



Statutory Document No. 26/03

THE DATA PROTECTION ACT 2002

THE DATA PROTECTION (FUNCTIONS OF DESIGNATED AUTHORITY) ORDER 2003

Approved by Tynwald

20th February 2003

Coming into operation

1st April 2003

In exercise of the powers conferred on the Council of Ministers by section 49(2) of the Data Protection Act 2002¹, 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 (Functions of Designated Authority) 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 Convention" means the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data²;

"foreign designated authority" means an authority designated for the purposes of Article 13 of the Convention by a party (other than the United Kingdom) which is bound by that Convention;

"register" means the register maintained under section 16(1) of the Act;

"request", except in article 2, means a request for assistance under Article 14 of the Convention which states —

- (a) the name and address of the person making the request;
- (b) particulars which identify the personal data to which the request relates;
- (c) the rights under Article 8 of the Convention to which the request relates;

¹ 2002 c.2

² Cm 1329

- (d) the reasons why the request has been made;
- and "requesting person" means a person making such a request.

(2) In this Order, references to the Supervisor are to the Supervisor as the designated authority in the Island for the purposes of Article 13 of the Convention.

2. Co-operation between the Supervisor and foreign designated authorities

(1) The Supervisor shall, at the request of a foreign designated authority, furnish to that foreign designated authority such information referred to in Article 13(3)(a) of the Convention, and in particular the data protection legislation in force in the Island at the time the request is made, as is the subject of the request.

(2) The Supervisor shall, at the request of a foreign designated authority, take appropriate measures in accordance with Article 13(3)(b) of the Convention, for furnishing to that foreign designated authority information relating to the processing of personal data in the Island.

(3) The Supervisor may request a foreign designated authority to furnish to him or, as the case may be, to take appropriate measures for furnishing to him, the information referred to in Article 13(3) of the Convention.

3. Persons resident outside the Island

(1) This article applies where a person resident outside the Island makes a request to the Supervisor under Article 14 of the Convention, including a request forwarded to the Supervisor through the Lord Chancellor or a foreign designated authority, seeking assistance in exercising any of the rights under Article 8 of the Convention.

(2) If the request —

- (a) seeks assistance in exercising the rights under section 5 of the Act; and
- (b) does not indicate that the data controller has failed, contrary to section 5 of the Act, to comply with the same request on a previous occasion,

the Supervisor shall notify the requesting person of the data controller's address for the receipt of notices from data subjects exercising their rights under that section and of such other information as the Supervisor considers necessary to enable that person to exercise his rights under that section.

(3) If the request indicates that a data protection principle has been contravened by a data controller the Supervisor shall either —

- (a) notify the requesting person of the rights of data subjects and the remedies available to them under Part 2 of the Act together with such particulars as are contained in the data controller's entry in the register as are necessary to enable the requesting person to avail himself of those remedies; or
- (b) if the Supervisor considers that notification in accordance with subparagraph (a) would not assist the requesting person or would, for any other reason, be inappropriate, treat the request as if it were a request

for an assessment which falls to be dealt with under section 38 of the Act.

(4) The Supervisor shall not be required, in response to any request referred to in paragraphs (2) and (3), to supply to the requesting person a duly certified copy in writing of the particulars contained in any entry made in the register other than on payment of such fee as is prescribed for the purposes of section 16(7) of the Act.

4. Persons resident in the Island

(1) Where a request for assistance in exercising any of the rights referred to in Article 8 of the Convention in a country or territory (other than the Island) specified in the request is made by a person resident in the Island and submitted through the Supervisor under Article 14(2) of the Convention, the Supervisor shall, if he is satisfied that the request contains all necessary particulars referred to in Article 14(3) of the Convention, send it to the foreign designated authority in the specified country or territory.

(2) If the Supervisor decides that he is not required by paragraph (1) above to render assistance to the requesting person he shall, where practicable, notify that person of the reasons for his decision.

5. Restrictions on use of information

Where the Supervisor receives information from a foreign designated authority as a result of either —

- (a) a request made by him under article 2(3); or
- (b) a request received by him under article 2(2) or 3,

the Supervisor shall use that information only for the purposes specified in the request.

MADE 30th January 2003

Mary Williams

Chief Secretary

EXPLANATORY NOTE

(This note is not part of the Order.)

This Order specifies the functions to be performed by the Isle of Man Data Protection Supervisor as "designated authority" in the Isle of Man for the purposes of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (1981, Cm 1329).