

Information Notices

The purpose of this guidance is to explain the various statutory provisions that relate to, the content of, the right of appeal against and the potential consequences of failing to comply with, an information notice.

It does not constitute legal guidance.

INTRODUCTION

When investigating a complaint or other compliance matter the Commissioner must obtain information.

The Commissioner may request a controller or processor to provide information under the obligation to cooperate with the Commissioner. However, the Commissioner has the power to order a controller or processor to provide information by giving an information notice.

An information notice is a formal request that requires specific information to be provided to the Commissioner within a specified time frame.

An information notice may be given to a controller, processor or any other person at any time during an investigation.

STATUTORY PROVISIONS

Applied GDPR and Applied LED

The relevant tasks and powers of the Commissioner under the Applied GDPR and the Applied LED that may lead to the Commissioner giving an information notice are set out in Annex 1.

The obligation for a controller or processor to co-operate, on request, with the Commissioner in the performance of his tasks are also set out in Annex 1.

GDPR and LED Implementing Regulations 2018

The general function for the Commissioner to give an information notice is set out in Regulation 77(5) of the GDPR and LED Implementing Regulations 2018 ('the Regulations').

The power for the Commissioner to give an information notice is provided for by Regulation 101 of the Regulations. How an information notice must be given is set out in Regulation 100.

Regulation 102 restricts the use of an information notice in particular circumstances and also sets out when certain information does not have to be provided in response to an information notice.

Regulation 103 set outs the consequence of making a false statement in response to an information notice.

Regulation 117 sets out the consequences of failure to comply with an information notice.

Regulations 100 to 103 and 117 are set out in Annex 2.

CONTENT OF AN INFORMATION NOTICE

An information notice must state why the Commissioner requires the information.

The Commissioner is only restricted in giving an information notice where a matter concerns the special purposes (see Regulation 102).

In general, the Commissioner may give an information notice in the following scenarios:-

- 1 the Commissioner has received a complaint and requires the information to progress investigation of that complaint; or
2. the Commissioner is conducting an investigation into compliance with data protection legislation and requires the information to further that investigation.

As required by Regulation 100, a notice must be addressed to the proper officer, for example the secretary or directors of the body at its principal office. However, where a controller or processor has advised the Commissioner of a designated Data Protection Officer (DPO), the information notice will also be sent to the DPO.

An information notice will specify:-

- specific information or categories of information to be provided;
- the form in which the information must be provided; and
- how and when the information is to be provided.

An information notice is not restricted to personal data and may require other information to be provided. For example, while not exhaustive, an information notice may require the provision of copies of policy or procedure documents, records of processing, copies of security testing or evaluation reports, audit logs or an explanation of actions taken.

Usually the Commissioner will ask for the information to be provided within 30 calendar days but if there is an urgency the Commissioner can request the information to be provided within 7 days.

An information notice also provides information about the right of appeal.

RIGHT OF APPEAL

There is a right of appeal against an information notice. The provisions relating to the right of appeal, including how to make an appeal, are set out in Annex 3.

An appeal can be made against the information notice, or, if the information notice contains an urgency statement, an appeal can be made against that statement or the effects of that statement on any other part of the notice.

In general terms an appeal must be made within 28 days of the date of issue of the information notice.

If an appeal is brought against an information notice, the information does not have to be provided to the Commissioner pending the determination or withdrawal of the appeal.

FAILURE TO COMPLY WITH AN INFORMATION NOTICE

The Commissioner may certify in writing to the High Court that a controller or processor has failed to comply with an information notice. The High Court must inquire into the matter and may deal with the controller or processor, as the case may be, as if it had committed a contempt of court.

The Commissioner may also give a Penalty Notice.

PENALTY NOTICE

Under Regulation 112(1)(b) (see Annex 4), the Commissioner may give a penalty notice for failure to comply with an information notice.

The Commissioner may, therefore, by written notice, a penalty notice, require the person to pay a penalty up to the maximum amount of £1 million. (See Regulation 114 in Annex 4)

PROVIDING FALSE INFORMATION

Under Regulation 103 (see Annex 2), it is an offence for a person to knowingly or recklessly make a false statement in response to an information notice.

CONCEALING INFORMATION

Under Regulation 129(1) (see Annex 4), a person commits an offence if the Commissioner has made a request for information and the person alters, defaces, erases destroys or conceals information with the intention of preventing the supply of that information to the Commissioner.

The penalty for this offence upon summary conviction is a fine not exceeding £10,000 or custody for a term not exceeding 6 months, or both. (See Regulation 141(1) Annex 4).

CORPORATE LIABILITY

Where an offence has been committed by a body corporate and it is proved to have been committed with the consent, or connivance of, or to be attributable to neglect on the part of an officer of the company then that officer also commits the offence. (See Regulation 143 in Annex 4)

ANNEX 1

APPLIED GDPR AND APPLIED LED

Commissioner's Tasks

Article 57 of the Applied GDPR sets out the Commissioner's tasks including:-

Art 57(1)(a): "monitor and enforce the application of this Regulation"

Art 57(1)(f): "handle complaints ..., and investigate, to the extent appropriate, the subject matter of the complaint..." and

Art 57(1)(h): "conduct investigations on the application of this Regulation..."

Article 46 of the Applied LED sets out the Commissioner's tasks including:-

Art 46(1)(a): "monitor and enforce the application of the provisions adopted pursuant to this Directive and its implementing measures;"

Art 46(1)(f): "deal with complaints lodged ... and investigate, to the extent appropriate, the subject-matter of the complaint..."

Art 46(1)(i): "conduct investigations on the application of this Directive..."

Commissioner's Powers

Article 58 of the Applied GDPR sets out the Commissioner's powers including:-

Art 58(1): "Each supervisory authority shall have all of the following investigative powers:

(a)to order the controller and the processor, and, where applicable, the controller's or the processor's representative to provide any information it requires for the performance of its tasks...

(e)to obtain, from the controller and the processor, access to all personal data and to all information necessary for the performance of its tasks;..."

Article 47 of Applied LED sets out the Commissioner's powers including:-

Art 47(1) "Each Member State shall provide by law for each supervisory authority to have effective investigative powers. Those powers shall include at least the power to obtain from the controller and the processor access to all personal data that are being processed and to all information necessary for the performance of its tasks."

Cooperation with the Commissioner

Applied GDPR Art 31: *"The controller and the processor and, where applicable, their representatives, shall cooperate, on request, with the supervisory authority in the performance of its tasks."*

Applied LED Art 26: *"Member States shall provide for the controller and the processor to cooperate, on request, with the supervisory authority in the performance of its tasks on request. "*

ANNEX 2

GDPR AND LED IMPLEMENTING REGULATIONS 2018

REGULATIONS 100 to 103

100: Notice from the Information Commissioner

- (1) This regulation applies in relation to a notice authorised or required by these Regulations to be given to a person by the Information Commissioner*
- (2) The notice may be given to a natural person —*
 - (a) by delivering it to the natural person;*
 - (b) by sending it to the natural person by post addressed to the natural person at his or her usual or last-known place of residence or business; or*
 - (c) by leaving it for the natural person at that place.*
- (3) The notice may be given to a body corporate or unincorporate, —*
 - (a) by sending it by post to the proper officer of the body at its principal office; or*
 - (b) by addressing it to the proper officer of the body and leaving it at that office.*
- (4) The notice may be given to the person by other means, including by electronic means, with the person's consent.*
- (5) In this regulation, — "principal office", in relation to a registered company, means its registered office; "proper officer", in relation to any body, means the secretary or other executive officer, including but not limited to the registered agent, board of directors, or equivalent governing body, as may be charged with the conduct of its general; "registered company" means a company registered under the enactments relating to companies for the time being in force in the Island.*
- (6) For the purposes of this regulation, so far as it relates to the addresses of controllers —*
 - (a) the address of a registered company is that of its registered office; and*
 - (b) the address of a person (other than a registered company) carrying on a business is that of the person's principal place of business on the Island.*
- (7) This regulation is without prejudice to any other lawful method of giving a notice.*

101: Information notices

- (1) *The Information Commissioner may, by written notice (an "information notice"),*
 - (a) *require a controller or processor to provide the Information Commissioner with information that the Information Commissioner reasonably requires for the purposes of carrying out the Information Commissioner's functions under data protection legislation; or*
 - (b) *require any person to provide the Information Commissioner with information that the Information Commissioner reasonably requires for the purposes of —*
 - (i) *investigating a suspected failure of a type described in regulation 106(2) or a suspected offence under data protection legislation; or*
 - (ii) *determining whether the processing of personal data is carried out by an individual in the course of a purely personal or household activity.*
- (2) *An information notice must state why the Information Commissioner requires the information.*
- (3) *An information notice*
 - (a) *may specify or describe particular information or a category of information;*
 - (b) *may specify the form in which the information must be provided;*
 - (c) *may specify the time at which, or the period within which, the information must be provided;*
 - (d) *may specify the place where the information must be provided. This is subject to the restrictions in paragraphs (5) to (7). (*
- (4) *An information notice must provide information about the rights of appeal under regulation 120.*
- (5) *An information notice may not require a person to provide information before the end of the period within which an appeal may be brought against the notice.*
- (6) *If an appeal is brought against an information notice, the information need not be provided pending the determination or withdrawal of the appeal.*
- (7) *If an information notice —*
 - (a) *states that, in the Information Commissioner's opinion, the information is required urgently; and*
 - (b) *gives the Information Commissioner's reasons for reaching that opinion, paragraphs(5) and (6) do not apply but the notice must not require the information to be provided before the end of the period of 72 hours beginning with the day on which the notice is given.*

- (8) *The Information Commissioner may cancel an information notice by written notice to the person to whom it was given.*
- (9) *In paragraph (1), in relation to a person who is a controller or processor for the purposes of the applied GDPR, the reference to a controller or processor includes a representative of a controller or processor designated under Article 27 of the applied GDPR (representatives of controllers or processors not established in the European Union).*
- (10) *The provisions of this regulation and of regulations 102 and 103 do not in any way limit the Information Commissioner's ability to exercise any powers conferred on him or her by Article 58 of the applied GDPR that are not specifically referred to in any of those regulations. Accordingly, the Information Commissioner may exercise any of those powers that may reasonably be exercised independently of serving an information notice.*

102: Information notices: restrictions

- (1) *The Information Commissioner may not give an information notice with respect to the processing of personal data for the special purposes unless —*
 - (a) *a determination under regulation 130 with respect to the data or the processing has taken effect; or*
 - (b) *the Information Commissioner —*
 - (i) *has reasonable grounds for suspecting that such a determination could be made; and*
 - (ii) *the information is required for the purposes of making such a determination.*
- (2) *An information notice does not require a person to give the Information Commissioner information in respect of a communication which is made —*
 - (a) *between a professional legal adviser and the adviser's client; and*
 - (b) *in connection with the giving of legal advice to the client with respect to obligations, liabilities or rights under the data protection legislation.*
- (3) *An information notice does not require a person to give the Information Commissioner information in respect of a communication which is made —*
 - (a) *between a professional legal adviser and the adviser's client or between such an adviser or client and another person;*
 - (b) *in connection with or in contemplation of proceedings under or arising out of the data protection legislation; and*
 - (c) *for the purposes of such proceedings.*

- (4) *In paragraphs (2) and (3), references to the client of a professional legal adviser include references to a person acting on behalf of the client.*
- (5) *An information notice does not require a person to provide the Information Commissioner with information if doing so would, by revealing evidence of the commission of an offence, expose the person to proceedings for that offence.*
- (6) *The reference to an offence in paragraph (5) does not include an offence under, —*
(a) these Regulations; or
(b) section 5 of the Perjury Act 1952 (false statements made otherwise than on oath).
- (7) *An oral or written statement provided by a person in response to an information notice may not be used in evidence against that person on a prosecution for an offence under these Regulations (other than an offence under regulation 141) unless in the proceedings, —*
(a) in giving evidence the person provides information inconsistent with the statement; and
(b) evidence relating to the statement is adduced, or a question relating to it is asked, by that person or on that person's behalf.
- (8) *In paragraph (5), in relation to an information notice given to a representative of a controller or processor designated under Article 27 of the applied GDPR, the reference to the person providing the information being exposed to proceedings for an offence includes a reference to the controller or processor being exposed to such proceedings.*

103: Offence of making false statements in an information notice

It is an offence for a person, in response to an information notice —

- (a) to make a statement which the person knows to be false in a material respect;*
(b) recklessly to make a statement which is false in a material respect

(See regulation 141(2), which specifies the penalty for offences under this regulation.)

117: Failure to comply with notices

- (1) *The Information Commissioner may certify in writing to the High Court that a controller or processor has, or both have (as the case may be), failed to comply with —*
 - (a) *an information notice; ...*
- (2) *The Information Commissioner must not exercise the power under paragraph (1) before the expiry of the period of time specified in the relevant notice.*
- (3) *The High Court must inquire into the matter and, after hearing —*
 - (a) *any witness who may be produced against or on behalf of the controller or processor, as the case may be; and*
 - (b) *any statement that may be offered in defence, may deal with the controller or processor, as the case may be, as if it had committed a contempt of court.*
- (4) *This regulation does not confer any right of action in civil proceedings in respect of a failure to comply with a duty imposed by or under these Regulations.*
- (5) *The High Court may for the purposes of securing compliance with data protection legislation make an order requiring the controller (or a processor acting on behalf of that controller), in respect of the processing, —*
 - (a) *to take steps specified in the order; or*
 - (b) *to refrain from taking steps specified in the Order.*

ANNEX 3

RIGHT OF APPEAL, TRIBUNAL PROCEDURES AND RULES

APPEAL

120: Right of appeal

- (1) A person who is given any of the following notices may appeal to the Tribunal—
- (a) an information notice;
- ...
- (2) Where a notice listed in paragraph (1) contains a statement under regulation 101(7)(a), 104(8)(a) or 107(8)(a) (urgency), the person given the notice may appeal against—
- (a) the Information Commissioner's decision to include the statement in the notice; or
 - (b) the effect of its inclusion as respects any part of the notice, whether or not the person appeals against the notice.
- ...
- (3) Schedule 8 contains additional provisions relevant to appeals.

121: Determination of appeals

- (1) Paragraphs (2) to (4) apply where a person appeals to the Tribunal under regulation 120(1) or (4).
- (2) The Tribunal may review any determination of fact on which the notice or decision against which the appeal is brought was based.
- (3) If the Tribunal considers—
- (a) that the notice or decision against which the appeal is brought is not in accordance with the law; or
 - (b) to the extent that the notice or decision involved an exercise of discretion by the Information Commissioner, that the Information Commissioner ought to have exercised the discretion differently,
- the Tribunal must allow the appeal or substitute another notice or decision which the Information Commissioner could have given or made.
- (4) Otherwise, the Tribunal must dismiss the appeal.
- (5) On an appeal under regulation 120(2), the Tribunal may direct—
- (a) that the notice against which the appeal is brought is to have effect as if it did not contain the statement under regulation 101(7)(a), 104(8)(a) or 107(8)(a) (urgency); or
 - (b) that the inclusion of that statement is not to have effect in relation to any part of the notice,

and may make such modifications to the notice as are required to give effect to the direction.

- (6) *On an appeal under regulation 120(3), if the Tribunal considers that the enforcement notice ought to be cancelled or varied by reason of a change in circumstances, the Tribunal must cancel or vary the notice.*
- (7) *On an appeal under regulation 120(5), the Tribunal may cancel the Information Commissioner's determination.*

PROCEDURE

146: Tribunal Procedure Rules

(1) Tribunal Procedure Rules may make provision for regulating, —

(a) the exercise of the rights of appeal conferred by regulation 120; ...

(b) ...

including their exercise by a representative body.

(2) In relation to proceedings involving the exercise of those rights, Tribunal Procedure Rules may make provision about, —

(a) securing the production of material used for the processing of personal data; and

(b) the inspection, examination, operation and testing of equipment or material used in connection with the processing of personal data.

(3) Paragraph 5 of Schedule 8 makes additional provisions in respect of Tribunal Procedure Rules.

147: Disclosure of information to Tribunal

No enactment or rule of law prohibiting or restricting the disclosure of information precludes a person from providing the Tribunal with information necessary for the discharge of the Tribunal's functions under data protection legislation.

ISLE OF MAN DATA PROTECTION TRIBUNAL RULES 2003

Tribunal Rule 52: – Time limit for appealing

Rule 52 sets out the time limit for appeal. In general, the time limit is **28 days** from the Issue Date of the information notice.

Tribunal Rule 51(1): - Method of appeal

You may bring an appeal by serving notice of appeal in writing to:

The Clerk to the Appeals Tribunal
General Registry
Isle of Man Courts of Justice
Deemsters' Walk
Douglas, Isle of Man
IM1 3AR

Tribunal Rule 51(2): – Completing a notice of appeal

"The notice of appeal shall -

(a) identify the disputed decision and the date on which the notice relating to such decision was served on or given to the appellant; and

(b) state -

(i) the name and address of the appellant;

(ii) the grounds of the appeal;

(iii) whether the appellant considers that he is likely to wish a hearing to be held or not;

(iv) where applicable, the special circumstances which the appellant considers justify the Tribunal's accepting jurisdiction under rule 52(2); and

(v) an address in the Island or the United Kingdom for service of notices and other documents on the appellant."

Tribunal Rule 51(4): – request for early hearing

"A notice of appeal may include a request for an early hearing of the appeal and the reasons for that request."

A copy of the Isle of Man Data Protection Tribunal Rules 2003 can be found at:-

<http://www.tynwald.org.im/links/tls/SD/2003/2003-SD-0027.pdf>

ANNEX 4

GDPR AND LED IMPLEMENTING REGULATIONS 2018

PENALTIES AND OFFENCES

PENALTIES

112: Penalty notices

- (1) *If the Information Commissioner is satisfied that a person—*
(b) *has failed to comply with an information notice;*

114: Maximum amount of penalty

- (1) *In relation to an infringement of a provision of the applied GDPR, the maximum amount of the penalty that may be imposed by a penalty notice is £1,000,000.*

OFFENCES

141: Penalties for offences

- (1) *A person who commits an offence under regulation 91, 103, 126, 127 or 137 is liable*
(a) *on summary conviction, to a fine not exceeding level 5 on the standard scale or to custody for a term not exceeding 6 months, or both; or*
(b) *on conviction on indictment, to a fine or to custody for a term not exceeding 2 years.*

Currently, under section 55 of the Interpretation Act 2015, the maximum level 5 fine is set at £10,000

143: Liability of directors etc.

- (1) *Paragraph (2) applies where*
(a) *an offence under these Regulations has been committed by a body corporate;*
and
(b) *it is proved to have been committed with the consent or connivance of or to be attributable to neglect on the part of—*
(i) *a director, manager, secretary or similar officer of the body corporate; or*
(ii) *a person who was purporting to act in such a capacity.*
- (2) *The director, manager, secretary, officer or person, as well as the body corporate, commits the offence and liable to be proceeded against and punished accordingly.*

129 : Record tampering

(1) A person commits an offence if —

- (a) a request for information has been made by the Information Commissioner to a controller or processor;*
- (b) the person alters, defaces, erases, destroys or conceals information held by the controller or processor with the intention of preventing the controller or processor from supplying the information to the Information Commissioner; and*
- (c) the person is —*
 - (i) the controller or processor;*
 - (ii) a member of staff of the controller or processor; or*
 - (iii) a person acting on behalf of the controller or processor, under any arrangement whatsoever and whether or not the person acts at the behest of the controller or processor.*