

SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4794 GIBRALTAR Thursday 17th December 2020

LEGAL NOTICE NO. 458 OF 2020

EUROPEAN UNION (WITHDRAWAL) ACT 2019

DATA PROTECTION

THE DATA PROTECTION, PRIVACY AND ELECTRONIC COMMUNICATIONS (AMENDMENTS ETC) (EU EXIT) REGULATIONS 2020

In exercise of the powers conferred by section 11(1), and paragraph 1 of Schedule 3 to the European Union (Withdrawal) Act 2019, the Minister has made the following Regulations—

Title.

1. These Regulations may be cited as the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2020.

Commencement.

2. These Regulations come into operation immediately before IP completion day.

Amendments to the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019.

3. The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 are amended as follows.

4. For every instance of “exit day” substitute “IP completion day”.

5.(1) Schedule 2 is amended as follows.

(2) In the inserted Schedule at paragraph 93, after paragraph 6(5) insert—

“(5A) For the purposes of subparagraph (2), binding corporate rules which, immediately before IP completion day, provided for the appropriate safeguards referred to in Article 46(1) of the EU GDPR by virtue of Article 46(5) of the EU GDPR based on an authorisation other than by the Commissioner are to be treated as authorised by the Commissioner where—

(a) the rules have been notified to the Commissioner, and

- (b) the Commissioner has approved them, and that approval has not been withdrawn.

(5B) In subparagraph (5A)(a), a notification is valid if it-

- (a) is made by a controller or processor established in Gibraltar,
- (b) is made to the Commissioner before the end of the period of 6 months beginning with IP completion day, and
- (c) includes-
 - (i) the name and contact details of the data protection officer or other contact point for the controller or processor, and
 - (ii) such other information that the Commissioner reasonably requires.

(5C) Where a valid notification is made the Commissioner must, without undue delay-

- (a) decide whether or not to approve the rules, and
- (b) notify the controller or processor of that decision.”.

6.(1) Schedule 3 is amended as follows.

(2) In paragraph 1-

(a) after subparagraph (1)(a) insert-

“(aa) Commission Decision 2000/519/EC of 26th July 2000 pursuant to Directive 95/46/EC of the European Parliament and of the Council on the adequate protection of personal data provided in Hungary;”;

(b) after subparagraph (1)(f) insert-

“(fa) Council Decision 2004/644/EC of 13th September 2004 adopting implementing rules concerning Regulation (EC) No 45/2001 of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data;”;

(c) after subparagraph (1)(h) insert-

“(ha) Commission Decision 2008/597/EC of 3rd June 2008 adopting implementing rules concerning the Data Protection Officer pursuant to Article 24(8) of Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data by the

Community institutions and bodies and on the free movement of such data;”;

(d) in subparagraph (1)(r) for the full-stop at the end substitute a semi-colon;

(e) after subparagraph (1)(r) insert-

“(s) Commission Decision (EU) 2019/165 of 1st February 2019 laying down internal rules concerning the provision of information to data subjects and the restriction of certain of their data protection rights by the Commission in the context of administrative inquiries, pre-disciplinary, disciplinary and suspension proceedings;

(t) Commission Implementing Decision (EU) 2019/419 of 23rd January 2019 pursuant to Regulation (EU) 2016/679 of the European Parliament and of the Council on the adequate protection of personal data by Japan under the Act on the Protection of Personal Information;

(u) Regulation (EU, Euratom) 2019/493 of the European Parliament and of the Council of 25th March 2019 amending Regulation (EU, Euratom) No 1141/2014 as regards a verification procedure related to infringements of rules on the protection of personal data in the context of elections to the European Parliament.”.

(3) In paragraph 2 for “and 5eq” substitute “, 5eq, 5er and 5es”.

Dated: 17th December, 2020.

A J ISOLA,
Minister with responsibility for data protection.

EXPLANATORY MEMORANDUM

These Regulations make amendments to the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (“the 2019 Regulations”).

The 2019 Regulations made amendments to legislation in relation to the regulation of the processing of personal data, in particular in connection with the withdrawal of Gibraltar from the European Union (“EU”).

These Regulations exercise the powers in section 11(1) of the European Union (Withdrawal) Act 2019 (“the EUWA 2019”) in order to address failures of retained EU law to operate effectively and other deficiencies (in particular under section 11(2)(d)) arising from the withdrawal of Gibraltar from the EU.

These Regulations amend a number of references to exit day in the 2019 Regulations. The provisions being amended will come into force on IP completion day by operation of paragraph 1 of Schedule 2 to the European Union (Withdrawal Agreement) Act 2020. The changes made by this instrument ensure that their effects begin from IP completion day rather than exit day.

Regulation 5(2) amends the 2019 Regulations to enable binding corporate rules that pre-date the GDPR and authorised other than by the Commissioner to continue to be relied on in certain circumstances.

Regulation 6(2) amends the 2019 Regulations to revoke retained direct EU legislation.