

Statutory Document No. 2019/0456



*Data Protection Act 2018*

## **DATA PROTECTION (APPLICATION OF GDPR) (AMENDMENT) ORDER 2019**

*Approved by Tynwald:  
Coming into Operation in accordance with Article 2*

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The Council of Ministers makes the following Order under section 4 of the *Data Protection Act 2018*.

### **1 Title**

This Order is the Data Protection (Application of GDPR) (Amendment) Order 2019.

### **2 Commencement**

If approved by Tynwald, this Order comes into operation on the day after it is approved by Tynwald.

### **3 Interpretation**

In this Order —

“**data protection legislation**” has the meaning given in regulation 5(1) of the GDPR and LED Implementing Regulations 2018<sup>1</sup>;

“**principal order**” means the Data Protection (Application of GDPR) Order 2019<sup>2</sup>;

“**principal regulations**” means the Unsolicited Communications Regulations 2005<sup>3</sup>.

### **4 Amendment of principal order**

The principal order is amended as follows.

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<sup>1</sup> SD No. 2018/0145

<sup>2</sup> SD No. 2018/0143

<sup>3</sup> SD No. 393/05



- paragraph (1) as extended by that paragraph.
- (3) This regulation is without prejudice to regulation 11. ~~22~~;
- (e) in the heading and lines 3 and 4 of regulation 13, omit “the Supervisor” and substitute ~~22~~ the Information Commissioner;
- (f) in the heading and line 1 of regulation 14, omit “the Supervisor” and substitute ~~22~~ the Information Commissioner; and
- (g) for the Schedule to the principal regulations, substitute the Schedule specified in Schedule 3 to this Order. ~~22~~.

## 6 Insertion of new Schedule – Schedule 3

Immediately after Schedule 2 to the principal order, insert as Schedule 3 the contents of the Schedule to this Order.

**MADE**

**W GREENHOW**  
*Chief Secretary*

**SCHEDULE****NEW SCHEDULE TO BE INSERTED IN THE PRINCIPAL ORDER**

[Article 6]

Insert the following Schedule in the principal order, immediately after Schedule 2 —

**☒ SCHEDULE 3****MODIFIED PART 7 OF THE GDPR AND LED IMPLEMENTING  
REGULATIONS 2018, AS APPLIED TO THE UNSOLICITED  
COMMUNICATIONS REGULATIONS 2005****PART 7 – ENFORCEMENT****101 Information notices**

- (1) The Information Commissioner [etc.]
  - (a) [...]
  - (b) [...]

**101 Information notices**

- (1) The Information Commissioner may, by written notice (an “**information notice**”), —
  - (a) require any person to provide the Information Commissioner with information that the Information Commissioner reasonably requires for the purposes of carrying out the Information Commissioner’s functions under the requirements of the Unsolicited Communications Regulations 2005; or
  - (b) require any person to provide the Information Commissioner with information that the Information Commissioner reasonably requires for the purposes of —
    - (i) investigating a suspected failure of a type described in regulation 106(5a) or a suspected offence under the requirements of the Unsolicited Communications Regulations 2005; or

- (ii) determining whether the processing of personal data is carried out by an individual in the course of a purely personal or household activity.
- (2) An information notice must state why the Information Commissioner requires the information.
- (3) An information notice –
  - (a) may specify or describe particular information or a category of information;
  - (b) may specify the form in which the information must be provided;
  - (c) may specify the time at which, or the period within which, the information must be provided;
  - (d) may specify the place where the information must be provided.

This is subject to the restrictions in paragraphs (5) to (7).
- (4) An information notice must provide information about the rights of appeal under regulation 120.
- (5) An information notice may not require a person to provide information before the end of the period within which an appeal may be brought against the notice.
- (6) If an appeal is brought against an information notice, the information need not be provided pending the determination or withdrawal of the appeal.
- (7) If an information notice –
  - (a) states that, in the Information Commissioner’s opinion, the information is required urgently; and
  - (b) gives the Information Commissioner’s reasons for reaching that opinion,

paragraphs (5) and (6) do not apply but the notice must not require the information to be provided before the end of the period of 72 hours beginning with the day on which the notice is given.
- (8) The Information Commissioner may cancel an information notice by written notice to the person to whom it was given.
- (9) In paragraph (1), in relation to any person, the reference to that person includes a representative of that person.
- (10) The provisions of this regulation and of regulations 102 and 103 do not in any way limit the Information Commissioner’s ability to exercise any powers conferred on him or her by Article 58 of the applied GDPR that are not specifically referred to in any of those regulations. Accordingly, the Information Commissioner may exercise any of those powers that

may reasonably be exercised independently of serving an information notice.<sup>1</sup>

## 102 Information notices: restrictions

- (1) [omit]
- (2) An information notice does not require a person to give the Information Commissioner information in respect of a communication which is made —
  - (a) between a professional legal adviser and the adviser's client; and
  - (b) in connection with the giving of legal advice to the client with respect to obligations, liabilities or rights under the requirements of the Unsolicited Communications Regulations 2005.
- (3) An information notice does not require a person to give the Information Commissioner information in respect of a communication which is made —
  - (a) between a professional legal adviser and the adviser's client or between such an adviser or client and another person;
  - (b) in connection with or in contemplation of proceedings under or arising out of the requirements of the Unsolicited Communications Regulations 2005; and
  - (c) for the purposes of such proceedings.
- (4) In paragraphs (2) and (3), references to the client of a professional legal adviser include references to a person acting on behalf of the client.
- (5) An information notice does not require a person to provide the Information Commissioner with information if doing so would, by revealing evidence of the commission of an offence, expose the person to proceedings for that offence.
- (6) The reference to an offence in paragraph (5) does not include an offence under, —
  - (a) these Regulations; or
  - (b) section 5 of the *Perjury Act 1952* (false statements made otherwise than on oath).
- (7) An oral or written statement provided by a person in response to an information notice may not be used in evidence against that person on a prosecution for an offence under these Regulations (other than an offence under regulation 141) unless in the proceedings, —
  - (a) in giving evidence the person provides information inconsistent with the statement; and

- (b) evidence relating to the statement is adduced, or a question relating to it is asked, by that person or on that person's behalf.
- (8) [omit]

### 103 Offence of making false statements in an information notice

It is an offence for a person, in response to an information notice —

- (a) to make a statement which the person knows to be false in a material respect;
- (b) recklessly to make a statement which is false in a material respect.

(See GDPR and LED Implementing Regulations 2018 regulation 141(2), which specifies the penalty for offences under this regulation.)<sup>2</sup>

### 104 Assessment notice

- (1) The Information Commissioner may by written notice (an “**assessment notice**”) require any person to permit the Information Commissioner to carry out an assessment of whether the person has complied or is complying with the requirements of the Unsolicited Communications Regulations 2005.
- (2) An assessment notice may require any person to permit the Information Commissioner to do any of the following —
  - (a) to enter any premises or vehicle (both of which terms have in the regulation the same meanings as are ascribed to them in section 81(1) of the *Police Powers and Procedures Act 1998*) occupied or controlled by the person (excluding any dwelling house in respect of which either the Information Commissioner must have the consent of the occupier of the dwelling house or otherwise obtain a warrant in accordance with Schedule 4);
  - (b) to obtain access to any data processing equipment and means on the premises;
  - (c) to obtain access to all information, documents or material, necessary for the performance of his tasks;
  - (d) to observe the processing of personal data that takes place on the premises;
  - (e) to access all personal data on the premises necessary for the performance of his tasks under this Regulation;
  - (f) to interview any person who processes personal data for or on behalf of the person, provided that any interviewee must be provided with —
    - (i) notice of not less than 72 hours of the date and time of the prospective interview;

- (ii) notice of the right to obtain legal advice or other professional advice prior to the prospective interview;
  - (iii) a reasonable period of not less than 72 hours for the purpose of obtaining such professional advice prior to the date and time of the interview set out in the notice;
- (g) to be provided with a copy (in such form as may be requested) of any information, documents or materials accessed under regulation 104(2)(c) or personal data on the premises accessed under regulation 104(2)(e).

(See Schedule 4, paragraph 2 for action that the Information Commissioner can take if the person fails to comply with an assessment notice.)

- (3) An assessment notice must provide information about the rights of appeal under regulation 120.
- (4) An assessment notice may not require a person to do anything before the end of the period within which an appeal may be brought against the notice.
- (5) If an appeal is brought against an assessment notice, the person need not comply with a requirement in the notice pending the determination of withdrawal of the appeal.
- (6) If an assessment notice —
  - (a) states that, in the Information Commissioner’s opinion, it is necessary for the person to comply with a requirement in the notice urgently; and
  - (b) gives the Information Commissioner’s reasons for reaching that opinion,

paragraphs (5) and (6) do not apply; but the notice must not require the person to comply with the requirement before the end of the period of 7 days beginning with the day on which the notice is given.

- (7) The Information Commissioner may cancel an assessment notice by written notice to the person to whom it was given.
- (8) [omit]
- (9) The provisions of this regulation and of regulation 105 do not in any way limit the Information Commissioner’s ability to exercise any powers conferred on him or her by Article 58 of the applied GDPR that are not specifically referred to in any of those regulations. Accordingly, the Information Commissioner may exercise any of those powers that may reasonably be exercised independently of serving an assessment notice.<sup>3</sup>



**105 Assessment notices: restrictions**

- (1) An assessment notice does not have effect so far as compliance would result in the disclosure of a communication which is made —
  - (a) between a professional legal adviser and the adviser’s client; and
  - (b) in connection with the giving of legal advice to the client with respect to obligations, liabilities or rights under the requirements of the Unsolicited Communications Regulations 2005.
- (2) An assessment notice does not have effect so far as compliance would result in the disclosure of a communication which is made —
  - (a) between a professional legal adviser and the adviser’s client or between such an adviser or client and another person;
  - (b) in connection with or in contemplation of proceedings under or arising out of the requirements of the Unsolicited Communications Regulations 2005; and
  - (c) for the purposes of such proceedings.
- (3) In paragraphs (1) and (2) —
  - (a) references to the client of a professional legal adviser include references to a person acting on behalf of such a client; and
  - (b) references to a communication include —
    - (i) a copy or other record of the communication; and
    - (ii) anything enclosed with or referred to in the communication if made as described in paragraph (1)(b) or in paragraph (2)(b) and (c).
- (4) [omit]

**106 Enforcement notices**

- (1) Where the Information Commissioner is satisfied that a person has failed, or is failing, as described in paragraph (5a), the Information Commissioner may give the person a written notice (an “**enforcement notice**”) which requires the person -
  - (a) to take steps specified in the notice; or
  - (b) to refrain from taking steps specified in the notice,or both (and see also regulations 107 and 108).
- (2) [omit]
- (3) [omit]
- (4) [omit]
- (5) [omit]

- (5a) Failure is where a person has failed, or is failing, to comply with regulations of the Unsolicited Communications Regulations 2005.
- (6) [omit]
- (7) [omit]
- (8) [omit]
- (9) [omit]
- (10) [omit]

### **107 Enforcement notices: supplementary**

- (1) An enforcement notice must —
  - (a) state what the person has failed or is failing to do; and
  - (b) give the Information Commissioner’s reasons for reaching that opinion.
- (2) In deciding whether to give an enforcement notice in reliance on regulation 106(5a), the Information Commissioner must consider whether the failure has caused or is likely to cause any person damage.
- (3) In relation to an enforcement notice given in reliance on regulation 106(5a), the Information Commissioner’s power under regulation 106(1)(b) to require a person to refrain from taking specified steps includes power —
  - (a) to impose a ban relating to all processing of personal data; or
  - (b) to impose a ban relating only to a specified description of processing of personal data, including by specifying one or more of the following —
    - (i) a description of personal data;
    - (ii) the purpose or manner of the processing;
    - (iii) the time when the processing takes place.
- (4) An enforcement notice may specify the time or times at which, or period or periods within which, a requirement imposed by the notice must be complied with (but see the restrictions in paragraphs (6) to (8)).
- (5) An enforcement notice must provide information about the rights of appeal under regulation 120.
- (6) An enforcement notice must not specify a time for compliance with a requirement in the notice which falls before the end of the period within which an appeal can be brought against the notice.
- (7) If an appeal is brought against an enforcement notice, a requirement in the notice need not be complied with pending determination or withdrawal of the appeal.

- (8) If an enforcement notice —
- (a) states that, in the Information Commissioner’s opinion, it is necessary for a requirement to be complied with urgently; and
  - (b) gives the Information Commissioner’s reasons for reaching that opinion,
- paragraphs (6) and (7) do not apply but the notice must not require the requirement to be complied with before the end of the period of 7 days beginning with the day on which the notice is given.
- (9) In this regulation, “specified” means specified in an enforcement notice.

**108 [omit]**

**109 [omit]**

### **110 Enforcement notices: cancellation and variation**

- (1) The Information Commissioner may cancel or vary an enforcement notice by giving written notice to the person to whom it was given.
- (2) A person to whom an enforcement notice is given may apply in writing to the Information Commissioner for cancellation or variation of the notice.
- (3) An application under paragraph (2) may be made only —
  - (a) after the end of the period within which an appeal can be brought against the notice; and
  - (b) on the ground that, by reason of a change of circumstances, one or more of the provisions of that notice need not be complied with in order to remedy the failure identified in the notice.

### **111 Powers of entry and inspection**

Schedule 4 makes provision about powers of entry and inspection.

### **112 Penalty notices**

- (1) If the Information Commissioner is satisfied that a person —
  - (a) has failed or is failing as described in regulation 106(5a);
  - (b) has failed to comply with an information notice;
  - (c) has failed to comply with an assessment notice given, pursuant to GDPR and LED Implementing Regulations 2018 regulation 77, in exercise of the Information Commissioner’s powers under Article 58(1) of the applied GDPR; or
  - (d) has failed to comply with an enforcement notice,

the Information Commissioner may, by written notice (a “**penalty notice**”), require the person to pay to the Information Commissioner an amount specified in the notice.<sup>4</sup>

- (2) In the case of a failure described in regulation 106(5a), when deciding whether to give a penalty notice to a person and determining the amount of the penalty, the Information Commissioner must have regard to the following, so far as relevant, —
  - (a) to the extent that the notice concerns a matter to which the applied GDPR applies, the matters listed in Article 83(1) and (2) of the applied GDPR;
  - (b) to the extent that the notice concerns a failure to comply with these Regulations, the matters listed in paragraph (3).
- (3) Those matters are, —
  - (a) the nature, gravity and duration of the failure;
  - (b) the intentional or negligent character of the failure;
  - (c) any action taken by the person to mitigate the damage suffered by data subjects;
  - (d) the degree of responsibility of the person;
  - (e) any relevant previous failures by the person;
  - (f) the degree of co-operation with the Information Commissioner, in order to remedy the failure and mitigate the possible adverse effects of the failure;
  - (g) the categories of personal data affected by the failure;
  - (h) the manner in which the infringement became known to the Information Commissioner, including whether, and if so to what extent, the person notified the Information Commissioner of the failure;
  - (i) the extent to which the person has complied with previous enforcement notices or penalty notices;
  - (j) adherence to approved codes of conduct or certification mechanisms;
  - (k) any other aggravating or mitigating factor applicable to the case, including financial benefits gained, or losses avoided, as a result of the failure (whether directly or indirectly); and
  - (l) whether the penalty would be effective, proportionate and dissuasive.
- (4) Schedule 5 makes further provision about penalty notices, including provision requiring the Information Commissioner to give a notice of

intent to impose a penalty and provision about payment, variation, cancellation and enforcement.

- (5) The Council of Ministers may by regulations, —
- (a) confer power on the Information Commissioner to give a penalty notice in respect of other failures; and
  - (b) make provision about the amount of the penalty that may be imposed.

Tynwald procedure – approval required.

- (6) Before making regulations under paragraph (5), the Council of Ministers must consult such persons as the Council of Ministers considers appropriate.
- (7) Regulations made under paragraph (5) may —
- (a) make provision about the giving of penalty notices in respect of the failure; and
  - (b) amend this regulation and regulations 113 to 116.

### **113 [omit]**

### **114 Maximum amount of penalty**

- (1) In relation to an infringement of a regulation of the Unsolicited Communications Regulations 2005, the maximum amount of the penalty that may be imposed by a penalty notice is £1,000,000.
- (2) This regulation applies despite Article 83 of the applied GDPR and, within the parameters of the significantly higher maximum fines provided for in the said Article 83, prescribes the maximum penalty imposable in the Island.

### **115 Fixed penalties for non-compliance with charges regulations**

- (1) The Information Commissioner may —
- (a) produce and publish; or
  - (b) adopt, with suitable modifications, from another jurisdiction, and publish,

a document specifying the amount of the penalty for a failure to comply with regulations made under GDPR and LED Implementing Regulations 2018 regulation 96.

- (2) The Information Commissioner may specify different amounts for different types of failure.
- (3) The maximum amount that may be specified is 150% of the highest charge payable by a person in respect of a financial year in accordance

with the regulations, disregarding any discount available under the regulations.

- (4) The Information Commissioner —
  - (a) may alter or replace the document; and
  - (b) must publish any altered or replacement document.
- (5) Before publishing a document under this regulation (including any altered or replacement document), the Information Commissioner must consult —
  - (a) the Council of Ministers; and
  - (b) such other persons as the Council of Ministers considers appropriate.
- (6) The Information Commissioner must arrange for a document published under this regulation (including any altered or replacement document) to be laid before Tynwald.

#### **116 Amount of penalties: supplementary**

- (1) For the purposes of Article 83 of the applied GDPR and of regulation 114, the Council of Ministers may by regulations, —
  - (a) provide that a person of a description specified in the regulations is or is not an undertaking; and
  - (b) make provision about how an undertaking's turnover is to be determined.

Tynwald procedure – approval required.

- (2) For the purposes of Article 83 of the applied GDPR, regulation 114 and regulation 115, the Council of Ministers may by regulations provide that a period is or is not a financial year.

Tynwald procedure – approval required.

- (3) Before making regulations under this regulation, the Council of Ministers must consult such persons as the Council of Ministers considers appropriate.

#### **117 Failure to comply with notices**

- (1) The Information Commissioner may certify in writing to the High Court that a person has failed to comply with —
  - (a) an information notice;
  - (b) an assessment notice;
  - (c) an enforcement notice; or
  - (d) a penalty notice.<sup>5</sup>

- (2) The Information Commissioner must not exercise the power under paragraph (1) before the expiry of the period of time specified in the relevant notice.
- (3) The High Court must inquire into the matter and, after hearing —
  - (a) any witness who may be produced against or on behalf of the person; and
  - (b) any statement that may be offered in defence,may deal with the person as if it had committed a contempt of court.
- (4) This regulation does not confer any right of action in civil proceedings in respect of a failure to comply with a duty imposed by or under these Regulations.
- (5) The High Court may for the purposes of securing compliance with the requirements of the Unsolicited Communications Regulations 2005 make an order requiring the person —
  - (a) to take steps specified in the order; or
  - (b) to refrain from taking steps specified in the Order.

#### **118 Guidance about corrective action<sup>6</sup>**

- (1) The Information Commissioner may produce and publish guidance about how the Information Commissioner proposes to exercise the Information Commissioner's functions in connection with —
  - (a) information notices;
  - (b) assessment notices;
  - (c) enforcement notices; or
  - (d) penalty notices.<sup>7</sup>
- (2) The Information Commissioner may produce and publish guidance about how the Information Commissioner proposes to exercise the Information Commissioner's other functions under this Part.
- (3) In relation to assessment notices, the guidance must include —
  - (a) provision specifying factors to be considered in determining whether to give an assessment notice to a person;
  - (b) provision specifying descriptions of documents or information that —
    - (i) are not to be examined or inspected in accordance with an assessment notice; or
    - (ii) are to be so examined or inspected only by a person of a description specified in the guidance;

- (c) provision about the nature of inspections and examinations carried out in accordance with an assessment notice;
  - (d) provision about the nature of interviews carried out in accordance with an assessment notice; and
  - (e) provision about the preparation, issuing and publication by the Information Commissioner of assessment reports in respect of persons that have been given assessment notices.
- (4) The guidance prepared in accordance with paragraph (3)(b) must include provisions that relate to —
- (a) documents and information concerning a natural person's physical or mental health; and
  - (b) documents and information concerning the provision of social care for a natural person.
- (5) In relation to penalty notices, the guidance must include —
- (a) provision about the circumstances in which the Information Commissioner would consider it appropriate to issue a penalty notice;
  - (b) provision about the circumstances in which the Information Commissioner would consider it appropriate to allow a person to make oral representations about a notice of intent; and
  - (c) provision explaining how the Information Commissioner will determine the amount of penalties.
- (6) The Information Commissioner —
- (a) may alter or replace the guidance; and
  - (b) must publish any altered or replacement guidance.
- (7) Before publishing guidance under this regulation (including any altered or replacement guidance), the Information Commissioner must consult —
- (a) the Council of Ministers; and
  - (b) such other persons as the Council of Ministers considers appropriate.
- (8) The Information Commissioner must arrange for guidance under this regulation (including any altered or replacement guidance) to be laid before Tynwald.
- (9) In this regulation, “social care” has the same meaning as in section 5 of the *Regulation of Care Act 2013*.



## 119 The Tribunal

- (1) For the purposes of these Regulations, there continues to be an Isle of Man Data Protection Tribunal (“**the Tribunal**”).
- (2) The Tribunal is to consist of a chairman and 2 other members, appointed in accordance with the *Tribunals Act 2006*.

## 120 Right of appeal

- (1) A person who is given any of the following notices may appeal to the Tribunal, —
  - (a) an information notice;
  - (b) an assessment notice;
  - (c) an instruction under GDPR and LED Implementing Regulations 2018 regulation 78(2);
  - (d) an enforcement notice;
  - (e) a penalty notice; or
  - (f) a penalty variation notice.
- (2) Where a notice listed in paragraph (1) contains a statement under regulation 101(7)(a), or 107(8)(a) (urgency), the person given the notice may appeal against, —
  - (a) the Information Commissioner's decision to include the statement in the notice; or
  - (b) the effect of its inclusion as respects any part of the notice, whether or not the person appeals against the notice.
- (3) A person who is given an enforcement notice may appeal to the Tribunal against the refusal of an application under regulation 110 for the cancellation or variation of the notice.
- (4) A person who is given a penalty notice or a penalty variation notice may appeal against the amount of the penalty specified in the notice, whether or not the person appeals against the notice.
- (5) [omit]
- (6) The requirements of Article 53 of the applied LED are to be regarded as having been, by this regulation, provided for and accordingly, the judicial remedy thereby required is, for the avoidance of doubt, hereby declared to be available in accordance with the relevant Rules of Court and associated substantive and procedural laws of the Island.
- (7) Schedule 8 contains additional provisions relevant to appeals.

**121 Determination of appeals**

- (1) Paragraphs (2) to (4) apply where a person appeals to the Tribunal under regulation 120(1) or (4).
- (2) The Tribunal may review any determination of fact on which the notice or decision against which the appeal is brought was based.
- (3) If the Tribunal considers, —
  - (a) that the notice or decision against which the appeal is brought is not in accordance with the law; or
  - (b) to the extent that the notice or decision involved an exercise of discretion by the Information Commissioner, that the Information Commissioner ought to have exercised the discretion differently,the Tribunal must allow the appeal or substitute another notice or decision which the Information Commissioner could have given or made.
- (4) Otherwise, the Tribunal must dismiss the appeal.
- (5) On an appeal under regulation 120(2), the Tribunal may direct, —
  - (a) that the notice against which the appeal is brought is to have effect as if it did not contain the statement under regulation 101(7)(a), or 107(8)(a) (urgency); or
  - (b) that the inclusion of that statement is not to have effect in relation to any part of the notice,and may make such modifications to the notice as are required to give effect to the direction.
- (6) On an appeal under regulation 120(3), if the Tribunal considers that the enforcement notice ought to be cancelled or varied by reason of a change in circumstances, the Tribunal must cancel or vary the notice.
- (7) On an appeal under regulation 120(5), the Tribunal may cancel the Information Commissioner's determination.

**122 [omit]****123 Orders to progress complaints**

- (1) This regulation applies where, after a data subject makes a complaint under regulation 13 of the Unsolicited Communications Regulations 2005, the Information Commissioner —
  - (a) fails to take appropriate steps to respond to the complaint;
  - (b) fails to provide the complainant with information about progress on the complaint, or of the outcome of the complaint, before the

- end of the period of 3 months beginning with the day on which the Information Commissioner received the complaint; or
- (c) if the Information Commissioner's consideration of the complaint is not concluded during that period, fails to provide the complainant with such information during a subsequent period of 3 months.
- (2) The Tribunal may, on an application by the data subject, make an order requiring the Information Commissioner, —
- (a) to take appropriate steps to respond to the complaint; or
  - (b) to inform the complainant of progress on the complaint, or of the outcome of the complaint, within a period specified in the order.
- (3) An order under paragraph (2)(a) may require the Information Commissioner, —
- (a) to take steps specified in the order; or
  - (b) to conclude the investigation, or take a specified step, within a period specified in the order.
- (4) [omit]

## 124 Compliance orders

- (1) This regulation applies if, on an application by a data subject, a court is satisfied that there has been an infringement of the data subject's rights under the data protection legislation in contravention of that legislation.
- (2) A court may make an order for the purposes of securing compliance with the data protection legislation which requires the controller in respect of the processing, or a processor acting on behalf of that controller, —
- (a) to take steps specified in the order; or
  - (b) to refrain from taking steps specified in the order.
- (3) The order may, in relation to each step, specify the time at which, or the period within which, it must be taken.
- (4) In paragraph (1), the reference to an application by a data subject includes an application made in exercise of the right under Article 79(1) of the applied GDPR (right to an effective remedy against a controller or processor).
- (5) In relation to a joint controller whose responsibilities are determined in an arrangement under data protection legislation, a court may only make an order under this regulation if the controller is responsible for compliance with the provision of the data protection legislation that is contravened.
- (6) The requirements of Articles 54 (right to an effective judicial remedy against a controller or processor) and 55 (representation of data subjects)

of the applied LED are to be regarded as having been provided for by this regulation and are accordingly enforceable under this regulation.

125 [omit]

126 [omit]

127 [omit]

128 [omit]

129 [omit]

130 [omit]

131 [Revoked]

132 [omit]

### 133 Jurisdiction

- (1) The jurisdiction conferred on a court by the provisions listed in paragraph (2) is exercisable only by the High Court.
- (2) Those provisions are, —
  - (a) [omit]
  - (b) [omit]
  - (c) regulation 124, and Article 79 of the applied GDPR (compliance orders);
  - (d) [omit]

### 134 Interpretation of Part 7

In this Part —

“**assessment notice**” has the meaning given in regulation 104;

“**the data protection principles**” means the principles listed in Article 5(1) of the applied GDPR;

“**enforcement notice**” has the meaning given in regulation 106;

“**information notice**” has the meaning given in regulation 101;

“**penalty notice**” has the meaning given in regulation 112;

“**penalty variation notice**” has the meaning given in paragraph 7 of Schedule 5;

“**representative**”, in relation to a controller or processor, means a person designated by the controller or processor under Article 27 of the applied GDPR to represent the controller or processor with regard to the controller's or processor's obligations under the applied GDPR.

## ENDNOTES

### Table of Endnote References

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<sup>1</sup> Reg 101 substituted by SD2018/0309.

<sup>2</sup> Reg 103 substituted by SD2018/0309.

<sup>3</sup> Reg 104 substituted by SD2018/0309.

<sup>4</sup> Para (1) substituted by SD2018/0309.

<sup>5</sup> Para (1) substituted by SD2018/0309.

<sup>6</sup> Reg 118 heading amended by SD2018/0309.

<sup>7</sup> Para (1) substituted by SD2018/0309. 