



Statutory Document No. 20/03

## THE DATA PROTECTION ACT 2002

### THE DATA PROTECTION (SUBJECT ACCESS MODIFICATION) (SOCIAL WORK) ORDER 2003

*Approved by Tynwald*

18<sup>th</sup> February 2003

*Coming into operation*

1st April 2003

Whereas the Council of Ministers considers that the application of the subject information provisions of the Data Protection Act 2002<sup>1</sup> (or those provisions without modification) in the circumstances and to the extent specified in this Order would be likely to prejudice the carrying out of social work:

In exercise of the powers conferred on the Council of Ministers by section 26(3) of the Data Protection Act 2002, and of all other enabling powers, and after consultation with the Isle of Man Data Protection Supervisor, the following Order is hereby made:—

#### 1. Citation, commencement and interpretation

(1) This Order may be cited as the Data Protection (Subject Access Modification) (Social Work) Order 2003 and, subject to section 61(1) of the Act, shall come into operation on the 1st April 2003.

(2) In this Order —

"the Act" means the Data Protection Act 2002;

"the Department" means the Department of Health and Social Security;

"request" means a request made under section 5;

"section 5" means section 5 of the Act.

#### 2. Personal data to which Order applies

(1) Subject to paragraph (2), this Order applies to personal data falling within any of the descriptions set out in paragraphs 1 and 2 of the Schedule.

(2) This Order does not apply —

---

<sup>1</sup> 2002 c.2

Price 80p Price Band A

- (a) to any data consisting of information as to the physical or mental health or condition of the data subject to which the Data Protection (Subject Access Modification) (Health) Order 2003 or the Data Protection (Subject Access Modification) (Education) Order 2003 applies; or
- (b) to any data which are exempted from section 5 by an order made under section 35(1) of the Act.

### **3. Exemption from subject information provisions**

Personal data to which this Order applies by virtue of paragraph 2 of the Schedule are exempt from the subject information provisions.

### **4. Exemption from section 5**

(1) Personal data to which this Order applies by virtue of paragraph 1 of the Schedule are exempt from the obligations in subsection (1)(b) to (d) of section 5 in any case to the extent to which the application of those provisions would be likely to prejudice the carrying out of social work by reason of the fact that serious harm to the physical or mental health or condition of the data subject or any other person would be likely to be caused.

(2) In paragraph (1) the "carrying out of social work" shall be construed as including —

- (a) the exercise of any functions mentioned in paragraph 1(a)(i) or (c) of the Schedule;
- (b) the provision of any service mentioned in paragraph 1(d) of the Schedule; and
- (c) the exercise of the functions of the body mentioned in paragraph (b) of the Schedule or any person mentioned in paragraph (e) of the Schedule.

(3) Where any person falling within paragraph (4) is enabled by or under any statutory provision or rule of law to make a request on behalf of a data subject and has made such a request, personal data to which this Order applies are exempt from section 5 in any case to the extent to which the application of that section would disclose information —

- (a) provided by the data subject in the expectation that it would not be disclosed to the person making the request;
- (b) obtained as a result of any examination or investigation to which the data subject consented in the expectation that the information would not be so disclosed; or
- (c) which the data subject has expressly indicated should not be so disclosed,

provided that sub-paragraphs (a) and (b) shall not prevent disclosure where the data subject has expressly indicated that he no longer has the expectation referred to therein.

- (4) A person falls within this paragraph if—
  - (a) the data subject is a minor, and that person has parental responsibility for the data subject; or
  - (b) the data subject is incapable of managing his own affairs and that person has been appointed by a court to manage those affairs.

**5. Further modifications of section 5**

(1) In relation to data to which this Order applies by virtue of paragraph 1 of the Schedule, section 5 is modified as follows.

- (2) In subsection (4), after paragraph (b) insert "or
  - (c) the other individual is a relevant person".
- (3) After substitute (9) insert —

"(9A) If the High Court is satisfied, on the application of any person to whose physical or mental health or condition serious harm would be likely to be caused by compliance with a request under this section, that the data controller in question is about to comply with the request in contravention of that section or the provisions of the Data Protection (Subject Access Modification) (Social Work) Order 2003, the court may order him not to comply with the request."

- (4) After subsection (12) insert —
  - "(13) A person is a relevant person for the purposes of subsection (4)(c) if he —
    - (a) is a person referred to in paragraph 1(e) or (f) of the Schedule to the Data Protection (Subject Access Modification) (Social Work) Order 2003; or
    - (b) is or has been employed by any person or body referred to in paragraph 1 of that Schedule in connection with functions which are or have been exercised in relation to the data consisting of the information; or
    - (c) has provided for reward a service similar to a service provided in the exercise of any functions specified in paragraph 1(a)(i) of that Schedule,

and the information relates to him or he supplied the information in his official capacity or, as the case may be, in connection with the provision of that service."

Article 2(1).

## SCHEDULE

### PERSONAL DATA TO WHICH THIS ORDER APPLIES

1. This Order applies to personal data falling within any of the following descriptions —
  - (a) data processed by the Department —
    - (i) in connection with its functions under the National Assistance (Isle of Man) Act 1951<sup>2</sup> or the Children and Young Persons Act 2001<sup>3</sup> (or, until the coming into operation of the said Act of 2001, the Children and Young Persons Acts 1966 to 1990), or
    - (ii) in the exercise of other functions but obtained or consisting of information obtained in connection with any of those functions;
  - (b) data processed by the Probation Liaison Committee established by section 30 of the Criminal Justice Act 1963<sup>4</sup>;
  - (c) data processed by the Department of Education in the exercise of its functions under section 30 of and Schedule 5 to the Education Act 2001<sup>5</sup> (or, until the coming into operation of those provisions, section 70A of and Schedule 4A to the Isle of Man Education Act 1949<sup>6</sup>);
  - (d) data processed by any voluntary organisation or other body designated under this sub-paragraph by the Department and appearing to the Department to be processed for the purposes of the provision of any service similar to a service provided in the exercise of any functions specified in sub-paragraph (a);
  - (e) data processed by a guardian ad litem appointed under section 51 of the Adoption Act 1984<sup>7</sup>;
  - (f) data processed by an advocate appointed under section 96 of the Children and Young Persons Act 2001 or any person engaged by him to take any steps in the proceedings to which the appointment relates.
2. This Order applies to personal data processed by a court and consisting of information supplied in a report or other evidence given to the court by the Department or a probation officer or other person in the course of any proceedings in a court of summary jurisdiction where, in accordance with rules of court, the information may be withheld by the court in whole or in part from the data subject.

MADE 30th January 2003

*Mary Williams*

Chief Secretary

---

<sup>2</sup> XIII p.1008

<sup>3</sup> 2001 c.20

<sup>4</sup> XIX p.975

<sup>5</sup> 2001 c.33

<sup>6</sup> XVII p.516

<sup>7</sup> 1984 c.14

## EXPLANATORY NOTE

*(This note is not part of the Order.)*

This Order provides for the partial exemption from the provisions of the Data Protection Act 2002, which confer rights on data subjects to gain access to data held about them, of certain data where the exercise of those rights would be likely to prejudice the carrying out of social work by causing serious harm to the physical or mental health or condition of the data subject or another person (article 3(1)). It does not apply to any data to which the Data Protection (Subject Access Modification) (Health) Order 2003, the Data Protection (Subject Access Modification) (Education) Order 2003 or any order made under section 38(1) of the Act applies (article 3(2)).

Where, under rules of court, information included in a report to the court in certain proceedings relating to children may be withheld by the court, it is exempted from the provisions of the Act which confer rights on data subjects to gain access to data held about them (article 2, Schedule paragraph 2). Other data held for social work purposes is exempted from those provisions if the exercise of those rights would be likely to cause serious harm to the physical or mental health or condition of the data subject or another person (article 4). The Order also modifies section 5 of the Act so that a data controller cannot refuse access on the grounds that the identity of a third party would be disclosed, unless serious harm to the third party's physical or mental health or condition is likely to be caused such that the exemption in article 4(1) applies (article 5).