



Statutory Document No. 21/03

## THE DATA PROTECTION ACT 2002

### THE DATA PROTECTION (SUBJECT ACCESS MODIFICATION) (EDUCATION) ORDER 2003

*Approved by Tynwald*

18<sup>th</sup> February 2003

*Coming into operation*

1st April 2003

In exercise of the powers conferred on the Council of Ministers by sections 26(2) of the Data Protection Act 2002<sup>1</sup>, 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) (Education) 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;

"request" means a request made under section 5; and

"section 5" means section 5 of the Act.

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

(1) Subject to paragraph (2), this Order applies to personal data consisting of information constituting an educational record.

(2) This Order does not apply —

(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<sup>2</sup> applies; or

(b) to any data which are exempted from section 5 by an order made under section 35(1) of the Act.

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

<sup>2</sup> SD 19/03

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

(1) Personal data specified in paragraph (2) and to which this Order applies are exempt from the subject information provisions.

(2) The personal data referred to in paragraph (1) are personal data processed by a court and consisting of information supplied in a report or other evidence given to the court in the course of proceedings in a court of summary jurisdiction apply where, in accordance with rules of court, the information may be withheld by the court in whole or in part from the data subject.

### **4. Exemptions from section 5**

(1) 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 be likely to cause serious harm to the physical or mental health or condition of the data subject or any other person.

(2) In circumstances where the exemption in paragraph (1) does not apply, where any person falling within paragraph (3) is enabled by or under any enactment or rule of law to make a request on behalf of a data subject and has made such a request, personal data consisting of information as to whether the data subject is or has been the subject of or may be at risk of child abuse are exempt from section 5 in any case to the extent to which the application of that section would not be in the best interests of that data subject.

(3) 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.

(4) For the purposes of paragraph (2), "child abuse" includes physical injury (other than accidental injury) to, and physical and emotional neglect, ill-treatment and sexual abuse of, a minor.

### **5. Further modifications of section 5**

(1) In relation to personal data to which this Order applies 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 subsection (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) (Education) 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 is —

- (a) an employee of the Department of Education,
- (b) in the case of a maintained school (within the meaning of the Education Act 2001<sup>3</sup>), a teacher or other employee at the school,
- (c) the person making the request."

(5) Until the coming into operation of Part 2 of the Education Act 2001, the reference to a maintained school in subsection (13) above shall be construed as a reference to a voluntary school (as defined in section 35 of the Isle of Man Education Act 1949<sup>4</sup>).

MADE 30th January 2003

*Mary Williams*

Chief Secretary

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<sup>3</sup> 2001 c.33

<sup>4</sup> XVII p.516

## EXPLANATORY NOTE

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

This Order makes special provision under the Data Protection Act 2002 for education records specified in article 2.

Where, under rules of court, information comprised in such records and 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 3). Such records are also exempted from those rights where their exercise would be likely to cause serious harm to the physical or mental health or condition of the data subject or another person, or, in some circumstances, would disclose information as to whether the data subject is or has been the subject of or may be at risk of child abuse which disclosure would not be in the best interests of that data subject (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 in cases where the third party is a relevant person (as defined), unless serious harm to that person's physical or mental health or condition is likely to be caused such that the exemption in article 4(1) applies (article 5).