

SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4630 of 24 October, 2019

LEGAL NOTICE NO. 208 OF 2019

DATA PROTECTION ACT 2004

DATA PROTECTION ACT 2004 (AMENDMENT) REGULATIONS 2019

In exercise of the powers conferred upon him by sections 12(6), 20(1), 27, 155(9), 162(7), 184 and paragraph 6 of Schedule 17 of the Data Protection Act 2004, and all other enabling powers, the Minister has made the following Regulations—

Title.

1. These Regulations may be cited as the Data Protection Act 2004 (Amendment) Regulations 2019.

Commencement.

2. These Regulations come into operation on the day of publication.

Amendment of the Data Protection Act 2004.

3.(1) The Data Protection Act 2004 is amended in accordance with the provisions of these Regulations.

(2) Section 2 is amended as follows-

(a) the definition of ““controller” and “processor”” is amended as follows-

(i) for “Part III or Part IV applies” substitute “or Part III applies”,

(ii) delete “and 92”;

(b) after the definition of “data subject” insert-

““enactment” includes-

(a) an enactment passed or made after this Act; and

(b) an enactment comprised in subsidiary legislation;”;

(c) after the definition of “the GDPR” insert-

““health professional” includes any profession registered in accordance with the Medical and Health Act, 1997;

“health record” means a record which-

(a) consists of data concerning health; and

(b) has been made by or on behalf of a health professional in connection with the diagnosis, care or treatment of the individual to whom the data relates;”;

(d) after the definition of “identifiable living individual” insert-

““inaccurate” in relation to personal data, means incorrect or misleading as to any matter of fact;”;

(e) after the definition of “information notice” insert-

““international obligation of Gibraltar” includes-

(a) an EU obligation; and

(b) an obligation that arises under an international agreement or arrangement to which Gibraltar is a party or which has been extended to Gibraltar;”;

(f) in the definition of “processing of personal data” for “, 38(2) and 91(3)” substitute “and 38(2)”;

(g) after the definition of “processing of personal data” insert-

““publish” means make available to the public or a section of the public (and related expressions) are to be read accordingly;”;

(h) after the definition of “Schengen State” insert-

““social work professional” means a person registered as a social worker and employed in Gibraltar in the capacity of a social worker;

“subsidiary legislation” has the meaning given in the Interpretation and General Clauses Act;

“tribunal” means any tribunal in which legal proceedings may be brought.”;

(i) in subsection (2)(c) and (2)(d) for “Part III or Part IV applies” substitute “or Part III applies”.

(3) Delete section 3(5).

- (4) In section 5(1)(a) for “13” substitute “16”.
- (5) In section 14(3) after “with the rights contained” insert “in”.
- (6) In section 18(5)(a) for “employer” substitute “employee”.
- (7) Section 19 is amended as follows-
- (a) in subsection (1) for “Schedules 2, 3 and 4” substitute “Schedules 2 and 3”;
 - (b) delete subsection (4).
- (8) In section 20(2)(a) for “Schedules 2 to 4” substitute “Schedules 2 and 3”.
- (9) Section 25 is amended as follows-
- (a) in subsection (1) delete “or Part IV (intelligence services processing)”;
 - (b) subsection (3) is amended as follows-
 - (i) in the definition of “the automated or structured processing of personal data” for the final semi-colon substitute a full-stop,
 - (ii) delete the definition of “the manual unstructured processing of personal data”.
- (10) Section 39 is amended as follows-
- (a) delete subsection (2);
 - (b) in subsection (5) delete the definition of “intelligence service”.
- (11) For section 83(a) substitute-
- “(a) the European Commission has decided, in accordance with Article 36 of the Law Enforcement Directive, that-
- (i) the third country or a territory or one or more specified sectors within that third country, or
 - (ii) as the case may be, the international organisation,
- ensures an adequate level of protection of personal data; and”.
- (12) For section 90(3) substitute-
- “(3) The mechanisms implemented under subsection (1) must include-

- (a) raising awareness of the protections provided by Part IV of the Employment Act; and
- (b) such other protections for a person who reports an infringement of this Part as the controller considers appropriate.”.

(13) Delete Part IV.

(14) Section 123 is amended as follows-

- (a) delete subsection (3);
- (b) subsection (4) is renumbered as subsection (3).

(15) After section 128(6) insert-

“ (7) Paragraphs (c) and (d) of section 2(2) do not apply to references in this section to personal data, the processing of personal data, a controller or a processor.”.

(16) After section 129(4) insert-

“ (5) Section 2(2)(c) does not apply to references to personal data and the processing of personal data in this section.”.

(17) After section 132(5) insert-

“ (5A) Any transitional provision in the first code under this section must cease to have effect before the end of the period of 12 months beginning when the code comes into force.”.

(18) After section 132 insert-

“Data protection and journalism code.

132A.(1) The Commissioner may prepare a code of practice which contains-

- (a) practical guidance in relation to the processing of personal data for the purposes of journalism in accordance with the requirements of the data protection legislation; and
- (b) such other guidance as the Commissioner considers appropriate to promote good practice in the processing of personal data for the purposes of journalism.

(2) Where a code under this section is in force, the Commissioner may prepare amendments of the code or a replacement code.

(3) Before preparing a code or amendments under this section, the Commissioner may consult such of the following as the Commissioner considers appropriate-

- (a) trade associations;
- (b) data subjects;
- (c) persons who appear to the Commissioner to represent the interests of data subjects.

(4) A code under this section may include transitional or savings provisions.

(5) In this section-

“good practice in the processing of personal data for the purposes of journalism” means such practice in the processing of personal data for those purposes as appears to the Commissioner to be desirable having regard to-

- (a) the interests of data subjects and others, including compliance with the requirements of the data protection legislation; and
- (b) the special importance of the public interest in the freedom of expression and information;

“trade association” includes a body representing controllers or processors.”.

(19) After section 133(2) insert-

“ (2A) The Commissioner must publish a code issued under subsection (2).”.

(20) Section 134 is amended as follows-

(a) subsection (4) is amended as follows-

- (i) for “relating to the data protection legislation” substitute “described in subsection (5)”,
- (ii) for “this Act” substitute “section 133(2)”;

(b) after subsection (4) insert-

“ (5) Those functions are functions under-

- (a) the data protection legislation; or
- (b) the Communications (Personal Data and Privacy) Regulations 2006.”.

(21) Section 135 is amended as follows-

- (a) delete subsections (1) to (3);
- (b) subsection (4) is renumbered as subsection (1);
- (c) subsection (5) is renumbered as subsection (2);
- (d) subsection (6) is renumbered as subsection (3);
- (e) subsection (7) is renumbered as subsection (4).

(22) Section 137 is amended as follows-

- (a) in subsection (1) for “section 29, 88 or 120” substitute “section 29 or 88”;
- (b) in subsection (6) for “section 29, 88 or 120” substitute “section 29 or 88”.

(23) In section 139(b) delete “or information which is privileged from disclosure in court proceedings”.

(24) The title just after section 144 entitled “Charges” is centered in alignment.

(25) For section 145(6) substitute-

“ (6) The Minister may by regulations make provision-

- (a) requiring a controller to provide information to the Commissioner; or
- (b) enabling the Commissioner to require a controller to provide information to the Commissioner,

for either or both of the purposes mentioned in subsection (7).”.

(26) Section 150 is amended as follows-

(a) for subsection (4) substitute-

“ (4) An information notice must provide information about-

- (a) the consequences of failure to comply with it; and
- (b) the rights under sections 168 and 169A (appeals etc).”;

(b) in subsection (7) for “7 days” substitute “24 hours”.

(27) Section 153 is amended as follows-

(a) for subsection (2)(d) substitute-

“(d) comply with a request from the Commissioner for a copy (in such form as may be requested) of-

- (i) the documents to which the Commissioner is directed,
- (ii) the information which the Commissioner is assisted to view;”;

(b) for subsections (2)(g) and (h) substitute-

“(g) provide the Commissioner with an explanation of such documents, information, equipment or material;

(h) permit the Commissioner to observe the processing of personal data that takes place on the premises;

(i) make available for interview by the Commissioner a specified number of people of a specified description who process personal data on behalf of the controller, not exceeding the number who are willing to be interviewed.”;

(c) for subsection (5) substitute-

“(5) An assessment notice must provide information about-

- (a) the consequences of failure to comply with it; and
- (b) the rights under sections 168 and 169A (appeals etc).”;

(d) subsection (8) is amended as follows-

- (i) in paragraph (a) delete “and”,
- (ii) in paragraph (b) for “,” substitute “; and”,
- (iii) after paragraph (b) insert-

“(c) does not meet the conditions in subsection (8A)(a) to (d).”;

(e) after subsection (8) insert-

“(8A) If an assessment notice-

(a) states that, in the Commissioner’s opinion, there are reasonable grounds for suspecting that a controller or processor has failed or is failing as described in section 155(2) or that an offence under this Act has been or is being committed;

(b) indicates the nature of the suspected failure or offence;

(c) does not specify domestic premises;

(d) states that, in the Commissioner's opinion, it is necessary for the controller or processor to comply with a requirement in the notice in less than 7 days; and

(e) gives the Commissioner's reasons for reaching that opinion,

subsections (6) and (7) do not apply.”;

(f) for subsection (11) substitute-

“ (11) In this section-

“domestic premises” means premises, or a part of premises, used as a dwelling;

“specified” means specified in an assessment notice.”.

(28) Section 155 is amended as follows-

(a) subsection (2) is amended as follows-

(i) in paragraph (a) delete “or Chapter 2 of Part IV”,

(ii) in paragraph (b) delete “or IV”,

(iii) in paragraph (d) for “section 76, 77 or 117” substitute “sections 76 or 77”,

(iv) in paragraph (e) delete “or 118”;

(b) for subsection (9) substitute-

“ (9) Regulations under this section-

(a) may make provision about the giving of an enforcement notice in respect of the failure, including by amending this section and sections 156 to 158; and

(b) may make provision about the giving of an information notice, an assessment notice or a penalty notice, or about powers of entry and inspection, in connection with the failure, including by amending sections 150, 151, 153, 154 and 162 to 164 and Schedules 15 and 16.”.

(29) Section 156 is amended as follows-

(a) for subsection (5) substitute-

“ (5) An enforcement notice must provide information about-

- (a) the consequences of failure to comply with it; and
- (b) the rights under section 168 and 169A (appeals etc).”;

(b) in subsection (8) for “7 days” substitute “24 hours”.

(30) Section 157 is amended as follows-

(a) in subsection (1)(b) for “or section 55, 56 or 109” substitute “section 55 or 56”;

(b) subsection (8) is amended as follows-

- (i) in paragraph (a) after the semi-colon insert “or”,
- (ii) in paragraph (b) for “; or” substitute “.”,
- (iii) delete paragraph (c).

(31) Section 158(4) is amended as follows-

(a) delete “or IV”;

(b) delete “or 113”.

(32) In section 162(3)(d) for “section 66, 75, 112 or 116” substitute “section 66 or 75”.

(33) Section 163(4) is amended as follows-

(a) delete “or IV”;

(b) delete “or 113”.

(34) Delete section 164(3).

(35) Section 167 is amended as follows-

(a) for subsection (1) substitute-

“ (1) The Commissioner must produce and publish guidance about how the Commissioner proposes to exercise the Commissioner’s functions in connection with-

- (a) information notices;
- (b) assessment notices;

(c) enforcement notices; and

(d) penalty notices.”.

(b) after subsection (2) insert-

“ (2A) In relation to information notices the guidance must include-

(a) provision specifying factors to be considered in determining the time at which, or the period within which, information is to be required to be provided;

(b) provision about the circumstances in which the Commissioner would consider it appropriate to give an information notice to a person in reliance on section 150(7) (urgent cases);

(c) provision about how the Commissioner will determine how to proceed if a person does not comply with an information notice.”.

(c) for subsection (3) substitute-

“ (3) In relation to assessment notices, the guidance must include-

(a) provision specifying factors to be considered in determining whether to give an assessment notice to a person;

(b) provision about the circumstances in which the Commissioner would consider it appropriate to give an assessment notice in reliance on section 153(8) or (8A) (urgent cases);

(c) provision specifying descriptions of documents or information that-

(i) are not to be examined or inspected in accordance with an assessment notice, or

(ii) are to be so examined or inspected only by a person of a description specified in the guidance;

(d) provision about the nature of inspections and examinations carried out in accordance with an assessment notice;

(e) provision about the nature of interviews carried out in accordance with an assessment notice;

(f) provision about the preparation, issuing and publication by the Commissioner of assessment reports in respect of controllers and processors that have been given assessment notices;

- (g) provision about how the Commissioner will determine how to proceed if a person does not comply with an assessment notice.”.
 - (d) in subsection (4) for “subsection (3)(b)” substitute “subsection (3)(c)”.
 - (e) after subsection (4) insert-
 - “ (4A) In relation to enforcement notices, the guidance must include-
 - (a) provision specifying factors to be considered in determining whether to give an enforcement notice to a person;
 - (b) provision about the circumstances in which the Commissioner would consider it appropriate to give an enforcement notice to a person in reliance on section 156(8) (urgent cases);
 - (c) provision about how the Commissioner will determine how to proceed if a person does not comply with an enforcement notice.”.
 - (f) subsection (5) is amended as follows-
 - (i) in paragraph (c) for the full-stop substitute a semi-colon,
 - (ii) after paragraph (c) insert-
 - “(d) provision about how the Commissioner will determine how to proceed if a person does not comply with a penalty notice.”.
 - (g) in subsection (7)(b) for “the Minister” substitute “the Commissioner”.
- (36) Delete section 168(3).
- (37) Delete section 169(5).
- (38) After section 169 insert-

“Applications in respect of urgent notices.

169A.(1) This section applies where an information notice, an assessment notice or an enforcement notice given to a person contains an urgency statement.

- (2) The person may apply to the court for either or both of the following-
 - (a) the disapplication of the urgency statement in relation to some or all of the requirements of the notice;
 - (b) a change to the time at which, or the period within which, a requirement of the notice must be complied with.

- (3) On an application under subsection (2), the court may do any of the following-
- (a) direct that the notice is to have effect as if it did not contain the urgency statement;
 - (b) direct that the inclusion of the urgency statement is not to have effect in relation to a requirement of the notice;
 - (c) vary the notice by changing the time at which, or the period within which, a requirement of the notice must be complied with;
 - (d) vary the notice by making other changes required to give effect to a direction under paragraph (a) or (b), or in consequence of a variation under paragraph (c).
- (4) The decision of the court on an application under this section is final.
- (5) In this section, “urgency statement” means-
- (a) in relation to an information notice, a statement under section 150(7)(a);
 - (b) in relation to an assessment notice, a statement under section 153(8)(a) or (8A)(d); and
 - (c) in relation to an enforcement notice, a statement under section 156(8)(a).”.
- (39) In section 170(2) delete “or IV”.
- (40) For section 172(4) substitute-
- “ (4) In subsection (1), the reference to an application by a data subject includes an application made in exercise of the right under Article 79(1) of the GDPR (right to an effective remedy against a controller or processor).”.
- (41) Section 174(4) is amended as follows-
- (a) delete “or IV”;
 - (b) delete “or 113”.
- (42) In section 175(7) delete “or 114(3)”.
- (43) In section 176(8) delete “or 114(3)”.
- (44) Section 178(2) is amended as follows-
- (a) in paragraph (c) for the semi-colon substitute a full-stop;

(b) delete paragraph (d).

(45) After section 181 insert-

“Guidance about how to seek redress against media organisations.

181A.(1) The Commissioner may produce and publish guidance about the steps that may be taken where an individual considers that a media organisation is failing or has failed to comply with the data protection legislation.

(2) In this section, “media organisation” means a body or other organisation whose activities consist of or include journalism.

(3) The guidance must include provision about relevant complaints procedures, including-

- (a) who runs them;
- (b) what can be complained about; and
- (c) how to make a complaint.

(4) For the purposes of subsection (3), relevant complaints procedures include procedures for making complaints to the Commissioner, and other persons who produce or enforce codes of practice for media organisations.

(5) The guidance may include provision about-

- (a) the powers available to the Commissioner in relation to a failure to comply with the data protection legislation;
- (b) when a claim in respect of such a failure may be made before a court and how to make such a claim;
- (c) alternative dispute resolution procedures;
- (d) the rights of bodies and other organisations to make complaints and claims on behalf of data subjects; and
- (e) the Commissioner’s power to provide assistance in special purpose proceedings.

(6) The Commissioner-

- (a) may alter or replace the guidance; and
- (b) must publish any altered or replacement guidance.”.

(46) Section 185(2) is amended as follows-

- (a) delete paragraph (c);
- (b) in paragraph (d) delete “or Part IV”;
- (c) in paragraph (e) for “Parts 5 to 7” substitute “Parts V to VII”.

(47) Section 187(4) is amended as follows-

- (a) in paragraph (c) for the semi-colon substitute a full-stop;
- (b) delete paragraph (d).

(48) Section 188 is amended as follows-

- (a) subsection (2) is amended as follows-
 - (i) in paragraph (a) after the semi-colon insert “and”,
 - (ii) in paragraph (b) for “; and” substitute “.”,
 - (iii) delete paragraph (c);
- (b) subsection (3) is amended as follows-
 - (i) in paragraph (a) for “Schedules 2, 3 and 4” substitute “Schedules 2 and 3”,
 - (ii) in paragraph (b) after the semi-colon insert “and”,
 - (iii) in paragraph (c) for “; and” substitute “.”,
 - (iv) delete paragraph (d).

(49) Section 191 is amended as follows-

- (a) subsection (1) is amended as follows-
 - (i) for paragraph (b) substitute-
 - “(b) prepare and publish a report of the review.”,
 - (ii) delete paragraph (c).
- (b) subsection (2) is amended as follows-
 - (i) in paragraph (c) delete the last “and”,

- (ii) in paragraph (d) for the full-stop substitute a semi-colon,
- (iii) after paragraph (d) insert-

“(e) the merits of making provision for a children’s rights organisation to exercise some or all of a data subject’s rights under Articles 77, 78, 79 and 82 of the GDPR on behalf of a data subject who is a child, with or without being authorised to do so by the data subject.”.

- (iv) after subsection (2) insert-

“(2A) In carrying a review under this section, the Minister may-

- (a) consider the particular needs of children separately from the needs of adults;
- (b) have regard to the fact that children have different needs at different stages of development;
- (c) carry out an analysis of the particular challenges that children face in authorising, and deciding whether to authorise, other persons to act on their behalf under Article 80(1) of the GDPR or section 189;
- (d) consider the support and advice available to children in connection with the exercise of their rights under Articles 77, 78, 79 and 82 of the GDPR by another person on their behalf and the merits of making available other support or advice; and
- (e) have consideration for the United Nations Convention on the Rights of the Child.

(2B) Before preparing the report under subsection (1), the Minister must consult the Commissioner, and may consult such other persons as the Minister considers appropriate, including-

- (a) persons active in the field of protection of data subjects’ rights and freedoms with regard to the protection of their personal data;
- (b) children and parents;
- (c) children’s rights organisations and other persons who appear to the Minister to represent the interests of children;
- (d) child development experts; and
- (e) trade associations.

(2C) In this section-

“children’s rights organisation” means a body or other organisation which-

- (a) is active in representing the interests of children; and
- (b) has objectives which are in the public interest;

“the United Nations Convention on the Rights of the Child” means the Convention on the Rights of the Child adopted by the General Assembly of the United Nations on 20 November 1989 (including any Protocols to that Convention);

“trade association” includes a body representing controllers or processors.”.

(c) subsection (3) is amended as follows-

- (i) for “laid before Parliament” substitute “published”,
- (ii) in paragraph (a) delete “and”,
- (iii) in paragraph (b) for the full-stop substitute “; and”,
- (iv) after paragraph (b) insert-

“(c) make provision described in subsection (2)(e) in relation to the exercise of the rights of a data subject who is a child.”;

(d) after subsection (4) insert-

“ (4A) The powers under subsection (3)(a) and (b) include power to make provision in relation to data subjects who are children or data subjects who are not children, or both.”;

(e) in subsection (5) for “subsection (5)(b) and (c)” substitute “subsection (4)(b) and (c)”.

(50) After section 190 insert-

“ Framework for Data Processing by Government

Framework for Data Processing by Government.

191A.(1) The Minister may prepare a document, called the Framework for Data Processing by Government, which contains guidance about the processing of personal data in connection with the exercise of functions of-

- (a) a Minister or a government department; and
 - (b) a person with functions of a public nature who is specified or described in regulations made by the Minister.
- (2) The document may make provision relating to all of those functions or only to particular functions or persons.
- (3) The Minister may, from time to time, prepare amendments of the document or a replacement document.
- (4) Before preparing a document or amendments under this section, the Minister must consult-
- (a) the Commissioner; and
 - (b) any other person the Minister considers it appropriate to consult.
- (5) The Minister must issue a document prepared under this section.
- (6) A document prepared and issued under this section will come into force at the end of the period of 21 days beginning with the day on which it is issued.
- (7) Nothing in this section prevents another version of the document being issued.

Publication and review of the Framework.

- 191B.(1) The Minister must publish a document that is issued under section 191A(5).
- (2) Where an amendment of a document is issued under section 191A(5), the Minister must publish-
- (a) the amendments; or
 - (b) the document as amended by it.
- (3) The Minister must keep under review the document issued under section 191A(5) for the time being in force.
- (4) Where the Minister becomes aware that the terms of such a document could result in a breach of an international obligation of Gibraltar, the Minister must issue another version of the document, with a view to remedying the situation.

Effect of the Framework.

- 191C.(1) When carrying out processing of personal data which is the subject of a document issued under section 191A(5) which is for the time being in force, a person must have regard to the document.

- (2) A failure to act in accordance with a provision of such a document does not of itself make a person liable to legal proceedings in a court or tribunal.
- (3) A document issued under section 191A(5), including an amendment or replacement document, is admissible in evidence in legal proceedings.
- (4) In any legal proceedings before a court or tribunal, the court or tribunal must take into account a provision of any document issued under section 191A(5) in determining a question arising in the proceedings if-
 - (a) the question relates to a time when the provision was in force; and
 - (b) the provision appears to the Commissioner to be relevant to the question.”.

(51) After section 194 insert-

“Guidance about criminal procedure and evidence codes of practice.

194A.(1) The Commissioner may produce and publish guidance about how the Commissioner proposes to perform the duty under section 687(6) of the Criminal Procedure and Evidence Act 2011 (duty to have regard to codes of practice under that Act when investigating offences and charging offenders) in connection with offences under this Act.

- (2) The Commissioner-
 - (a) may alter or replace the guidance; and
 - (b) must publish any altered or replacement guidance.
- (3) The Commissioner must consult the Minister before publishing guidance under this section (including any altered or replacement guidance).”.

(52) In section 196(1)(a)(i) delete “, 120”.

(53) In section 197(2)(a) delete “, 120”.

(54) For section 198(7) substitute-

- “ (7) In this section, references to a person who has an establishment in Gibraltar include the following-
- (a) an individual who is ordinarily resident in Gibraltar;
 - (b) a body incorporated under Gibraltar law;

- (c) a partnership or other unincorporated association formed under Gibraltar law; and
- (d) a person not within paragraph (a), (b) or (c) who maintains, and carries on activities through, an office, branch or agency or other stable arrangements in Gibraltar,

and references to a person who has an establishment in another country or territory have a corresponding meaning.”.

(55) Section 200 is amended as follows-

- (a) in subsection (1) for “Parts 1, 2 and 5 to 7” substitute “Parts I, II and V to VII”;
- (b) in subsection (4)(d) delete “.”.

(56) Schedule 1 is amended as follows-

- (a) after paragraph 1(2) insert-

“(3)In this paragraph-

“social security” includes any of the branches of social security listed in Article 3(1) of Regulation (EC) No. 883/2004 of the European Parliament and of the Council on the co-ordination of social security systems (as amended from time to time);

“social protection” includes all interventions from public or private bodies intended to relieve households and individuals of the burden of a defined set of risks or needs, provided that neither a simultaneous reciprocal arrangement nor an individual arrangement is involved. The list of risks or needs that may give rise to social protection are: sickness and/or health care; disability; old age; survivorship; family/children; unemployment; housing; and social exclusion not elsewhere classified.”;

- (b) paragraph 2(2) is amended as follows-

- (i) in subparagraph (e) after the semi-colon insert “or”,
- (ii) in subparagraph (f) for “; or” substitute “.”,
- (iii) delete subparagraph (g).

- (c) paragraph 9 is amended as follows-

- (i) for subparagraph (1) substitute-

“(1) This condition is met if the processing-

- (a) is of personal data revealing racial or ethnic origin;
- (b) is carried out as part of a process of identifying suitable individuals to hold senior positions in a particular organisation, a type of organisation or organisations generally;
- (c) is necessary for the purposes of promoting or maintaining diversity in the racial and ethnic origins of individuals who hold senior positions in the organisation or organisations; and
- (d) can reasonably be carried out without the consent of the data subject,

subject to the exception in subparagraph (3).”,

- (ii) in subparagraph (6) for “organized” substitute “organised”;
- (d) paragraph 14 is amended as follows-
 - (i) paragraph 14 is renumbered as “14.(1)”,
 - (ii) after subparagraph (1) insert-

“ (2) In this paragraph, “anti-fraud organisation” means any unincorporated association, body corporate or other person which enables or facilitates any sharing of information to prevent fraud, or a particular kind of fraud, or which has any of these functions as its purpose or one of its purposes.”;
- (e) paragraph 15 is amended as follows-
 - (i) delete “under either of the following”,
 - (ii) in subparagraph (a) delete “a disclosure”, and after the semi-colon insert “or”,
 - (iii) in subparagraph (b) delete “a disclosure”, and after “money laundering” insert “under section 4H of the Proceeds of Crime Act 2015”;
- (f) paragraph 16 is amended as follows-
 - (i) in subparagraph (3)(b) for “paragraph (a) of this subparagraph” substitute “subsubparagraph (a) above”,
 - (ii) in subparagraph (5) for the definition of “disability” substitute-

““disability” has the same meaning as in the Disability Act 2017 (see section 4 of, and Schedule 3 to, that Act).”;

(g) paragraph 28(1) is amended as follows-

- (i) in subsubparagraph (a) delete “and”,
- (ii) in subsubparagraph (b) for the full-stop substitute “; and”,
- (iii) after subsubparagraph (b) insert-
 - “(c) is necessary for reasons of substantial public interest.”;

(h) in paragraph 41 delete “.”.

(57) Schedule 2 is amended as follows-

(a) in paragraph 1(a)(x) for “subparagraphs” substitute “subsubparagraphs”;

(b) paragraph 2 is amended as follows-

- (i) in subparagraph (1) for “paragraphs (a) to (c)” substitute “subsubparagraphs (a) to (c)”,
- (ii) in subparagraph (3)(d) for “paragraphs (a) to (c)” substitute “subsubparagraphs (a) to (c)”;

(c) in paragraph 3(3)(d) for “paragraphs (a) to (c)” substitute “subsubparagraphs (a) to (c)”;

(d) in paragraph 12(3)(b) for every instance of “paragraph” substitute “subsubparagraph”;

(e) for paragraph 14 substitute-

“Legal professional privilege.

14. The listed GDPR provisions do not apply to personal data that consists of-

- (a) information in respect of which a claim to legal professional privilege could be maintained in legal proceedings; or
- (b) information in respect of which a duty of confidentiality is owed by a professional legal adviser to a client of the adviser.”;

(f) for paragraph 21 substitute-

“Trusts.

21. Subject to the terms of the trust or any court order, the listed GDPR provisions do not apply to personal data processed in connection with a Gibraltar trust to the extent that the application of those provisions would be likely to result in the disclosure of any document that-

(a) discloses the existence of a trust, in circumstances where one or more of the beneficiaries are not aware of the existence of the trust;

(b) discloses a trustee’s deliberations as to the manner in which the trustee has exercised a power or discretion or performed a duty conferred or imposed upon the trustee;

(c) discloses the reason for any particular exercise of such power or discretion or performance of duty referred to in subparagraph (b), or the material upon which such reason shall or might have been based;

(d) relates to the exercise or proposed exercise of such power or discretion, or the performance or proposed performance of such duty, referred to in subparagraph (b); or

(e) relates to or forms part of the accounts of the trust, and a trustee is satisfied that it is in the interests of one or more of the beneficiaries, or the beneficiaries as a whole, to restrict the listed GDPR provisions.”.

(58) Schedule 3 is amended as follows-

(a) in paragraph 2(1), specifically in the definition of “the appropriate health professional”, at subsubparagraph (c) for “paragraph (a) or (b)” substitute “subsubparagraphs (a) or (b)”;

(b) in paragraph 8(1)(h) for “paragraphs (a) to (g)” substitute “subsubparagraphs (a) to (g)”.

(59) Delete Schedule 4.

(60) In Schedule 5 paragraph 4, for every instance of “paragraph (a)” substitute “subsubparagraph (a)”.

(61) Schedule 6 is amended as follows-

(a) in paragraph 8 delete “or 114(3)”;

(b) in paragraph 21 for “Schedules 2, 3 and 4” substitute “Schedules 2 and 3”.

(62) In Schedule 8 at paragraph 8(b)(iii) for “subparagraph (i) or (ii)” substitute “subsubparagraph (i) or (ii)”.

(63) Delete Schedules 9, 10 and 11.

(64) Schedule 13 is amended as follows-

(a) paragraph 1 is amended as follows-

- (i) paragraph 1 is renumbered as “1.(1)”,
- (ii) in subsubparagraph (a) for “Parts 3 and 4” substitute “Part III”,
- (iii) in subsubparagraph (b) for “those Parts apply” substitute “Part III applies”,
- (iv) in subsubparagraph (c) for “those Parts apply” substitute “Part III applies”,
- (v) in subsubparagraph (d) for “Parts 3 and 4” substitute “Part III”,
- (vi) in subsubparagraph (e) for “Parts 3 and 4” substitute “Part III”,
- (vii) in subsubparagraph (g) for “Parts 3 and 4” substitute “Part III”;

(b) after paragraph 1(1) insert-

“ (2) Section 2(2)(c) does not apply to the reference to personal data in subparagraph (1)(h).”;

(c) in paragraph 2 delete every instance of “or IV”.

(65) Schedule 15 is amended as follows-

(a) paragraph 5 is amended as follows-

(i) after subparagraph (2)(a) insert-

“(aa) to require any person on the premises to provide, in an appropriate form, a copy of information capable of being viewed using equipment on the premises which may be evidence of that failure or offence;”,

(ii) in subparagraph (2)(b) after “found on the premises” insert “and of any information capable of being viewed using equipment on the premises”,

(iii) after subparagraph (3)(a) insert-

“(aa) to require any person on the premises to provide, in an appropriate form, a copy of information capable of being viewed using equipment on the premises which may enable the Commissioner to make such a determination;”,

(iv) in subparagraph (3)(b) after “found on the premises” insert “and of any information capable of being viewed using equipment on the premises”,

(v) after subparagraph (4) insert-

“ (5) For the purposes of this paragraph, a copy of information is in an “appropriate form” if-

(a) it can be taken away; and

(b) it is visible and legible or it can readily be made visible and legible.”.

(b) in paragraph 14(1)(a) for “Executed” substitute “executed”.

(66) Schedule 17 paragraph 4 is amended as follows-

(a) in subparagraph (c) for the semi-colon substitute a full-stop;

(b) delete subparagraph (d).

Dated 24th October, 2019.

A J ISOLA,
Minister with responsibility for data protection.

Explanatory Memorandum

These Regulations amend the Data Protection Act 2004 to make necessary changes for the proper administration and functioning of the Act.

Printed by the Gibraltar Chronicle Printing Limited
Unit 3, New Harbours
Government Printers for Gibraltar,
Copies may be purchased at 6, Convent Place, Price. £1.10