

A closer look at



Definitions

The General Data Protection Regulation

Important

This document is part of a series, produced purely for guidance, and does not constitute legal advice or legal analysis.

All organisations that process data need to be aware that the General Data Protection Regulation may apply directly to them.

The responsibility to become familiar with the GDPR and comply with its provisions from 25th May 2018 onwards lies with the organisation.

Legal advice, if required, should be sought from a Manx advocate.

Definitions

This document contains the definitions set out in the Article and associated Recitals of the GDPR and includes the relevant section of the existing Data Protection Act 2002 for comparison (if applicable).

The definitions in this document are:-

Binding corporate rules-----	<u>5</u>
Biometric data-----	<u>5</u>
Consent -----	<u>6</u>
Controller -----	<u>6</u>
Criminal convictions and offences-----	<u>7</u>
Cross-border processing-----	<u>8</u>
Data concerning health -----	<u>8</u>
Data protection officer-----	<u>9</u>
Enterprise -----	<u>9</u>
Filing system -----	<u>10</u>
Genetic data-----	<u>10</u>
Group of undertakings-----	<u>11</u>
Information society services -----	<u>11</u>
International organisations -----	<u>12</u>
Main establishment-----	<u>12</u>
Personal data-----	<u>13</u>
Personal data breach -----	<u>14</u>
Processing-----	<u>14</u>
Processor-----	<u>15</u>
Profiling -----	<u>15</u>
Pseudonymisation -----	<u>15</u>
Recipient -----	<u>16</u>
Representative -----	<u>17</u>
Restriction on processing -----	<u>17</u>
Special categories of personal data -----	<u>18</u>
Supervisory authority -----	<u>18</u>
Supervisory authority concerned -----	<u>19</u>
Third party -----	<u>19</u>

Binding corporate rules		
DPA section	N/A	
Article	4(20)	'binding corporate rules' means personal data protection policies which are adhered to by a controller or processor established on the territory of a Member State for transfers or a set of transfers of personal data to a controller or processor in one or more third countries within a group of undertakings, or group of enterprises engaged in a joint economic activity;
Recital	N/A	

Biometric data		
DPA section	N/A	
Article	4(14)	'biometric data' means personal data resulting from specific technical processing relating to the physical, physiological or behavioural characteristics of a natural person, which allow or confirm the unique identification of that natural person, such as facial images or dactyloscopic data;
Recital	51	<p>This includes photographs, finger-prints, facial recognition, iris scans, etc.</p> <p>The processing of photographs should not systematically be considered to be processing of special categories of personal data as they are covered by the definition of biometric data only when processed through a specific technical means allowing the unique identification or authentication of a natural person.</p>

Consent

DPA section	62(3)	<p>Consent is not defined but takes the definition from Directive 95/46/EC by virtue of section 62(3)</p> <p>In construing any provision of this Act any court or tribunal shall have regard to any provision of the Convention or of the Data Protection Directive which appears to the court or tribunal to be relevant.</p>
Article	4(11)	<p>'consent' of the data subject means any freely given, specific, informed and unambiguous indication of the data subject's wishes by which he or she, by a statement or by a clear affirmative action, signifies agreement to the processing of personal data relating to him or her; (must be read in conjunction with the relevant provisions of Arts. 6,7,8,9,22,49)</p>
Recital	32, 33, 38	<p>Consent is covered in a separate document in the series</p>

Controller

DPA section	1(1)	<p>"data controller" means, subject to subsection (4), a person who (either alone or jointly or in common with other persons) determines the purposes for which and the manner in which any personal data are, or are to be, processed;</p>
DPA section	1(4)	<p>Where personal data are processed only for purposes for which they are required by or under any enactment to be processed, the person on whom the obligation to process the data is imposed by or under that enactment is for the purposes of this Act the data controller.</p>
Article	4(7)	<p>'controller' means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data;</p> <p>...</p> <p>where the purposes and means of such processing are determined by Union or Member State law, the controller or the specific criteria for its nomination may be provided for by Union or Member State law;</p>
Recital	18	<p>This Regulation does not apply to the processing of personal data by a natural person in the course of a purely personal or household activity [but does apply] to controllers or processors which provide the means for processing personal data for such personal or household activities.</p>

Criminal convictions and offences

DPA section	1(1)	Included in the definition of sensitive personal data
Article	10	<p>'Processing of personal data relating to criminal convictions and offences or related security measures based on Article 6(1) shall be carried out only under the control of official authority or when the processing is authorised by Union or Member State law providing for appropriate safeguards for the rights and freedoms of data subjects' [i.e. a necessary and proportionate measure].</p> <p>Any comprehensive register of criminal convictions shall be kept only under the control of official</p>
Recital	19	<p>The GDPR does not apply to processing of personal data for criminal law enforcement purposes by "competent authorities" (as defined under the criminal law enforcement Directive 2016/680):</p> <p><i>"The protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security and the free movement of such data, is the subject of a specific Union legal act. This Regulation should not, therefore, apply to processing activities for those purposes."</i></p> <p>BUT, some processing by competent authorities is subject to GDPR...</p> <p><i>"... Member States may entrust competent authorities ... with tasks which are not necessarily carried out for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and prevention of threats to public security, so that the processing of personal data for those other purposes, in so far as it is within the scope of Union law, falls within the scope of this Regulation."</i></p> <p>Processing undertaken by a controller which is not a 'competent authority'</p> <p>This can only occur where there is a legal obligation to do so and the processing is restricted to that which is necessary and proportionate for the identified purpose. <u>AML obligations are specifically mentioned.</u></p> <p><i>"When the processing of personal data by private bodies falls within the scope of this Regulation, this Regulation should provide for the possibility for Member States under specific conditions to restrict by law certain obligations and rights when such a restriction constitutes a necessary and proportionate measure in a democratic society to safeguard specific important interests including public security and the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security. This is relevant for instance in the framework of anti-money laundering or the activities of forensic laboratories."</i></p>

Cross-border processing		
DPA section	N/A	
Article	4(23)	<p>'cross-border processing' means either:</p> <p>(a) processing of personal data which takes place in the context of the activities of establishments in more than one Member State of a controller or processor in the Union where the controller or processor is established in more than one Member State; or</p> <p>(b) processing of personal data which takes place in the context of the activities of a single establishment of a controller or processor in the Union but which substantially affects or is likely to substantially affect data subjects in more than one Member State.</p>
Recital	N/A	

Data concerning health		
DPA section	62(1)	<p>"health record" means any record which —</p> <p>(a) consists of information relating to the physical or mental health or condition of an individual, and</p> <p>(b) has been made by or on behalf of a health professional in connection with the care of that individual;</p>
Article	4(15)	<p>'data concerning health' means personal data related to the physical or mental health of a natural person, including the provision of health care services, which reveal information about his or her health status;</p>
Recital	35	<p>Personal data concerning health should include all data pertaining to the health status of a data subject which reveal information relating to the past, current or future physical or mental health status of the data subject. This includes information about the natural person collected in the course of the registration for, or the provision of, health care services as referred to in Directive 2011/24/EU of the European Parliament and of the Council to that natural person; a number, symbol or particular assigned to a natural person to uniquely identify the natural person for health purposes; information derived from the testing or examination of a body part or bodily substance, including from genetic data and biological samples; and any information on, for example, a disease, disability, disease risk, medical history, clinical treatment or the physiological or bio-medical state of the data subject independent of its source, for example from a physician or other health professional, a hospital, a medical device or an in vitro diagnostic test.</p>

Data protection officer		
DPA section	N/A	
Article	37 38 39	<p>Not defined but details are included of:</p> <p>Designation</p> <p>Position</p> <p>Tasks</p> <p>DPOs are covered in a separate document in the series</p>
Recital	97	<p>Where the processing is carried out by a public authority, except for courts or independent judicial authorities when acting in their judicial capacity, where, in the private sector, processing is carried out by a controller whose core activities consist of processing operations that require regular and systematic monitoring of the data subjects on a large scale, or where the core activities of the controller or the processor consist of processing on a large scale of special categories of personal data and data relating to criminal convictions and offences, a person with expert knowledge of data protection law and practices should assist the controller or processor to monitor internal compliance with this Regulation. In the private sector, the core activities of a controller relate to its primary activities and do not relate to the processing of personal data as ancillary activities. The necessary level of expert knowledge should be determined in particular according to the data processing operations carried out and the protection required for the personal data processed by the controller or the processor. Such data protection officers, whether or not they are an employee of the controller, should be in a position to perform their duties and tasks in an independent manner.</p>

Enterprise		
DPA section	N/A	
Article	4(18)	<p>'enterprise' means a natural or legal person engaged in an economic activity, irrespective of its legal form, including partnerships or associations regularly engaged in an economic activity;</p>
Recital	N/A	

Filing system		
DPA section	1(1)	<p>“relevant filing system” means any set of information relating to individuals to the extent that, although the information is not processed by means of equipment operating automatically in response to instructions given for that purpose, the set is structured, either by reference to individuals or by reference to criteria relating to individuals, in such a way that specific information relating to a particular individual is readily accessible;</p>
Article	4(6)	<p>‘filing system’ means any structured set of personal data which are accessible according to specific criteria, whether centralised, decentralised or dispersed on a functional or geographical basis;</p>
Recital	15	<p>... The protection of natural persons should apply to the processing of personal data by automated means, as well as to manual processing, if the personal data are contained or are intended to be contained in a filing system. Files or sets of files, as well as their cover pages, which are not structured according to specific criteria should not fall within the scope of this Regulation.</p>

Genetic data		
DPA section	N/A	
Article	4(13)	<p>‘genetic data’ means personal data relating to the inherited or acquired genetic characteristics of a natural person which give unique information about the physiology or the health of that natural person and which result, in particular, from an analysis of a biological sample from the natural person in question;</p>
Recital	34	<p>Genetic data should be defined as personal data relating to the inherited or acquired genetic characteristics of a natural person which result from the analysis of a biological sample from the natural person in question, in particular chromosomal, deoxyribonucleic acid (DNA) or ribonucleic acid (RNA) analysis, or from the analysis of another element enabling equivalent information to be obtained.</p>

Group of undertakings		
DPA section	N/A	
Article	4(19)	'group of undertakings' means a controlling undertaking and its controlled undertakings;
Recital	37	A group of undertakings should cover a controlling undertaking and its controlled undertakings, whereby the controlling undertaking should be the undertaking which can exert a dominant influence over the other undertakings by virtue, for example, of ownership, financial participation or the rules which govern it or the power to have personal data protection rules implemented. An undertaking which controls the processing of personal data in undertakings affiliated to it should be regarded, together with those undertakings, as a group of undertakings.

Information society service		
DPA section	N/A	
Article	4(25)	<p>'information society service' means a service as defined in point (b) of Article 1(1) of Directive (EU) 2015/1535 of the European Parliament and of the Council</p> <p>Article 1(1)(b) of Directive (EU) 2015/1535 states:</p> <p>'service' means any Information Society service, that is to say, any service normally provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services. For the purposes of this definition: (i) 'at a distance' means that the service is provided without the parties being simultaneously present; (ii) 'by electronic means' means that the service is sent initially and received at its destination by means of electronic equipment for the processing (including digital compression) and storage of data, and entirely transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means; (iii) 'at the individual request of a recipient of services' means that the service is provided through the transmission of data on individual request. An indicative list of services not covered by this definition is set out in Annex I of Directive (EU) 2015/1535;</p>
Recital	N/A	

International organisation

DPA section	N/A	
Article	4(26)	'international organisation' means an organisation and its subordinate bodies governed by public international law, or any other body which is set up by, or on the basis of, an agreement between two or more countries.
Recital	N/A	

Main establishment

DPA section	N/A	
Article	4(16)	<p>'main establishment' means:</p> <p>(a) as regards a controller with establishments in more than one Member State, the place of its central administration in the Union, unless the decisions on the purposes and means of the processing of personal data are taken in another establishment of the controller in the Union and the latter establishment has the power to have such decisions implemented, in which case the establishment having taken such decisions is to be considered to be the main establishment;</p> <p>(b) as regards a processor with establishments in more than one Member State, the place of its central administration in the Union, or, if the processor has no central administration in the Union, the establishment of the processor in the Union where the main processing activities in the context of the activities of an establishment of the processor take place to the extent that the processor is subject to specific obligations under this Regulation;</p>
Recital	36	<p>The main establishment of a controller in the Union should be the place of its central administration in the Union, unless the decisions on the purposes and means of the processing of personal data are taken in another establishment of the controller in the Union, in which case that other establishment should be considered to be the main establishment.</p> <p>The main establishment of a controller in the Union should be determined according to objective criteria and should imply the effective and real exercise of management activities determining the main decisions as to the purposes and means of processing through stable arrangements.</p> <p>That criterion should not depend on whether the processing of personal data is carried out at that location. The presence and use of technical means and technologies for processing personal data or processing activities do not, in themselves, constitute a main establishment and are therefore not determining criteria for a main establishment.</p> <p>The main establishment of the processor should be the place of its central administration in the Union or, if it has no central administration in the Union, the place where the main processing activities take place in the Union ...</p> <p>Where the processing is carried out by a group of undertakings, the main establishment of the controlling undertaking should be considered to be the main establishment of the group of undertakings, except where the purposes and means of processing are determined by another undertaking.</p>

Personal data

DPA section	1(1)	<p>“personal data” means data which relate to a living individual who can be identified —</p> <p>(a) from those data, or</p> <p>(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual;</p>
Article	4(1)	<p>‘personal data’ means any information relating to an identified or identifiable natural person (‘data subject’);</p> <p>an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;</p>
Recital	14	<p>The protection afforded by this Regulation should apply to natural persons, whatever their nationality or place of residence, in relation to the processing of their personal data. This Regulation does not cover the processing of personal data which concerns legal persons ...</p>
	26	<p>The principles of data protection should apply to any information concerning an identified or identifiable natural person.</p> <p>To determine whether a natural person is identifiable, account should be taken of all the means reasonably likely to be used, such as singling out, either by the controller or by another person to identify the natural person directly or indirectly. To ascertain whether means are reasonably likely to be used to identify the natural person, account should be taken of all objective factors, such as the costs of and the amount of time required for identification, taking into consideration the available technology at the time of the processing and technological developments.</p> <p>The principles of data protection should ... not apply to anonymous information, namely information which does not relate to an identified or identifiable natural person or to personal data rendered anonymous in such a manner that the data subject is not or no longer identifiable.</p> <p>This Regulation does not ... concern the processing of such anonymous information, including for statistical or research purposes</p>
	27	<p>This Regulation does not apply to the personal data of deceased persons.</p>
	30	<p>Natural persons may be associated with online identifiers provided by their devices, applications, tools and protocols, such as internet protocol addresses, cookie identifiers or other identifiers such as radio frequency identification tags. This may leave traces which, in particular when combined with unique identifiers and other information received by the servers, may be used to create profiles of the natural persons and identify them.</p>
	18	<p>This Regulation does not apply to the processing of personal data by a natural person in the course of a purely personal or household activity and thus with no connection to a professional or commercial activity. Personal or household activities could include correspondence and the holding of addresses, or social networking and online activity undertaken within the context of such activities.</p>

Personal data breach		
DPA section	N/A	
Article	4(12)	'personal data breach' means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed;
Recital		Security is covered in a separate document in the series

Processing		
DPA section	1(1)	<p>"processing", in relation to information or data, means obtaining, recording or holding the information or data or carrying out any operation or set of operations on the information or data, including —</p> <p>(a) organisation, adaptation or alteration of the information or data,</p> <p>(b) retrieval, consultation or use of the information or data,</p> <p>(c) disclosure of the information or data by transmission, dissemination or otherwise making available, or</p> <p>(d) alignment, combination, blocking, erasure or destruction of the information or data;</p>
Article	4(2)	'processing' means any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction;
Recital	N/A	

Processor

DPA section	1(1)	"data processor", in relation to personal data, means any person (other than an employee of the data controller) who processes the data on behalf of the data controller;
Article	4(8)	'processor' means a natural or legal person, public authority, agency or other body which processes personal data on behalf of the controller;
Recital	N/A	

Profiling

DPA	N/A	
Article	4(4)	'profiling' means any form of automated processing of personal data consisting of the use of personal data to evaluate certain personal aspects relating to a natural person, in particular to analyse or predict aspects concerning that natural person's performance at work, economic situation, health, personal preferences, interests, reliability, behaviour, location or movements; (See the associated rights in Art. 15, 21, 22)
Recital	N/A	Rights of individuals are covered in a separate document in the series

Pseudonymisation

DPA section	N/A	
Article	4(5)	'pseudonymisation' means the processing of personal data in such a manner that the personal data can no longer be attributed to a specific data subject without the use of additional information, provided that such additional information is kept separately and is subject to technical and organisational measures to ensure that the personal data are not attributed to an identified or identifiable natural person;
Recital	26	<p>Personal data which have undergone pseudonymisation, which could be attributed to a natural person by the use of additional information, should be considered to be information on an identifiable natural person.</p> <p>To determine whether a natural person is identifiable, account should be taken of all the means reasonably likely to be used, such as singling out, either by the controller or by another person to identify the natural person directly or indirectly. To ascertain whether means are reasonably likely to be used to identify the natural person, account should be taken of all objective factors, such as the costs of and the amount of time required for identification, taking into consideration the available technology at the time of the processing and technological developments.</p> <p>See also Recitals 28-29</p>

Recipient

DPA section	62(1)	<p>“recipient”, in relation to any personal data, means any person to whom the data are disclosed, including any person (such as an employee or agent of the data controller, a data processor or an employee or agent of a data processor) to whom they are disclosed in the course of processing the data for the data controller, but does not include any person to whom disclosure is or may be made as a result of, or with a view to, a particular inquiry by or on behalf of that person made in the exercise of any power conferred by law;</p>
Article	4(9)	<p>‘recipient’ means a natural or legal person, public authority, agency or another body, to which the personal data are disclosed, whether a third party or not.</p> <p>However, public authorities which may receive personal data in the framework of a particular inquiry in accordance with Union or Member State law shall not be regarded as recipients; the processing of those data by those public authorities shall be in compliance with the applicable data protection rules according to the purposes of the processing;</p>
Recital	31	<p>Public authorities to which personal data are disclosed in accordance with a legal obligation for the exercise of their official mission, such as tax and customs authorities, financial investigation units, independent administrative authorities, or financial market authorities responsible for the regulation and supervision of securities markets should not be regarded as recipients if they receive personal data which are necessary to carry out a particular inquiry in the general interest, in accordance with Union or Member State law.</p>

Representative

DPA section	3(2)	A data controller falling within subsection (1)(b) must nominate for the purposes of this Act a representative established in the Island.
Article	4(17)	'representative' means a natural or legal person established in the Union who, designated by the controller or processor in writing pursuant to Article 27, represents the controller or processor with regard to their respective obligations under this Regulation;
Recital	80	Where a controller or a processor not established in the Union is processing personal data of data subjects who are in the Union whose processing activities are related to the offering of goods or services, irrespective of whether a payment of the data subject is required, to such data subjects in the Union, or to the monitoring of their behaviour as far as their behaviour takes place within the Union, the controller or the processor should designate a representative, unless the processing is occasional, does not include processing, on a large scale, of special categories of personal data or the processing of personal data relating to criminal convictions and offences, and is unlikely to result in a risk to the rights and freedoms of natural persons, taking into account the nature, context, scope and purposes of the processing or if the controller is a public authority or body. The representative should act on behalf of the controller or the processor and may be addressed by any supervisory authority. The representative should be explicitly designated by a written mandate of the controller or of the processor to act on its behalf with regard to its obligations under this Regulation. The designation of such a representative does not affect the responsibility or liability of the controller or of the processor under this Regulation. Such a representative should perform its tasks according to the mandate received from the controller or processor, including cooperating with the competent supervisory authorities with regard to any action taken to ensure compliance with this Regulation. The designated representative should be subject to enforcement proceedings in the event of non-compliance by the controller or processor.

Restriction of processing

DPA section	N/A	
Article	4(3)	'restriction of processing' means the marking of stored personal data with the aim of limiting their processing in the future; (see the associated rights in Arts 18, 19)
Recital	N/A	Rights of individuals are covered in a separate document in the series

Special categories of personal data

DPA section	1(1)	<p>“sensitive personal data” means personal data consisting of information as to —</p> <p>(a) the racial or ethnic origin of the data subject,</p> <p>(b) his political opinions,</p> <p>(c) his religious beliefs or other beliefs of a similar nature,</p> <p>(d) whether he is a member of a trade union (within the meaning of the Trade Unions Act 1991),</p> <p>(e) his physical or mental health or condition,</p> <p>(f) his sexual life,</p> <p>(g) the commission or alleged commission by him of any offence, or</p> <p>(h) any proceedings for any offence committed or alleged to have been committed by him, the disposal of such proceedings or the sentence of any court in such proceedings;</p>
Article	9	Processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation shall be prohibited.
Recital	51 - 56	Personal data which are, by their nature, particularly sensitive in relation to fundamental rights and freedoms merit specific protection as the context of their processing could create significant risks to the fundamental rights and freedoms.

Supervisory authority

DPA section	N/A	
Article	4(21)	‘supervisory authority’ means an independent public authority which is established by a Member State pursuant to Article 51
Recital	N/A	

Supervisory authority concerned

DPA section	N/A	
Article	4(22)	<p>'supervisory authority concerned' means a supervisory authority which is concerned by the processing of personal data because:</p> <ul style="list-style-type: none"> (a) the controller or processor is established on the territory of the Member State of that supervisory authority; (b) data subjects residing in the Member State of that supervisory authority are substantially affected or likely to be substantially affected by the processing; or (c) a complaint has been lodged with that supervisory authority;
Recital	N/A	

Third party

DPA section	62(1)	<p>"third party", in relation to personal data, means any person other than —</p> <ul style="list-style-type: none"> (a) the data subject, (b) the data controller, or (c) any data processor or other person authorised to process data for the data controller or processor;
Article	4(10)	<p>'third party' means a natural or legal person, public authority, agency or body other than the data subject, controller, processor and persons who, under the direct authority of the controller or processor, are authorised to process personal data;</p>
Recital	N/A	

