S.I. No. 68 of 2003), reg. 9(6).

C79

Unsolicited commercial communications.

9. ...

(6) The following provisions of the Act, namely —

(*a*) sections 1, 10, 12, 24 and 25,

(*b*) section 26 in so far as it relates to a requirement specified in an enforcement notice or an information notice or a decision of the Data Protection Commissioner in relation to a complaint under section 10 (1) (a) of the Act,

and

(*c*) sections 27 to 30,

apply for the purpose of this Regulation with the modifications specified in paragraphs (7) to (10) and any other necessary modifications.

(7) References, in the provisions of the Act mentioned in paragraph (6), to that Act or the provisions of that Act shall, unless the context otherwise requires be construed as including references to this Regulation or the provisions of this Regulation.

...

(11) In this Regulation —

"Act" means the Data Protection Act 1988 (No. 25 of 1988);

...

Editorial Notes:

E71 Previous affecting provision: construction of section extended (6.11.2003) by *European Communities (Electronic Communications Networks and Services) (Data Protection and Privacy) Regulations 2008* (S.I. No. 535 of 2003), reg. 17(1)(a); reg. 17 substituted (13.12.2008) by *European Communities (Electronic Communications Networks and Services) (Data Protection and Privacy) (Amendment) Regulations 2008* (S.I. No. 526 of 2008), reg. 9; revoked and replaced (1.07.2011) by *European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011* (S.I. No. 336 of 2011), reg. 35 subject to transitional provisions in reg. 34.

E72 Previous affecting provision: application of ss. 10, 12, 24, 25, 26 (insofar as it relates to a requirement specified in an enforcement notice or an information notice or a decision of the Commissioner in relation to a complaint under section 10(1)(a)) and ss. 27 to 31 extended with any necessary modifications (8.05.2002) by *European Communities (Data Protection and Privacy in Telecommunications) Regulations 2002* (S.I. No. 192 of 2002), reg. 12; revoked (6.11.2003) by *European Communities (Electronic Communications Networks and Services) (Data Protection and Privacy) Regulations 2003* (S.I. No. 535 of 2003), reg. 24.

Prosecution of summary offences by Commissioner.

30.—(1) Summary proceedings for an offence under this Act may be brought and prosecuted by the Commissioner.

(2) Notwithstanding section 10 (4) of the Petty Sessions (Ireland) Act, 1851, summary proceedings for an offence under this Act may be instituted within on e year from the date of the offence.

Annotations

Modifications (not altering text):

C80 Application of section extended with modification (27.01.2014) by *Credit Reporting Act 2013* (45/2013), s. 19(2), (4), S.I. No. 19 of 2014.

Data protection

19. ...

(2) Sections 2, 4 and 6 of the Data Protection Act 1988 shall have effect as if—

(*a*) references to personal data included relevant credit data, and

(*b*) a person to whom this section applies were a living individual, and sections 9, 10, 12 and 24 to 31 of that Act apply accordingly.

(3) ...

(4) This section applies to any person with an annual turnover of not more than €3,000,000 (and to whom sections 2, 4 and 6 of the Data Protection Act 1988 would not apply apart from this section).

...

C81 Application of section extended with any necessary modifications (24.02.2003) by *European Communities (Directive 2000/31/EC) Regulations 2003* (S.I. No. 68 of 2003), reg. 9(6).

Unsolicited commercial communications.

9. ...

(6) The following provisions of the Act, namely —

(*a*) sections 1, 10, 12, 24 and 25,

(*b*) section 26 in so far as it relates to a requirement specified in an enforcement notice or an information notice or a decision of the Data Protection Commissioner in relation to a complaint under section 10 (1) (a) of the Act,

and

(*c*) sections 27 to 30,

apply for the purpose of this Regulation with the modifications specified in paragraphs (7) to (10) and any other necessary modifications.

(7) References, in the provisions of the Act mentioned in paragraph (6), to that Act or the provisions of that Act shall, unless the context otherwise requires be construed as including references to this Regulation or the provisions of this Regulation.

...

(11) In this Regulation —

"Act" means the Data Protection Act 1988 (No. 25 of 1988);

...

Editorial Notes:

E73 Previous affecting provision: construction of section extended (6.11.2003) by *European Communities (Electronic Communications Networks and Services) (Data Protection and Privacy) Regulations 2008* (S.I. No. 535 of 2003), reg. 17(1)(a); reg. 17 substituted (13.12.2008) by *European Communities (Electronic Communications Networks and Services) (Data Protection and Privacy) (Amendment) Regulations 2008* (S.I. No. 526 of 2008), reg. 9; revoked and replaced (1.07.2011) by *European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011* (S.I. No. 336 of 2011), reg. 35 subject to transitional provisions in reg. 34.

E74 Previous affecting provision: application of ss. 10, 12, 24, 25, 26 (insofar as it relates to a requirement specified in an enforcement notice or an information notice or a decision of the Commissioner in relation to a complaint under section 10(1)(a)) and ss. 27 to 31 extended with any necessary modifications (8.05.2002) by *European Communities (Data Protection and Privacy in Telecommunications) Regulations 2002* (S.I. No. 192 of 2002), reg. 12; revoked (6.11.2003) by *European Communities (Electronic Communications Networks and Services) (Data Protection and Privacy) Regulations 2003* (S.I. No. 535 of 2003), reg. 24.

Penalties.

31.—(1) A person guilty of an offence under this Act shall be liable—

(*a*) on summary conviction, to a fine not exceeding F63**[**€3,000**]**, or

(*b*) on conviction on indictment, to a fine not exceeding F63**[**€100,000**]**.

(2) Where a person is convicted of an offence under this Act, the court may order any data material which appears to the court to be connected with the commission of the offence to be forfeited or destroyed and any relevant data to be erased.

(3) The court shall not make an order under *subsection (2)* of this section in relation to data material or data where it considers that some person other than the person convicted of the offence concerned may be the owner of, or otherwise interested in, the data unless such steps as are reasonably practicable have been taken for notifying that person and giving him an opportunity to show cause why the order should not be made.

(4) Section 13 of the Criminal Procedure Act, 1967, shall apply in relation to an offence under this Act that is not being prosecuted summarily as if, in lieu of the penalties provided for in subsection (3) (*a*) of that section, there were specified therein the fine provided for in *subsection (1) (a)* of this section and the reference in subsection (2) (*a*) of the said section 13 to the penalties provided for by *subsection (3)* shall be construed and have effect accordingly.

Annotations

Amendments:

F63 Substituted (1.07.2003) by *Data Protection (Amendment) Act 2003* (6/2003), s. 19, S.I. No. 207 of 2003. A fine of €3,000 translates into a class B fine not exceeding €4,000 as provided (4.01.2011) by *Fines Act 2010* (8/2010), ss. 3, 5(3) and table ref. no. 1, S.I. No. 662 of 2010.

Modifications (not altering text):

C82 Application of section extended with modification (27.01.2014) by *Credit Reporting Act 2013* (45/2013), s. 19(2), (4), S.I. No. 19 of 2014.

Data protection

19. ...

(2) Sections 2, 4 and 6 of the Data Protection Act 1988 shall have effect as if—

(*a*) references to personal data included relevant credit data, and

(*b*) a person to whom this section applies were a living individual, and sections 9, 10, 12 and 24 to 31 of that Act apply accordingly.

(3) ...

(4) This section applies to any person with an annual turnover of not more than €3,000,000 (and to whom sections 2, 4 and 6 of the Data Protection Act 1988 would not apply apart from this section).

...

C83 Application of Act extended (31.12.2005) by *Disability Act 2005* (14/2005), s. 42(4), S.I. No. 474 of 2005.

Genetic testing and processing of genetic data.

42.—...

(4) A person who contravenes *subsection (2)* or *(3)* shall be guilty of an offence; an offence under this subsection shall be deemed to be an offence to which section 31 of the Data Protection Act 1988 applies.

Editorial Notes:

E75 Previous affecting provision: construction of section extended (6.11.2003) by *European Communities (Electronic Communications Networks and Services) (Data Protection and Privacy) Regulations 2008* (S.I. No. 535 of 2003), reg. 17(1)(a); reg. 17 substituted (13.12.2008) by *European Communities (Electronic Communications Networks and Services) (Data Protection and Privacy) (Amendment) Regulations 2008* (S.I. No. 526 of 2008), reg. 9; revoked and replaced (1.07.2011) by *European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011* (S.I. No. 336 of 2011), reg. 35 subject to transitional provisions in reg. 34.

E76 Previous affecting provision: application of ss. 10, 12, 24, 25, 26 (insofar as it relates to a requirement specified in an enforcement notice or an information notice or a decision of the Commissioner in relation to a complaint under section 10(1)(a)) and ss. 27 to 31 extended with any necessary modifications (8.05.2002) by *European Communities (Data Protection and Privacy in Telecommunications) Regulations 2002* (S.I. No. 192 of 2002), reg. 12; revoked (6.11.2003) by *European Communities (Electronic Communications Networks and Services) (Data Protection and Privacy) Regulations 2003* (S.I. No. 535 of 2003), reg. 24.

Laying of regulations before Houses of Oireachtas.

32.—Every regulation made under this Act (other than *section 2*) shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

Fees.

33.—F64**[**...**]**

Annotations

Amendments:

F64 Repealed other than for certain excepted purposes (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 7(1)(g), (4), S.I. No. 174 of 2018. The excepted purposes in subs. (4) are 7/2018, s. 8(1)(b), (2), (3). See C-note below.

Modifications (not altering text):

C84 Section repealed, but retained (see below) for certain excepted purposes, (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 7(1)(g), (4), S.I. No. 174 of 2018. The excepted purposes in subs. (4) are 7/2018, s. 8(1)(b) (the processing of such data under the *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014* (11/2014) or the *Vehicle Registration Data (Automated Searching and Exchange) Act 2018* (5/2018) to the extent that the Act of 1988 is applied in those Acts) and s. 8(2), (3) (transitional provisions).

33.—(1) Fees under this Act shall be paid into or disposed of for the benefit of the Exchequer in accordance with the directions of the Minister for Finance.

(2) The Public Offices Fees Act, 1879, shall not apply in respect of any fees under this Act.

C85 Functions transferred and references to "Department of Finance" and "Minister for Finance" construed (29.07.2011) by *Finance (Transfer of Departmental Administration and Ministerial Functions) Order 2011* (S.I. No. 418 of 2011), arts. 2, 3, 5 and sch. 1 part 2, in effect as per art. 1(2), subject to transitional provisions in arts. 6-9.

2. (1) The administration and business in connection with the performance of any functions transferred by this Order are transferred to the Department of Public Expenditure and Reform.

(2) References to the Department of Finance contained in any Act or instrument made thereunder and relating to the administration and business transferred by paragraph (1) shall, on and after the commencement of this Order, be construed as references to the Department of Public Expenditure and Reform.

3. The functions conferred on the Minister for Finance by or under the provisions of —

(*a*) the enactments specified in Schedule 1, and

(*b*) the statutory instruments specified in Schedule 2,

are transferred to the Minister for Public Expenditure and Reform.

...

5. References to the Minister for Finance contained in any Act or instrument under an Act and relating to any functions transferred by this Order shall, from the commencement of this Order, be construed as references to the Minister for Public Expenditure and Reform.

...

Schedule 1

Enactments

...

Part 2

1922 to 2011 Enactments

Number and Year (1)	Short Title (2)	Provision (3)
...	...	...
No. 25 of 1988	Data Protection Act 1988	Sections 1 and 33(1); Second Schedule, paragraph 9
...	...	...

Expenses of Minister.

34.—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

Short title and commencement.

35.—(1) This Act may be cited as the Data Protection Act, 1988.

(2) This Act shall come into operation on such day or days as, by order or orders made by the Minister under this section, may be fixed therefor either generally or with reference to any particular purpose or provision and different days may be so fixed for different purposes and different provisions.

Annotations

Editorial Notes:

E77 Power pursuant to section exercised (18.07.2014) by *Data Protection Act 1988 (Commencement) Order 2014* (S.I. No. 337 of 2014).

2. The 18th day of July 2014 is fixed as the day on which the Data Protection Act 1988 (No. 25 of 1988), insofar as it is not already in operation, shall come into operation.

E78 Power pursuant to subs. (2) exercised (19.12.1988) by *Data Protection Act (Commencement) Order 1988* (S.I. No. 349 of 1988).

3. The 9th day of January, 1989, is hereby fixed as the day on which the following provisions of the Act shall come into operation, namely:

(*a*) sections 1, 9, 16 (other than subsection (3)), 17, 18, 20,26 (other than paragraphs (*a*), (*b*) and (*d*) of subsection (1) and subsection (4)), 32 to 35, and

(*b*) the Second and Third Schedules.

4. The 19th day of April, 1989, is hereby fixed as the day on which the Act (other than sections 6 (2) (*b*) and 10 (7) (*b*) and the provisions specified in Regulation 3 of these Regulations) shall come into operation.

Section 1 (1).

FIRST SCHEDULE

Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data done at Strasbourg on the 28th day of January, 1981

PREAMBLE

The member States of the Council of Europe, signatory hereto,

Considering that the aim of the Council of Europe is to achieve greater unity between its members, based in particular on respect for the rule of law, as well as human rights and fundamental freedoms;

Considering that it is desirable to extend the safeguards for everyone's rights and fundamental freedoms, and in particular the right to the respect for privacy, taking account of the increasing flow across frontiers of personal data undergoing automatic processing;

Reaffirming at the same time their commitment to freedom of information regardless of frontiers;

Recognising that it is necessary to reconcile the fundamental values of the respect for privacy and the free flow of information between peoples,

Have agreed as follows:

CHAPTER I—GENERAL PROVISIONS

Article 1

Object and purpose

The purpose of this convention is to secure in the territory of each Party for every individual, whatever his nationality or residence, respect for his rights and fundamental freedoms, and in particular his right to privacy, with regard to automatic processing of personal data relating to him ("data protection").

Article 2

Definitions

For the purposes of this convention:

a. "personal data" means any information relating to an identified or identifiable individual ("data subject");

b. "automated data file" means any set of data undergoing automatic processing;

c. "automatic processing" includes the following operations if carried out in whole or in part by automated means: storage of data, carrying out of logical and/or arithmetical operations on those data, their alteration, erasure, retrieval or dissemination;

d. "controller of the file" means the natural or legal person, public authority, agency or any other body who is competent according to the national law to decide what should be the purpose of the automated data file, which categories of personal data should be stored and which operations should be applied to them.

Article 3

Scope

1. The Parties undertake to apply this convention to automated personal data files and automatic processing of personal data in the public and private sectors.

2. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, or at any later time, give notice by a declaration addressed to the Secretary General of the Council of Europe:

a. that it will not apply this convention to certain categories of automated personal data files, a list of which will be deposited. In this list it shall not include, however, categories of automated data files subject under its domestic law to data protection provisions. Consequently, it shall amend this list by a new declaration whenever additional categories of automated personal data files are subjected to data protection provisions under its domestic law;

b. that it will also apply this convention to information relating to groups of persons, associations, foundations, companies, corporations and any other bodies consisting directly or indirectly of individuals, whether or not such bodies possess legal personality;

c. that it will also apply this convention to personal data files which are not processed automatically.

3. Any State which has extended the scope of this convention by any of the declarations provided for in sub-paragraph 2.*b* or *c* above may give notice in the said declaration that such extensions shall apply only to certain categories of personal data files, a list of which will be deposited.

4. Any Party which has excluded certain categories of automated personal data files by a declaration provided for in sub-paragraph 2.*a* above may not claim the application of this convention to such categories by a Party which has not excluded them.

5. Likewise, a Party which has not made one or other of the extensions provided for in sub-paragraphs 2.*b* or *c* above may not claim the application of this convention on these points with respect to a Party which has made such extensions.

6. The declarations provided for in paragraph 2 above shall take effect from the moment of the entry into force of the convention with regard to the State which has made them if they have been made at the time of signature or deposit of its instrument of ratification, acceptance, approval or accession, or three months after their receipt by the Secretary General of the Council of Europe if they have been made at any later time. These declarations may be withdrawn, in whole or in part, by a notification addressed to the Secretary General of the Council of Europe. Such withdrawals shall take effect three months after the date of receipt of such notification.

CHAPTER II—BASIC PRINCIPLES FOR DATA PROTECTION

Article 4

Duties of the Parties

1. Each Party shall take the necessary measures in its domestic law to give effect to the basic principles for data protection set out in this chapter.

2. These measures shall be taken at the latest at the time of entry into force of this convention in respect of that Party.

Article 5

Quality of data

Personal data undergoing automatic processing shall be:

a. obtained and processed fairly and lawfully;

b. stored for specified and legitimate purposes and not used in a way incompatible with those purposes;

c. adequate, relevant and not excessive in relation to the purposes for which they are stored;

d. accurate and, where necessary, kept up to date;

e. preserved in a form which permits identification of the data subjects for no longer than is required for the purpose for which those data are stored.

Article 6

Special categories of data

Personal data revealing racial origin, political opinions or religious or other beliefs, as well as personal data concerning health or sexual life, may not be processed automatically unless domestic law provides appropriate safeguards. The same shall apply to personal data relating to criminal convictions.

Article 7

Data security

Appropriate security measures shall be taken for the protection of personal data stored in automated data files against accidental or unauthorised destruction or accidental loss as well as against unauthorised access, alteration or dissemination.

Article 8

Additional safeguards for the data subject

Any person shall be enabled:

a. to establish the existence of an automated personal data file, its main purposes, as well as the identity and habitual residence or principal place of business of the controller of the file;

b. to obtain at reasonable intervals and without excessive delay or expense confirmation of whether personal data relating to him are stored in the automated data file as well as communication to him of such data in an intelligible form;

c. to obtain, as the case may be, rectification or erasure of such data if these have been processed contrary to the provisions of domestic law giving effect to the basic principles set out in Articles 5 and 6 of this convention;

d. to have a remedy if a request for confirmation or, as the case may be, communication, rectification or erasure as referred to in paragraphs b and c of this article is not complied with.

Article 9

Exceptions and restrictions

1. No exception to the provisions of Articles 5, 6 and 8 of this convention shall be allowed except within the limits defined in this article.

2. Derogation from the provisions of Articles 5, 6 and 8 of this convention shall be allowed when such derogation is provided for by the law of the Party and constitutes a necessary measure in a democratic society in the interests of:

a. protecting State security, public safety, the monetary interests of the State or the suppression of criminal offences;

b. protecting the data subject or the rights and freedoms of others.

3. Restrictions on the exercise of the rights specified in Article 8, paragraphs *b, c* and *d*, may be provided by law with respect to automated personal data files used for statistics or for scientific research purposes when there is obviously no risk of an infringement of the privacy of the data subjects.

Article 10

Sanctions and remedies

Each Party undertakes to establish appropriate sanctions and remedies for violations of provisions of domestic law giving effect to the basic principles for data protection set out in this chapter.

Article 11

Extended protection

None of the provisions of this chapter shall be interpreted as limiting or otherwise affecting the possibility for a Party to grant data subjects a wider measure of protection than that stipulated in this convention.

CHAPTER III—TRANSBORDER DATA FLOWS

Article 12

Transborder flows of personal data and domestic law

1. The following provisions shall apply to the transfer across national borders, by whatever medium, of personal data undergoing automatic processing or collected with a view to their being automatically processed.

2. A Party shall not, for the sole purpose of the protection of privacy, prohibit or subject to special authorisation transborder flows of personal data going to the territory of another Party.

3. Nevertheless, each Party shall be entitled to derogate from the provisions of paragraph 2:

a. insofar as its legislation includes specific regulations for certain categories of personal data or of automated personal data files, because of the nature of those data or those files, except where the regulations of the other Party provide an equivalent protection;

b. when the transfer is made from its territory to the territory of a non-Contracting State through the intermediary of the territory of another Party, in order to avoid such transfers resulting in circumvention of the legislation of the Party referred to at the beginning of this paragraph.

CHAPTER IV—MUTUAL ASSISTANCE

Article 13

Co-operation between Parties

1. The Parties agree to render each other mutual assistance in order to implement this convention.

2. For that purpose:

a. each Party shall designate one or more authorities, the name and address of each of which it shall communicate to the Secretary General of the Council of Europe;

b. each Party which has designated more than one authority shall specify in its communication referred to in the previous sub-paragraph the competence of each authority.

3. An authority designated by a Party shall at the request of an authority designated by another Party:

a. furnish information on its law and administrative practice in the field of data protection;

b. take, in conformity with its domestic law and for the sole purpose of protection of privacy, all appropriate measures for furnishing factual information relating to specific automatic processing carried out in its territory, with the exception however of the personal data being processed.

Article 14

Assistance to data subjects resident abroad

1. Each Party shall assist any person resident abroad to exercise the rights conferred by its domestic law giving effect to the principles set out in Article 8 of this convention.

2. When such a person resides in the territory of another Party he shall be given the option of submitting his request through the intermediary of the authority designated by that Party.

3. The request for assistance shall contain all the necessary particulars, relating *inter alia* to:

a. the name, address and any other relevant particulars identifying the person making the request;

b. the automated personal data file to which the request pertains, or its controller;

c. the purpose of the request.

Article 15

Safeguards concerning assistance rendered by designated authorities

1. An authority designated by a Party which has received information from an authority designated by another Party either accompanying a request for assistance or in reply to its own request for assistance shall not use that information for purposes other than those specified in the request for assistance.

2. Each Party shall see to it that the persons belonging to or acting on behalf of the designated authority shall be bound by appropriate obligations of secrecy or confidentiality with regard to that information.

3. In no case may a designated authority be allowed to make under Article 14, paragraph 2, a request for assistance on behalf of a data subject resident abroad, of its own accord and without the express consent of the person concerned.

Article 16

Refusal of requests for assistance

A designated authority to which a request for assistance is addressed under Articles 13 or 14 of this convention may not refuse to comply with it unless:

a. the request is not compatible with the powers in the field of data protection of the authorities responsible for replying;

b. the request does not comply with the provisions of this convention;

c. compliance with the request would be incompatible with the sovereignty, security or public policy (*ordre public*) of the Party by which it was designated, or with the rights and fundamental freedoms of persons under the jurisdiction of that Party.

Article 17

Costs and procedures of assistance

1. Mutual assistance which the Parties render each other under Article 13 and assistance they render to data subjects abroad under Article 14 shall not give rise to the payment of any costs or fees other than those incurred for experts and interpreters. The latter costs or fees shall be borne by the Party which has designated the authority making the request for assistance.

2. The data subject may not be charged costs or fees in connection with the steps taken on his behalf in the territory of another Party other than those lawfully payable by residents of that Party.

3. Other details concerning the assistance relating in particular to the forms and procedures and the languages to be used, shall be established directly between the Parties concerned.

CHAPTER V—CONSULTATIVE COMMITTEE

Article 18

Composition of the committee

1. A Consultative Committee shall be set up after the entry into force of this convention.

2. Each Party shall appoint a representative to the committee and a deputy representative. Any member State of the Council of Europe which is not a Party to the convention shall have the right to be represented on the committee by an observer.

3. The Consultative Committee may, by unanimous decision, invite any non-member State of the Council of Europe which is not a Party to the convention to be represented by an observer at a given meeting.

Article 19

Functions of the committee

The Consultative Committee:

a. may make proposals with a view to facilitating or improving the application of the convention;

b. may make proposals for amendment of this convention in accordance with Article 21;

c. shall formulate its opinion on any proposal for amendment of this convention which is referred to it in accordance with Article 21, paragraph 3;

d. may, at the request of a Party, express an opinion on any question concerning the application of this convention.

Article 20

Procedure

1. The Consultative Committee shall be convened by the Secretary General of the Council of Europe. Its first meeting shall be held within twelve months of the entry into force of this convention. It shall subsequently meet at least once every two years and in any case when one-third of the representatives of the Parties request its convocation.

2. A majority of representatives of the Parties shall constitute a quorum for a meeting of the Consultative Committee.

3. After each of its meetings, the Consultative Committee shall submit to the Committee of Ministers of the Council of Europe a report on its work and on the functioning of the convention.

4. Subject to the provisions of this convention, the Consultative Committee shall draw up its own Rules of Procedure.

CHAPTER VI—AMENDMENTS

Article 21

Amendments

1. Amendments to this convention may be proposed by a Party, the Committee of Ministers of the Council of Europe or the Consultative Committee.

2. Any proposal for amendment shall be communicated by the Secretary General of the Council of Europe to the member States of the Council of Europe and to every non-member State which has acceded to or has been invited to accede to this convention in accordance with the provisions of Article 23.

3. Moreover, any amendment proposed by a Party or the Committee of Ministers shall be communicated to the Consultative Committee, which shall submit to the Committee of Ministers its opinion on that proposed amendment.

4. The Committee of Ministers shall consider the proposed amendment and any opinion submitted by the Consultative Committee and may approve the amendment.

5. The text of any amendment approved by the Committee of Ministers in accordance with paragraph 4 of this article shall be forwarded to the Parties for acceptance.

6. Any amendment approved in accordance with paragraph 4 of this article shall come into force on the thirtieth day after all Parties have informed the Secretary General of their acceptance thereof.

CHAPTER VII—FINAL CLAUSES

Article 22

Entry into force

1. This convention shall be open for signature by the member States of the Council of Europe. It is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

2. This convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which five member States of the Council of Europe have expressed their consent to be bound by the convention in accordance with the provisions of the preceding paragraph.

3. In respect of any member State which subsequently expresses its consent to be bound by it, the convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.

Article 23

Accession by non-member States

1. After the entry into force of this convention, the Committee of Ministers of the Council of Europe may invite any State not a member of the Council of Europe to accede to this convention by a decision taken by the majority provided for in Article 20.*d* of the Statute of the Council of Europe and by the unanimous vote of the representatives of the Contracting States entitled to sit on the committee.

2. In respect of any acceding State, the convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.

Article 24

Territorial clause

1. Any State may at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this convention shall apply.

2. Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this convention to any other territory specified in the declaration. In respect of such territory the convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.

3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of such notification by the Secretary General.

Article 25

Reservations

No reservation may be made in respect of the provisions of this convention.

Article 26

Denunciation

1. Any Party may at any time denounce this convention by means of a notification addressed to the Secretary General of the Council of Europe.

2. Such denunciation shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of the notification by the Secretary General.

Article 27

Notifications

The Secretary General of the Council of Europe shall notify the member States of the Council and any State which has acceded to this convention of:

a. any signature;

b. the deposit of any instrument of ratification, acceptance, approval or accession;

c. any date of entry into force of this convention in accordance with Articles 22, 23 and 24;

d. any other act, notification or communication relating to this convention.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at Strasbourg, the 28th day of January 1981, in English and in French, both texts being equally authoritative, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe and to any State invited to accede to this Convention.

Section 9.

SECOND SCHEDULE

THE DATA PROTECTION COMMISSIONER

F65**[**...**]**

Annotations

Amendments:

F65 Repealed other than for certain excepted purposes (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 7(1)(e), (4), S.I. No. 174 of 2018. The excepted purposes in subs. (4) are 7/2018, s. 8(1)(b), (2) and (3). See C-note below.

F66 Inserted (25.03.2004) by *Public Service Superannuation (Miscellaneous Provisions) Act 2004* (7/2004), s. 3 and sch. 2 part 2, commenced on enactment.

F67 Substituted (6.10.2004) by *Public Service Management (Recruitment and Appointments) Act 2004* (33/2004), s. 61(1) and sch. 2 part 1, commenced on enactment.

F68 Inserted (1.07.2003) by *Data Protection (Amendment) Act 2003* (6/2003), s. 20, S.I. No. 207 of 2003.

Modifications (not altering text):

C86 Schedule repealed, but retained (see below) for certain excepted purposes (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 7(1)(e), (4), S.I. No. 174 of 2018. The excepted purposes in subs. (4) are 7/2018, s. 8(1)(b) (the processing of such data under the Criminal Justice (Forensic Evidence and DNA Database System) Act 2014 (11/2014) or the Vehicle Registration Data (Automated

Searching and Exchange) Act 2018 (5/2018) to the extent that the Act of 1988 is applied in those Acts) and s. 8(2), (3) (transitional provisions). Note *Data Protection Act 2018* (7/2018), s. 14(3): A reference in the Act of 1988 (other than in section 1(3)(c)(iii) in so far as it refers to the Commissioner of the Garda Síochána) to the Commissioner shall be construed as a reference to the Commission.

1. The Commissioner shall be a body corporate and shall be independent in the performance of his functions.

2. (1) The Commissioner shall be appointed by the Government and, subject to the provisions of this Schedule, shall hold office upon such terms and conditions as the Government may determine.

(2) The Commissioner—

(*a*) may at any time resign his office as Commissioner by letter addressed to the Secretary to the Government and the resignation shall take effect on and from the date of receipt of the letter,

(*b*) may at any time be removed from office by the Government if, in the opinion of the Government, he has become incapable through ill-health of effectively performing his functions or has committed stated misbehaviour, and

(*c*) shall, in any case, vacate the office of Commissioner on reaching the age of 65 years F66**[**: but where the person is a new entrant (within the meaning of the Public Service Superannuation (Miscellaneous Provisions) Act 2004) appointed on or after 1 April 2004, then the requirement to vacate office on grounds of age shall not apply.**]**.

3. The term of office of a person appointed to be the Commissioner shall be such term not exceeding 5 years as the Government may determine at the time of his appointment and, subject to the provisions of this Schedule, he shall be eligible for re-appointment to the office.

4. (1) Where the Commissioner is—

(*a*) nominated as a member of Seanad Éireann,

(*b*) elected as a member of either House of the Oireachtas, the European Parliament or a local authority, or

(*c*) regarded pursuant to section 15 (inserted by the European Assembly Elections Act, 1984) of the European Assembly Elections Act, 1977, as having been elected to such Parliament to fill a vacancy,

he shall thereupon cease to be the Commissioner.

(2) A person who is for the time being—

(i) entitled under the standing orders of either House of the Oireachtas to sit therein,

(ii) a member of the European Parliament, or

(iii) entitled under the standing orders of a local authority to sit therein,

shall, while he is so entitled or is such a member, be disqualified for holding the office of Commissioner.

5. The Commissioner shall not hold any other office or employment in respect of which emoluments are payable.

6. There shall be paid to the Commissioner, out of moneys provided by the Oireachtas, such remuneration and allowances for expenses as the Minister, with the consent of the Minister for Finance, may from time to time determine.

7. (*a*) The Minister shall, with the consent of the Minister for Finance, make and carry out, in accordance with its terms, a scheme or schemes for the granting of pensions, gratuities or other allowances on retirement or death to or in respect of persons who have held the office of Commissioner.

(*b*) The Minister may, with the consent of the Minister for Finance, at any time make and carry out, in accordance with its terms, a scheme or schemes amending or revoking a scheme under this paragraph.

(*c*) A scheme under this paragraph shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the scheme is passed by either such House within the next 21 days on which that House has sat after the scheme is laid before it, the scheme shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

8. (1) The Minister may appoint to be members of the staff of the Commissioner such number of persons as may be determined from time to time by the Minister, with the consent of the Minister for Finance.

(2) Members of the staff of the Commissioner shall be civil servants.

(3) The functions of the Commissioner under this Act may be performed during his temporary absence by such member of the staff of the Commissioner as he may designate for that purpose.

(4) The Minister may delegate to the Commissioner the powers exercisable by him under the F67**[**Public Service Management (Recruitment and Appointments) Act 2004**]**, and the Civil Service Regulation Acts, 1956 and 1958, as the appropriate authority in relation to members of the staff of the Commissioner and, if he does so, then so long as the delegation remains in force—

(*a*) those powers shall, in lieu of being exercisable by the Minister, be exercisable by the Commissioner, and

(*b*) the Commissioner shall, in lieu of the Minister, be for the purposes of this Act the appropriate authority in relation to members of the staff of the Commissioner.

9. (1) The Commissioner shall keep in such form as may be approved of by the Minister, with the consent of the Minister for Finance, all proper and usual accounts of all moneys received or expended by him and all such special accounts (if any) as the Minister, with the consent of the Minister for Finance, may direct.

(2) Accounts kept in pursuance of this paragraph in respect of each year shall be submitted by the Commissioner in the following year on a date (not later than a date specified by the Minister) to the Comptroller and Auditor General for audit and, as soon as may be after the audit, a copy of those accounts, or of such extracts from those accounts as the Minister may specify, together with the report of the Comptroller and Auditor General on the accounts, shall be presented by the Commissioner to the Minister who shall cause copies of the documents presented to him to be laid before each House of the Oireachtas.

F68**[**10. (1) A person who holds or held the office of Commissioner or who is or was a member of the staff of the Commissioner shall not disclose to a person other than the Commissioner or such a member any information that is obtained by him or her in his capacity as Commissioner or as such a member that could reasonably be regarded as confidential without the consent of the person to whom it relates.

(2) A person who contravenes subparagraph (1) of this paragraph shall be guilty of an offence.**]**

Editorial Notes:

E79 Power pursuant to s. 9 and sch. para. 7(a) exercised (25.05.1993) by *Data Protection Commissioner Superannuation Scheme 1993* (S.I. No. 141 of 1993). Continued in force (25.05.2018) by *Data Protection Act 2018* (7/2018), s. 67, S.I. No. 174 of 2018, as if made under 7/2018, s. 22 and (a) a person who was a member of the scheme ... shall continue to be a member, and (b) the provisions of that section shall apply accordingly.

Section 16 (1) (a).

THIRD SCHEDULE

Public Authorities and Other Bodies and Persons

F69**[**...**]**

Annotations

Amendments:

F69 Repealed (1.10.2007) by *Data Protection (Amendment) Act 2003* (6/2003), s. 22(1), S.I. No. 656 of 2007.

Number 25 *of* 1988

DATA PROTECTION ACT 1988

REVISED

Updated to 10 November 2025

About this Revised Act

This Revised Act presents the text of the Act as it has been amended since enactment, and preserves the format in which it was passed.

Related legislation

Data Protection Acts 1988 to 2018: this Act is one of a group of Acts included in this collective citation (*Data Protection Act 2018* (s. 1(2)). The Acts in the group are:

- *Data Protection Act 1988* (25/1988)
- *Data Protection Act 2003* (6/2003)
- *Data Protection Act 2018* (7/2018)

Annotations

This Revised Act is annotated and includes textual and non-textual amendments, statutory instruments made pursuant to the Act and previous affecting provisions.

An explanation of how to read annotations is available at www.lawreform.ie/annotations.

Material not updated in this revision

Where other legislation is amended by this Act, those amendments may have been superseded by other amendments in other legislation, or the amended legislation may have been repealed or revoked. This information is not represented in this revision but will be reflected in a revision of the amended legislation if one is available.

Where legislation or a fragment of legislation is referred to in annotations, changes to this legislation or fragment may not be reflected in this revision but will be reflected in a revision of the legislation referred to if one is available.

A list of legislative changes to any Act, and to statutory instruments from 1972, may be found linked from the page of the Act or statutory instrument at www.irishstatutebook.ie.

Acts which affect or previously affected this revision

- *Childcare Support Act 2018* (11/2018)

- *Data Protection Act 2018* (7/2018)
- *Vehicle Registration Data (Automated Searching and Exchange) Act 2018* (5/2018)
- *National Shared Services Office Act 2017* (26/2017)
- *Prisons Act 2015* (57/2015)
- *Communications Regulation (Postal Services) (Amendment) Act 2015* (20/2015)
- *Customs Act 2015* (18/2015)
- *Freedom of Information Act 2014* (30/2014)
- *Health Identifiers Act 2014* (15/2014)
- *Criminal Justice (Forensic Evidence and DNA Database System) Act 2014* (11/2014)
- *Local Government Reform Act 2014* (1/2014)
- *Credit Reporting Act 2013* (45/2013)
- *Courts and Civil Law (Miscellaneous Provisions) Act 2013* (32/2013)
- *Health (Alteration of Criteria for Eligibility) Act 2013* (10/2013)
- *Personal Insolvency Act 2012* (44/2012)
- *Property Services (Regulation) Act 2011* (40/2011)
- *Student Support Act 2011* (4/2011)
- *National Asset Management Agency Act 2009* (34/2009)
- *Criminal Justice (Miscellaneous Provisions) Act 2009* (28/2009)
- *Nursing Homes Support Scheme Act 2009* (15/2009)
- *Criminal Justice (Mutual Assistance) Act 2008* (7/2008)
- *Medical Practitioners Act 2007* (25/2007)
- *Europol (Amendment) Act 2006* (37/2006)
- *Electoral (Amendment) Act 2006* (33/2006)
- *Planning and Development (Strategic Infrastructure) Act 2006* (27/2006)
- *Disability Act 2005* (14/2005)
- *Health Act 2004* (42/2004)
- *Public Service Management (Recruitment and Appointments) Act 2004* (33/2004)
- *Commissions of Investigation Act 2004* (23/2004)
- *Public Service Superannuation (Miscellaneous Provisions) Act 2004* (7/2004)
- *Civil Registration Act 2004* (3/2004)
- *Data Protection (Amendment) Act 2003* (6/2003)
- *Residential Institutions Redress Act 2002* (13/2002)
- *Customs and Excise (Mutual Assistance) Act 2001* (2/2001)
- *Planning and Development Act 2000* (30/2000)
- *Commission to Inquire into Child Abuse Act 2000* (7/2000)
- *British-Irish Agreement Act 1999* (1/1999)
- *Europol Act 1997* (38/1997)
- *Health (Provision of Information) Act 1997* (9/1997)
- *Refugee Act 1996* (17/1996)
- *Statistics Act 1993* (21/1993)

All Acts up to and including *Electricity (Supply) (Amendment) Act 2025* (12/2025), enacted 20 November 2025, were considered in the preparation of this revision.

Statutory instruments which affect or previously affected this revision

- *Data Protection Act 1988 (Section 2B) Regulations 2025* (S.I. No. 537 of 2025)
- *Data Protection Act 1988 (Section 2B) Regulations 2023* (S.I. No. 443 of 2023)
- *Data Protection Act 1988 (Section 2B) Regulations 2022* (S.I. No. 354 of 2022)
- *European Union (Good Agricultural Practice for Protection of Waters) Regulations 2022* (S.I. No. 113 of 2022)
- *Data Protection Act 1988 (Section 2B) (No. 2) Regulations 2016* (S.I. No. 427 of 2016)
- *Data Protection Act 1988 (Section 2B) Regulations 2016* (S.I. No. 426 of 2016)
- *Data Protection Act 1988 (Section 2A) Regulations 2016* (S.I. No. 220 of 2016)
- *Data Protection Act 1988 (Section 2B) Regulations 2015* (S.I. No. 240 of 2015)
- *Data Protection Act 1988 (Commencement) Order 2014* (S.I. No. 337 of 2014)
- *European Union (Capital Requirements) Regulations 2014* (S.I. No. 158 of 2014)
- *European Union (Good Agricultural Practice for Protection of Waters) Regulations 2014* (S.I. No. 31 of 2014)
- *Data Protection Act 1988 (Section 2A) Regulations 2013* (S.I. No. 313 of 2013)
- *Data Protection Act 1988 (Section 2B) Regulations 2012* (S.I. No. 209 of 2012)
- *Data Protection Act 1988 (Section 2B) Regulations 2011* (S.I. No. 486 of 2011)
- *Finance (Transfer of Departmental Administration and Ministerial Functions) Order 2011* (S.I. No. 418 of 2011)

- *European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011* (S.I. No. 336 of 2011)
- *European Communities (Good Agricultural Practice for Protection of Waters) Regulations 2010* (S.I. No. 610 of 2010)
- *European Communities (Data Collection in the Fisheries Sector) Regulations 2010* (S.I. No. 132 of 2010)
- *Data Protection Act 1988 (Section 5(1)(d)) (Specification) Regulations 2009* (S.I. No. 421 of 2009)
- *European Communities (Payment Services) Regulations 2009* (S.I. No. 383 of 2009)
- *European Communities (Good Agricultural Practice For Protection of Waters) Regulations 2009* (S.I. No. 101 of 2009)
- *European Communities (Electronic Communications Networks and Services) (Data Protection and Privacy) (Amendment) Regulations 2008* (S.I. No. 526 of 2008)
- *Data Protection (Processing of Genetic Data) Regulations 2007* (S.I. No. 687 of 2007)
- *Data Protection (Fees) Regulations 2007* (S.I. No. 658 of 2007)
- *Data Protection Act 1988 (Section 16(1)) Regulations 2007* (S.I. No. 657 of 2007)
- *European Communities (Good Agricultural Practice for Protection of Waters) Regulations 2005* (S.I. No. 788 of 2005)
- *European Communities (Good Agricultural Practice for Protection of Waters) Regulations 2006* (S.I. No. 378 of 2006)
- *Customs and Excise (Mutual Assistance) Act 2001 (Section 8) (Protection of Manual Data) Regulations 2004* (S.I. No. 254 of 2004)
- *European Communities (Clinical Trials on Medicinal Products For Human Use) Regulations 2004* (S.I. No. 190 of 2004)
- *European Communities (Electronic Communications Networks and Services) (Data Protection and Privacy) Regulations 2003* (S.I. No. 535 of 2003)
- *European Communities (Directive 2000/31/EC) Regulations 2003* (S.I. No. 68 of 2003)
- *European Communities (Data Protection and Privacy in Telecommunications) Regulations 2002* (S.I. No. 192 of 2002)
- *European Communities (Data Protection) Regulations 2001* (S.I. No. 626 of 2001)
- *Data Protection (Registration) Regulations 2001* (S.I. No. 2 of 2001)
- *Data Protection (Fees) Regulations 1996* (S.I. No. 105 of 1996)
- *Data Protection Commissioner Superannuation Scheme 1993* (S.I. No. 141 of 1993)
- *Data Protection Act 1988 (Section 5(1)(d) (Specification) Regulations 1993* (S.I. No. 95 of 1993)
- *Data Protection (Fees) Regulations 1990* (S.I. No. 80 of 1990)
- *Data Protection Act 1988 (Section 5(1)(d)) (Specification) Regulations 1989* (S.I. No. 84 of 1989)
- *Data Protection (Access Modification) (Social Work) Regulations 1989* (S.I. No. 83 of 1989)
- *Data Protection (Access Modification) (Health) Regulations 1989* (S.I. No. 82 of 1989)
- *Data Protection Act 1988 (Restriction of Section 4) Regulations 1989* (S.I. No. 81 of 1989)
- *Data Protection (Registration) Regulations 1988* (S.I. No. 351 of 1988)
- *Data Protection (Registration Period) Regulations 1988* (S.I. No. 350 of 1988)
- *Data Protection Act (Commencement) Order 1988* (S.I. No. 349 of 1988)
- *Data Protection (Fees) Regulations 1988* (S.I. No. 347 of 1988)

All statutory instruments up to and including *Data Protection Act 1988 (Section 2B) Regulations 2025* (S.I. No. 537 of 2025), made 10 November 2025, were considered in the preparation of this revision.