2004-01
Revoked
Subsidiary
2014/223

DATA PROTECTION (POLICE AND JUDICIAL COOPERATION IN CRIMINAL MATTERS) REGULATIONS 2014

Subsidiary Legislation made under s. 37 of Data Protection Act 2004 as read with section 23(g)(i) of the Interpretation and General Clauses Act.

Revoked by LN. 2018/124 as from 25.5.2018

DATA PROTECTION (POLICE AND JUDICIAL COOPERATION IN CRIMINAL MATTERS) REGULATIONS 2014

(LN. 2014/223)

Commencement **1.12.2014**

Amending enactments	Relevant current provisions	Commencement date

Transposing:
Council Framework Decision 2008/977/JHA

EU Legislation/International Agreements involved:

ARRANGEMENT OF REGULATIONS.

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DATA PROTECTION (POLICE AND JUDICIAL COOPERATION IN CRIMINAL MATTERS) REGULATIONS 2014

In exercise of the powers conferred upon him by section 37 of Data Protection Act 2004 as read with section 23(g)(i) of the Interpretation and General Clauses Act and all other enabling powers, and in order to transpose Council Framework Decision 2008/977/JHA of 27th November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters, the Minister has made the following Regulations–

Title and commencement.

1. These Regulations may be cited as the Data Protection (Police and Judicial Cooperation in Criminal Matters) Regulations 2014 and come into operation on 1 December 2014.

General

Interpretation.

2.(1) In these Regulations–

"the Act" means the Data Protection Act 2004;

"the Commissioner" means the Data Protection Commissioner designated under section 21 of the Act (the Commissioner);

"competent authority in Gibraltar" means an authority referred to in the Schedule;

"competent authority outside Gibraltar" means–

(a) any of the police, customs, judicial or other competent authorities of a Member State authorised by that State's national law to process personal data within the scope of the Data Protection Framework Decision; and

(b) an agency or other body established by a legal instrument adopted under Title VI of the Treaty on European Union (as it had effect before 1st December 2009) or Chapter 1, 4 or 5 of Title V of Part Three of the Treaty on the Functioning of the European Union that is outside Gibraltar;

"data" and "data subject" have the meanings given by section 2 of the Act;

"the Data Protection Framework Decision" means Council Framework Decision 2008/977/JHA of 27th November 2008 on the protection

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of personal data processed in the framework of police and judicial cooperation in criminal matters;

"Member State" means a State participating in the Data Protection Framework Decision;

"personal data" has the meaning given by section 2 of the Act;

"the relevant conditions" means–

(a) that the data are not processed to support measures or decisions with respect to particular individuals, and

(b) that the data are not processed in such a way that substantial damage or substantial distress is, or is likely to be, caused to any data subject; and

"sensitive personal data" has the meaning given by section 8 of the Act (sensitive personal data).

(2) Other expressions used in these Regulations which are defined in the Data Protection Framework Decision have the same meaning as in that Decision.

Scope.

3.(1) Subject to subregulation (3), these Regulations apply in relation to the processing of personal data by a competent authority in Gibraltar which is carried out–

(a) for the purposes of the prevention, investigation, detection or prosecution of a criminal offence or the execution of a criminal penalty;

(b) in the circumstances set out in subregulation (2); and

(c) in the course of activities within the scope of a relevant EU measure.

(2) The circumstances are that the processing of personal data is or has been transmitted or made available–

(a) between Gibraltar and a Member State;

(b) to an authority or information system established on the basis of Title VI of the Treaty on European Union (as it had effect

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before 1st December 2009) or Chapter 1, 4 or 5 of Title V of Part Three of the Treaty on the Functioning of the European Union; or

(c) to a competent authority in Gibraltar by an authority or information system established on the basis of Title VI of the Treaty on European Union (as it had effect before 1st December 2009) or Chapter 1, 4 or 5 of Title V of Part Three of the Treaty on the Functioning of the European Union.

(3) These Regulations do not apply to the processing of personal data transmitted to or made available to a competent authority in Gibraltar that is subject to the Data Protection Framework Decision if those data originated in Gibraltar.

(4) In this regulation, a relevant EU measure is–

(a) any measure adopted under Chapter 4 (judicial cooperation in criminal matters) or Chapter 5 (police cooperation) of Title V of Part Three of the Treaty on the Functioning of the European Union which binds the Gibraltar;

(b) any act of the Union in the field of police cooperation and judicial cooperation in criminal matters adopted on the basis of Title V or VI of the Treaty on European Union prior to the entry into force of the Treaty of Lisbon in which the Gibraltar participates by virtue of Title VII of Protocol 36 (transitional provisions) to the EU Treaties.

Duties of competent authorities and rights of data subjects

Duties of competent authorities.

4. When undertaking activities in relation to the processing of personal data to which these Regulations apply, a competent authority in Gibraltar must comply with regulations 5 to 17, 18(2), 19, 20, 22 and 23.

Principles of lawfulness, proportionality and purpose.

5.(1) Personal data must be–

(a) processed lawfully;

(b) collected only for specified, explicit and legitimate purposes;

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(c) processed only for the purposes for which the data were collected;

(d) adequate, relevant and not excessive in relation to the purposes for which they were collected.

(2) Further processing of personal data may only be undertaken–

(a) for historical, statistical or scientific purposes, if the relevant conditions are complied with;

(b) for any other purpose, if–

(i) the processing is not incompatible with the purposes for which the data were collected;

(ii) the competent authority is permitted by law to carry it out; and

(iii) the processing is necessary and proportionate to that other purpose.

(3) When undertaking further processing for historical, statistical or scientific purposes, consideration must be given to whether the purpose can be achieved by making the data anonymous.

Rectification, erasure and blocking.

6.(1) A competent authority in Gibraltar must–

(a) rectify personal data which are inaccurate;

(b) complete or update personal data where that is possible and necessary;

(c) erase personal data or make them anonymous where they are no longer required for the purposes for which they were lawfully collected or are lawfully further processed.

(2) Nothing in subregulation (1)(c) precludes a competent authority from archiving the data in a separate dataset for an appropriate period in accordance with an enactment or rule of law.

(3) Personal data must be blocked instead of erased if the competent authority has reasonable grounds to believe that erasure could affect the

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legitimate interests of the data subject and, once blocked, that data shall be processed only for the purpose which prevented their erasure.

(4) When the personal data are contained in a judicial decision or record related to the issuance of a judicial decision, rectification, erasure or blocking is permitted only where it complies with an enactment or rule of law regarding judicial proceedings.

(5) A competent authority which refuses to rectify, erase or block data under subregulation (1), having been asked by the data subject to do so, must give notice of its decision in writing to the data subject within a reasonable period of making it.

(6) That notice must inform the data subject that they may make a complaint about the refusal to the Commissioner.

(7) The Commissioner must examine any such complaint and, having done so, inform the data subject of whether or not the competent authority acted properly.

(8) If the accuracy of an item of personal data is contested by the data subject and its accuracy or inaccuracy cannot be ascertained, that item may be marked for the purpose of indicating that its accuracy or inaccuracy cannot be ascertained.

Establishment of time limits for erasure and review.

7. A competent authority in Gibraltar must–

(a) establish time limits for the periodic review of the need for continued storage of personal data and for its erasure; and

(b) ensure that those time limits are observed.

Processing of sensitive personal data.

8. Sensitive personal data may be processed only if–

(a) necessary; and

(b) at least one of the conditions in section 8(2) to the Act (conditions relevant for the processing of sensitive personal data), with the exception of the condition in paragraph (h), is satisfied.

Automated individual decisions.

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9.(1) A decision which produces an adverse legal effect for the data subject or significantly affects them and which is based solely on automated processing of data intended to evaluate certain personal aspects relating to the data subject shall be permitted where it aids the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties.

(2) A competent authority in Gibraltar which proposes to make a decision permitted by subregulation (1) must take steps to safeguard the legitimate interests of the data subject (for example, by allowing them to make representations).

Verification of quality of data that are transmitted or made available.

10.(1) A competent authority in Gibraltar must take all reasonable steps to ensure that personal data which are inaccurate, incomplete or no longer up-to-date are not transmitted or made available.

(2) Where a competent authority in Gibraltar transmits or makes available personal data it should, as far as practicable, verify the quality of personal data before transmitting it or making it available.

(3) Where a competent authority in Gibraltar transmits or makes available personal data, it must, as far as possible, add available information which enables the recipient to assess the degree of accuracy, completeness and reliability of the data, including whether they are up-to-date.

(4) If personal data are transmitted or made available to a competent authority without that authority having requested them, that authority must verify without delay whether the data are necessary for the purpose for which they were transmitted.

(5) This subregulation applies where a competent authority in Gibraltar transmits or makes available personal data to a competent authority outside Gibraltar and it becomes apparent that the transmitted data–

(a) are incorrect; or

(b) have been unlawfully transmitted.

(6) Where subregulation (5) applies, the competent authority in Gibraltar must without delay–

(a) notify the recipient of the inaccuracy or unlawful transmission; and

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(b) rectify, erase or block the data in accordance with regulation 6.

Time limits.

11.(1) A competent authority in Gibraltar transmitting or making available personal data to a competent authority outside Gibraltar or to a competent authority referred to in Part 2 of Schedule 4 must when doing so notify the recipient of the time limits established for its retention.

(2) If–

(a) a competent authority outside Gibraltar transmits or makes available data to a competent authority in Gibraltar that is subject to the Data Protection Framework Decision; and

(b) when doing so, indicates a time limit for the retention of that data,

the competent authority in Gibraltar must take steps on the expiry of that time limit to erase or block the data, or review whether they are still needed.

(3) The obligation in subregulation (2) does not apply if, on the expiry of the time limit, the data are required for a current investigation, the prosecution of a criminal offence or enforcement of a criminal penalty.

(4) If a competent authority outside Gibraltar transmits or makes available data to a competent authority in Gibraltar that is subject to the Data Protection Framework Decision without indicating a time limit for its retention, the competent authority in Gibraltar shall apply any relevant time limits provided for under any enactment or rule of law.

Logging and documentation.

12.(1) Any transmission of personal data by a competent authority in Gibraltar must be logged or documented by that authority for the purposes of verifying the lawfulness of the processing and self-monitoring, and ensuring proper data integrity and security.

(2) A log or documentation prepared under subregulation (1) must be sent on request to the Commissioner, who may use the information only for the control of data protection and for ensuring proper data processing as well as data integrity and security.

Processing of personal data received from or made available by an authority in another Member State.

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13.(1) A competent authority in Gibraltar may only process personal data received from or made available by a competent authority outside Gibraltar for the purpose for which they were transmitted or made available, or for any of the following purposes–

(a) the prevention, investigation, detection or prosecution of a criminal offence, or the execution of a criminal penalty, other than that for which the data were transmitted or made available;

(b) other judicial and administrative proceedings directly linked to the prevention, investigation, detection or prosecution of a criminal offence or execution of a criminal penalty;

(c) prevention of an immediate and serious threat to public security;

(d) any other purpose only with the prior consent of the transmitting authority or the data subject's consent given in accordance with national law.

(2) A competent authority in Gibraltar may undertake further processing of personal data for historical, statistical or scientific purposes if the relevant conditions are complied with.

(3) When undertaking further processing for historical, statistical or scientific purposes, consideration must be given to whether the purpose can be achieved by making the data anonymous.

Compliance with national processing restrictions.

14.(1) Where a competent authority outside Gibraltar–

(a) transmits or makes available data to a competent authority in Gibraltar in accordance with the Data Protection Framework Decision; and

(b) notifies the competent authority in Gibraltar of specific processing restrictions that would apply in the specific circumstances under its law to the exchange of that data had it been made within that State,

the competent authority in Gibraltar shall comply with those restrictions.

(2) Where–

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(a) a competent authority in Gibraltar transmits or makes available data to a competent authority outside Gibraltar in accordance with the Data Protection Framework Decision; and

(b) in the specific circumstances, the exchange of that data would have been subject to specific processing restrictions by virtue of or under any enactment or rule of law had it been made to another competent authority in Gibraltar,

the competent authority in Gibraltar shall notify the recipient of those restrictions.

(3) The restrictions referred to in subregulations (1) and (2) are limited to those applying under the applicable domestic law of the competent authority transmitting or making available the data to such exchanges of data between competent authorities within that State.

Transfer to competent authorities in third countries or to international bodies.

15.(1) Personal data transmitted or made available to a competent authority in Gibraltar by a competent authority outside Gibraltar may be transferred to a third country or an international body only if–

(a) it is necessary for the prevention, investigation, detection or prosecution of a criminal offence or the execution of a criminal penalty;

(b) the receiving authority in the recipient third country or receiving international body is responsible for the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties;

(c) subject to subregulation (2), the competent authority from which the data were obtained has given its prior consent to the transfer in compliance with the applicable national law; and

(d) subject to subregulation (3), the third country or international body concerned ensures an adequate level of protection for the intended data processing.

(2) Transfer without prior consent is permitted only if–

(a) transfer of the data is essential for the prevention of an immediate and serious threat to public security of a Member

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State or a third country or to essential interests of a Member State; and

(b) such consent cannot be obtained in good time.

(3) Where a transfer is made without prior consent, the authority otherwise responsible for giving it must be informed without delay.

(4) Subregulation (1)(d) does not apply where–

(a) the transfer is necessary to pursue–

(i) the legitimate specific interests of the data subject; or

(ii) other legitimate prevailing interests, especially important public interests; or

(b) the third country or receiving international body provides safeguards which are deemed adequate by the person or body that intends to make the transfer.

(5) The adequacy of the level of protection referred to in subregulation (1)(d) shall be assessed in the light of all the circumstances surrounding a data transfer operation or a set of data transfer operations including, in particular–

(a) the nature of the data;

(b) the purpose and duration of the proposed processing operation or operations;

(c) the State of origin and the State or international body of final destination of the data;

(d) the rules of law in force in the third country or which apply to the international body in question; and

(e) the professional rules and security measures which apply.

(6) In this regulation, "third country" means a State other than a Member State.

Transmission to private parties.

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16.(1) A competent authority in Gibraltar may transmit to a private party personal data received from or made available to it by a competent authority outside Gibraltar only if–

(a) the authority from which the data were obtained has consented in compliance with the applicable national law to its transmission;

(b) no legitimate specific interests of the data subject prevent transmission; and

(c) in the particular case, transmission by the competent authority in Gibraltar is essential for–

(i) performance of a task lawfully assigned to it;

(ii) the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties;

(iii) prevention of an immediate and serious threat to public security; or

(iv) prevention of serious harm to the rights of individuals.

(2) The competent authority in Gibraltar transmitting the data to a private party shall inform the private party of the purposes for which the data may exclusively be used.

(3) In this regulation, "private party" does not include a body which exercises functions of a public nature, whether under contract or otherwise, when engaging in an activity that involves the exercise of those functions.

Information on request of the competent authority.

17. The recipient of any data transmitted or made available by a competent authority in Gibraltar shall, on request by that authority, inform it about their processing of that data.

Information for the data subject.

18.(1) A data subject must be informed regarding the collection or processing of personal data by a competent authority in Gibraltar in accordance with section 10 of the Data Protection Act 2004.

(2) A competent authority in Gibraltar to which personal data have been transmitted or made available by a competent authority outside Gibraltar

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must not inform the data subject of that fact without the prior consent of the competent authority outside Gibraltar.

Right of access.

19. Section 14 (access), of the Act applies in relation to the processing of personal data to which these Regulations apply, mutatis mutandis and in accordance with article 17 of the Data Protection Framework Decision.

Right to compensation.

20.(1) An individual who suffers damage by reason of any contravention by a competent authority in Gibraltar of any of the requirements of these regulations is entitled to compensation in accordance with section 25 of the Data Protection Act 2004 from that authority–

(a) for that damage; and

(b) for any distress suffered in addition to that damage.

(2) In assessing whether compensation is due by virtue of subregulation (1), it is not a defence to prove that any data transmitted or made available were inaccurate.

Confidentiality of processing.

21.(1) A person who has access to personal data in connection with activities referred to in regulation 4 may process that data only if that person is a member of, or acts on instructions of, a competent authority in Gibraltar, unless he is required to do so by an enactment or rule of law.

(2) A person working for a competent authority in Gibraltar may only process such personal data in accordance with this Part.

Security of processing.

22. (1) A competent authority in Gibraltar must implement appropriate technical and organisational measures to protect personal data against–

(a) accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves transmission of that data over a network or making it available by granting direct automated access; and

(b) all other unlawful forms of processing.

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(2) In doing so, that authority must take into account, in particular, the risks represented by the processing and the nature of the data to be protected.

(3) Such measures must ensure a level of security appropriate to the risks represented by the processing and the nature of the data to be protected, having regard to the state of the art and the cost of their implementation.

(4) A competent authority in Gibraltar must in respect of automated data processing adopt measures, policies and practices designed to–

(a) deny unauthorised persons access to data-processing equipment used for processing personal data (equipment access control);

(b) prevent the unauthorised reading, copying, modification or removal of data media (data media control);

(c) prevent the unauthorised input of data and the unauthorised inspection, modification or deletion of stored personal data (storage control);

(d) prevent the use of automated data-processing systems by unauthorised persons using data communication equipment (user control);

(e) ensure that persons authorised to use an automated data-processing system only have access to the data covered by their access authorisation (data access control);

(f) ensure that it is possible to verify and establish the bodies to which personal data have been or may be transmitted or made available using data communication equipment (communication control);

(g) ensure that it is subsequently possible to verify and establish which personal data have been input into automated data-processing systems and when and by whom the data were input (input control);

(h) prevent the unauthorised reading, copying, modification or deletion of personal data during transfers of personal data or during transportation of data media (transport control);

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(i) ensure that installed systems may, in case of interruption, be restored (recovery);

(j) ensure that the functions of the system perform, that the appearance of faults in the functions is reported (reliability) and that stored data cannot be corrupted by means of a malfunctioning of the system (integrity).

(5) Where a competent authority in Gibraltar wishes to designate a data processor to carry out processing on its behalf, the authority–

(a) may do so only if the processor guarantees that it will–

(i) observe the requisite technical and organisational measures required by virtue of subregulation (1); and

(ii) comply with instructions given by that competent authority; and

(b) must monitor the processor in those respects.

(6) Personal data may be processed by a processor only on the basis of a legal act or a written contract.

Prior consultation.

23.(1) A competent authority in Gibraltar that wishes to process personal data in the circumstances described in subregulation (2) must consult the Commissioner before doing so.

(2) Those circumstances are that the processing of the data will form part of a new filing system to be created where–

(a) sensitive personal data are to be processed; or

(b) the type of processing, in particular using new technologies, mechanisms or procedures, holds otherwise specific risks for the fundamental rights and freedoms, and in particular the privacy, of the data subject.

Miscellaneous

Unlawful obtaining etc. of personal data within the scope of these Regulations.

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24.(1) This regulation applies in relation to personal data processed by a competent authority in Gibraltar which falls within regulation 3(1).

(2) A person shall not knowingly or recklessly, without the consent of a competent authority in Gibraltar–

(a) obtain or disclose personal data to which this regulation applies or the information contained in such data; or

(b) procure the disclosure to another person of the information contained in personal data.

(3) Subregulation (2) does not apply to a person who shows–

(a) that the obtaining, disclosing or procuring–

(i) was necessary for the purpose of preventing or detecting crime; or

(ii) was required or authorised by or under any enactment, by any rule of law or by the order of a court;

(b) that he acted in the reasonable belief that he had in law the right to obtain or disclose the data or information or, as the case may be, to procure the disclosure of the information to the other person;

(c) that he acted in the reasonable belief that he would have had the consent of the relevant competent authority in Gibraltar if that authority had known of the obtaining, disclosing or procuring and the circumstances of it; or

(d) that in the particular circumstances the obtaining, disclosing or procuring was justified as being in the public interest.

(4) A person who contravenes subregulation (2) is guilty of an offence.

(5) A person who sells personal data is guilty of an offence if he has obtained the data in contravention of subregulation (2).

(6) A person who offers to sell personal data is guilty of an offence if–

(a) he has obtained the data in contravention of subregulation (2); or

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(b) he subsequently obtains the data in contravention of that subsection.

(7) For the purposes of subregulation (6), an advertisement indicating that personal data are or may be for sale is an offer to sell the data.

(8) For the purposes of subregulations (5) to (7), "personal data" includes information extracted from personal data.

Application of the Data Protection Act 2004.

25. The Act shall not apply to the processing of personal data to which the Regulations apply, except so far as regulations 2, 19, 20 or 26 provide otherwise.

Other functions of the Commissioner.

26. The provisions of the Act with imposing duties on and granting powers to the Commissioner with regards to investigations, access to data, intervention apply for the purposes of these Regulations mutatis mutandis, in accordance with article 25 of the Framework Directive as they apply for the purposes of the Act.

SCHEDULE

COMPETENT AUTHORITIES IN GIBRALTAR

HM Attorney General

HM Customs

The Chief Secretary of HM Government of Gibraltar

The Gibraltar Coordinating Centre for Criminal Intelligence & Drugs

The Gibraltar Finance Intelligence Unit

The Ministry for Justice

The Royal Gibraltar Police

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