



Statutory Document No. 28/03

THE DATA PROTECTION ACT 2002

**THE DATA PROTECTION (PROCESSING OF SENSITIVE PERSONAL DATA) (ELECTED REPRESENTATIVES) ORDER 2003**

*Approved by Tynwald*

20<sup>th</sup> February 2003

*Coming into operation*

1st April 2003

In exercise of the powers conferred on the Council of Ministers by paragraph 19 of Schedule 3 to 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 (Processing of Sensitive Personal Data) (Elected Representatives) 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.

**2. Additional circumstances in which sensitive personal data may be processed**

For the purposes of paragraph 19 of Schedule 3 to the Act, the circumstances specified in any of paragraphs 2, 3, 4 or 5 in the Schedule to this Order are circumstances in which sensitive personal data may be processed.

---

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

Price 65p Price Band A

Article 2

SCHEDULE

CIRCUMSTANCES IN WHICH SENSITIVE PERSONAL DATA MAY BE PROCESSED

*Interpretation*

1. (1) In this Schedule, "elected representative" means —
  - (a) a member of Tynwald;
  - (b) an elected member of the Isle of Man Board of Education;
  - (c) a member of a local authority.
- (2) A member of the Keys shall be deemed for the purposes of sub-paragraph (1) to continue to be a member of Tynwald until the return of the writ for the election of a member in his place.

*Processing by elected representatives*

2. The processing —
  - (a) is carried out by an elected representative or a person acting with his authority;
  - (b) is in connection with the discharge of his functions as such a representative;
  - (c) is carried out pursuant to a request made by the data subject to the elected representative to take action on behalf of the data subject or any other individual; and
  - (d) is necessary for the purposes of, or in connection with, the action reasonably taken by the elected representative pursuant to that request.
3. The processing —
  - (a) is carried out by an elected representative or a person acting with his authority;
  - (b) is in connection with the discharge of his functions as such a representative;
  - (c) is carried out pursuant to a request made by an individual other than the data subject to the elected representative to take action on behalf of the data subject or any other individual;
  - (d) is necessary for the purposes of, or in connection with, the action reasonably taken by the elected representative pursuant to that request; and
  - (e) is carried out without the explicit consent of the data subject because the processing —
    - (i) is necessary in a case where explicit consent cannot be given by the data subject,
    - (ii) is necessary in a case where the elected representative cannot reasonably be expected to obtain the explicit consent of the data subject,
    - (iii) must necessarily be carried out without the explicit consent of the data subject being sought so as not to prejudice the action taken by the elected representative, or
    - (iv) is necessary in the interests of another individual in a case where the explicit consent of the data subject has been unreasonably withheld.

*Processing limited to disclosures to elected representatives*

4. The disclosure —
  - (a) is made to an elected representative or a person acting with his authority;
  - (b) is made in response to a communication to the data controller from the elected representative, or a person acting with his authority, acting pursuant to a request made by the data subject;

- (c) is of sensitive personal data which are relevant to the subject matter of that communication; and
  - (d) is necessary for the purpose of responding to that communication.
5. The disclosure —
- (a) is made to an elected representative or a person acting with his authority;
  - (b) is made in response to a communication to the data controller from the elected representative, or a person acting with his authority, acting pursuant to a request made by an individual other than the data subject;
  - (c) is of sensitive personal data which are relevant to the subject matter of that communication;
  - (d) is necessary for the purpose of responding to that communication; and
  - (e) is carried out without the explicit consent of the data subject because the disclosure —
    - (i) is necessary in a case where explicit consent cannot be given by the data subject,
    - (ii) is necessary in a case where the data controller cannot reasonably be expected to obtain the explicit consent of the data subject,
    - (iii) must necessarily be carried out without the explicit consent of the data subject being sought so as not to prejudice the action taken by the elected representative, or
    - (iv) is necessary in the interests of another individual in a case where the explicit consent of the data subject has been unreasonably withheld.

MADE 30th January 2003

*Mary Williams*

Chief Secretary

## EXPLANATORY NOTE

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

The first data protection principle, set out in paragraph 1 of Schedule 1 to the Data Protection Act 2002, prohibits the processing of "sensitive personal data" (ie. data relating to an individual's race, politics, religion, trade union membership, health, sex life or criminal record) unless one of the conditions in Schedule 3 to the Act is met. Paragraph 19 of that Schedule enables further conditions to be prescribed by order of the Council of Ministers.

The Schedule to this Order specifies a number of such circumstances, which relate to the processing of sensitive personal data by, and disclosures of sensitive personal data to, elected representatives (ie members of Tynwald, the Isle of Man Board of Education and local authorities). Paragraphs 2 and 3 cover certain processing carried out by an elected representative in connection with the discharge of his functions as such, viz. pursuant to a request made by the data subject to the elected representative to take action on behalf of the data subject or any other individual. Paragraphs 4 and 5 cover certain disclosures made to an elected representative acting pursuant to such a request.