

Statutory Instrument 417/2000, 17th February, the Data Protection (Processing of Sensitive Personal Data) Order 2000

- **SCHEDULE Article 2. CIRCUMSTANCES IN WHICH SENSITIVE PERSONAL DATA MAY BE PROCESSED 1**

Made 17th February 2000

Coming into force 1st March 2000

Whereas a draft of this Order has been laid before and approved by a resolution of each House of Parliament:

Now, therefore, the Secretary of State, in exercise of the powers conferred on him by section 67(2) of, and paragraph 10 of Schedule 3 to, the Data Protection Act 1998[1] and after consultation with the Data Protection Commissioner in accordance with section 67(3) of that Act, hereby makes the following Order:

1. 1. This Order may be cited as the Data Protection (Processing of Sensitive Personal Data) Order 2000 and shall come into force on 1st March 2000.
2. In this Order, "the Act" means the Data Protection Act 1998.
2. For the purposes of paragraph 10 of Schedule 3 to the Act, the circumstances specified in any of the paragraphs in the Schedule to this Order are circumstances in which sensitive personal data may be processed.

SCHEDULE ➔ Article 2. CIRCUMSTANCES IN WHICH SENSITIVE PERSONAL DATA MAY BE PROCESSED

1. 1. The processing -
 - a. is in the substantial public interest;
 - b. is necessary for the purposes of the prevention or detection of any unlawful act; and
 - c. must necessarily be carried out without the explicit consent of the data subject being sought so as not to prejudice those purposes.
2. In this paragraph, "act" includes a failure to act.
2. The processing -
 - a. is in the substantial public interest;
 - b. is necessary for the discharge of any function which is designed for protecting members of the public against-

is of sensitive personal data consisting of information falling within section 2(e) of the Act relating to a data subject who is the parent, grandparent, great grandparent or sibling of -

- i. in the case of paragraph (a)(i), the insured person, or
- ii. in the case of paragraph (a)(ii), the member of the scheme;
- c. is necessary in a case where the data controller cannot reasonably be expected to obtain the explicit consent of that data subject and the data controller is not aware of the data subject withholding his consent; and
- d. does not support measures or decisions with respect to that data subject.

2. In this paragraph -

- a. "insurance business" means insurance business, as defined in section 95 of the Insurance Companies Act 1982[3], falling within Classes I, III or IV of Schedule 1 (classes of long term business) or Classes 1 or 2 of Schedule 2 (classes of general business) to that Act, and
- b. "insured" and "member" includes an individual who is seeking to become an insured person or member of the scheme respectively.

6. The processing -

1. is of sensitive personal data in relation to any particular data subject that are subject to processing which was already under way immediately before the coming into force of this Order;

2. is necessary for the purpose of -

- carrying on insurance business, as defined in section 95 of the Insurance Companies Act 1982, falling within Classes I, III or IV of Schedule 1 to that Act; or
- establishing or administering an occupational pension scheme as defined in section 1 of the Pension Schemes Act 1993; and

3. either -

- i. is necessary in a case where the data controller cannot reasonably be expected to obtain the explicit consent of the data subject and that data subject has not informed the data controller that he does not so consent, or
- ii. must necessarily be carried out even without the explicit consent of the data subject so as not to prejudice those purposes.

7. 1. Subject to the provisions of sub-paragraph (2), the processing -

a. is of sensitive personal data consisting of information falling within section 2(c) or (e) of the Act;

b. is necessary for the purpose of identifying or keeping under review the existence or absence of equality of opportunity or treatment between persons -

- i. holding different beliefs as described in section 2(c) of the Act, or
- ii. of different states of physical or mental health or different physical or mental conditions as described in section 2(e) of the Act,

- with a view to enabling such equality to be promoted or maintained;
- c. does not support measures or decisions with respect to any particular data subject otherwise than with the explicit consent of that data subject; and
 - d. does not cause, nor is likely to cause, substantial damage or substantial distress to the data subject or any other person.
2. Where any individual has given notice in writing to any data controller who is processing personal data under the provisions of sub-paragraph (1) requiring that data controller to cease processing personal data in respect of which that individual is the data subject at the end of such period as is reasonable in the circumstances, that data controller must have ceased processing those personal data at the end of that period.
8. Subject to the provisions of sub-paragraph (2), the processing -
 - a. is of sensitive personal data consisting of information falling within section 2(b) of the Act;
 - b. is carried out by any person or organisation included in the register maintained pursuant to section 1 of the Registration of Political Parties Act 1998[4] in the course of his or its legitimate political activities; and
 - c. does not cause, nor is likely to cause, substantial damage or substantial distress to the data subject or any other person.
 9. Where any individual has given notice in writing to any data controller who is processing personal data under the provisions of sub-paragraph (1) requiring that data controller to cease processing personal data in respect of which that individual is the data subject at the end of such period as is reasonable in the circumstances, that data controller must have ceased processing those personal data at the end of that period.
 10. The processing -
 - a. is in the substantial public interest;
 - b. is necessary for research purposes (which expression shall have the same meaning as in section 33 of the Act);
 - c. does not support measures or decisions with respect to any particular data subject otherwise than with the explicit consent of that data subject; and
 - d. does not cause, nor is likely to cause, substantial damage or substantial distress to the data subject or any other person.
 11. The processing is necessary for the exercise of any functions conferred on a constable by any rule of law.

Mike O'Brien

Parliamentary Under-Secretary of State