

The data protection legislation aims to promote high standards in the handling of personal data by controllers and processors (“organisations”). Personal data may be in electronic format or, in some cases, may be manual records in a suitably sophisticated filing system. Organisations must follow the principles of data protection, thereby protecting an individual’s right to privacy.

The principles can be found in Article 5 of the Applied GDPR and are:

1. Lawfulness, fairness and transparency
2. Purpose limitation
3. Data minimisation
4. Accuracy
5. Storage limitation
6. Integrity and confidentiality

There is an overarching principle of accountability and organisations must be able to demonstrate how they comply with the principles when processing personal data.

Summary of your rights

You have rights regarding the use of your personal data. These rights, set out in Articles 15 - 22 of the Applied GDPR, are:

- Right to information about processing
- Right of access
- Right to rectification
- Right to erasure (‘right to be forgotten’)
- Right to restriction of processing
- Right to data portability
- Right to object to processing

These rights can only be exercised against ‘controllers’, which must respond in a timely and appropriate manner. The data protection legislation makes it clear that the exercise of rights, or the associated obligations of organisations, cannot be removed or restricted by any enactment or rule of law which otherwise prohibits or restricts the disclosure of the personal data or authorises the withholding of such personal data.

Article 12 of the Applied GDPR sets out general rules in respect of duties and procedural aspects of complying with rights, together with exceptions to those general rules.

Individuals can take remedial actions against organisations if they consider that their rights have been infringed or there is non-compliance with the requirements of the law.

Your rights in more detail

1. Right of access by the data subject

Article 15 of the Applied GDPR provides the right of access to personal data.

The exercise of this right is commonly known as making a 'subject access request'.

You can make a request at any time and you are not required to explain why you are exercising your right. Although it is often used before exercising any of your other information rights, it can be exercised to find out whether any information about you is being processed or not.

The right of access enables you to find out what personal data is held, why, who it is given to, and to check the accuracy of the information held.

You can also request details about the logic involved in automated decisions (unless this is a trade secret), where the automated means is the sole basis for any decision, for example evaluating your performance at work, creditworthiness, reliability or conduct, online credit card or job applications.

The right of access **does not** give you:

- a right to copies of 'documents' or recordings, only to the information constituting your 'personal data' – you may receive a summary of your personal data or telephone conversation. It is not therefore a substitute for the disclosure process in legal actions.
- a right to receive third party information, i.e. names or other information which would identify a third party **unless** that person has consented to the disclosure of their details, the organisation considers it reasonable in all the circumstances not to withhold the details or the record is a health, social care or education record when different rules apply to third party details of staff of those Departments.
- a right to receive information about a complaint you have made regarding another person – this will not be your personal data.

This right is subject to a few exemptions. There is further information on the website about the right of access, the exemptions from the right, and how to make a subject access request.

2. Right to rectification

Article 16 of the Applied GDPR gives the right to rectification of inaccurate data.

The law also explicitly states that, having regard to the purpose for processing the personal data, you have the right to obtain completion of incomplete personal data "including by means of providing a supplementary statement".

If the organisation has disclosed inaccurate personal data, Article 19 applies and the organisation must advise each recipient of the inaccurate data in question about the rectification and, if requested, they must inform the data subject about those recipients.

Organisations may refuse to comply with all or part of the request for rectification but they must be able to justify their decision.

Further information on the refusal to comply with requests is on the website.

3. Right to erasure

Article 17 of the Applied GDPR gives individuals the right to erasure of their personal data, which is also known as “the right to be forgotten”. This right also gives you the right to request details of the recipients to whom the organisation has disclosed the personal data to which the right applies.

Although you have the right to obtain erasure of your personal data without undue delay on request, the right is not absolute and organisations are only obliged to erase personal data in the circumstances specified in Article 17(1).

The right can be exercised when one of the following applies:

- consent is withdrawn and the organisation has no other grounds for processing that personal data;
- the right to object to direct marketing has been exercised;
- the right to object to processing has been exercised and there are no other grounds for processing.

or the data:

- is no longer necessary for the purpose(s) for which they were collected or otherwise processed;
- has been unlawfully processed;
- have to be erased to comply with a legal obligation on the organisation;
- was collected in relation to information society services and relates to a child (or a child that has now reached maturity)

4. Right to restriction of processing

Article 18 of the Applied GDPR gives individuals the right to restrict the processing of their personal data.

You can exercise this right in the four scenarios set out in Article 18(1), which are:

- the accuracy of the data is contested (for a period to enable the organisation to verify the accuracy)

- the processing is unlawful and the data subject objects to the erasure of the data and requests restrictions of their use instead
- the organisation no longer requires the data for their purposes but the data subject require them for the establishment, exercise or defence of legal claims
- the data subject has objected to processing based on the grounds of legitimate interests or tasks carried out in the public interest under official authority, pending verification (i.e. Article 21(1) applies)

During the term of the restriction, Article 18(2) sets out the circumstances in which personal data can be processed by the organisation.

These are:

- for storage
- with the consent of the data subject
- for the establishment, exercise or defence of legal claims
- for reasons of important public interest of the Island, Union or Member State

The scenarios in which the right can be exercised relate to **temporary** and **permanent** restrictions.

Further information on temporary and permanent restrictions on processing can be found on the website.

5. Data Portability

Article 20 of the Applied GDPR relates to the right to receive personal data that you have provided and the right to transmit the personal data to another organisation. This must be conducted without hindrance from the organisation to which the personal data has been provided.

This right is limited in its application and can only be exercised in respect of personal data:

- Provided by the individual to the organisation; and
- Processed with the consent of the individual or under the terms of a contract; and
- Processed by automated means.

Data 'provided' by the individual, is not limited to information that has been typed in, such as a username or email address. It may include data that the organisation has gathered from monitoring the individual's activities when a device or service has been used.

The right does not apply in circumstances where:

- the processing is based on any legal ground other than consent or contract; or
- the personal data is processed by a public authority in the exercise of its public duties.

Further information on data portability can be found on the website.

6. Right to object to processing

Article 21 of the Applied GDPR gives individuals the right to object to the processing of their personal data.

There are two circumstances where the right to object to processing can be exercised:

1. An absolute right to object to processing for the purposes of direct marketing. This applies to ANY form of marketing and also applies to the profiling of individuals undertaken in respect of direct marketing activities.
2. A qualified general right in specified circumstances. This is the right to object to all, or particular, elements of processing, such as disclosures to certain parties, including for profiling purposes, where the processing is necessary for one of two specific grounds:
 - The performance of a task carried out in the public interest or in the exercise of official authority vested in the organisation;
 - The purposes of legitimate interests pursued by the organisation or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject, which require protection of personal data, in particular where the data subject is a child.

There are restrictions and exemptions to this right; further information is on the website.

Compensation and other remedies

The Commissioner cannot award compensation.

If you think that you have suffered damage, including financial loss, distress and any other adverse effect caused by the contravention or infringement of the data protection legislation, you have a right to seek compensation from the organisation via the court.

Individuals also have other remedies and these can be sought without prejudicing any other action or remedy.

The remedies include the rights to:

- Make a complaint to the Commissioner;
- An effective judicial remedy against an organisation
- Receive compensation for material or non-material damage
- An effective judicial remedy against a supervisory authority

A judicial remedy is the means by which a court of law, usually in civil matters, enforces a right, imposes a penalty, or makes an order to impose its will.

It is recommended that you seek the advice of a Manx Advocate before commencing any court action.

Further guidance on the remedies is on the website.

Data Protection Complaints

Article 77 of the Applied GDPR and Regulation 122 of the Implementing Regulations allow individuals to make a complaint to the Commissioner about organisations if they consider that an infringement of the data protection legislation has occurred in connection with the processing of their personal data.

You may make a complaint to the Commissioner if you consider that:

- the processing of your personal data has contravened the principles;
- your rights have not been complied with;
- the data protection legislation has been infringed in any other way.

If you are thinking about making a complaint about the use of **domestic CCTV**, please read the website guidance before doing so.

A complaint form, and further information on how to make a complaint, is on the website.

Whilst in general, no fee can be charged for handling a complaint, the Commissioner can refuse to act or charge a reasonable fee based on administrative costs if complaints are manifestly unfounded or excessive.

The Commissioner is required to investigate the subject matter of complaints, to the extent appropriate, and inform the complainant of the progress and outcome of the investigation within a 'reasonable period', in particular if further investigation or coordination with another supervisory authority outside the Island is required.

If you have made a complaint to the Commissioner, you can make an application to the Data Protection Tribunal to seek an order under Regulation 123 of the Implementing Regulations requiring the Commissioner to progress their complaint in certain circumstances.

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