

USES OF SENSITIVE PERSONAL DATA NOT NOTIFIED TO THE EUROPEAN COMMISSION BY THE UK GOVERNMENT *(including those purposes that do not need notifying by virtue of Article 3(2))*

Unreported purposes 1-3 (legal purposes)

In Schedule 3 of the DPA.

These three purposes have no test of substantial public interest and no specific safeguards in the text (except possibly the through the word “necessary”)

6. The processing-
- (a) is necessary for the purpose of, or in connection with, any legal proceedings (including prospective legal proceedings),
 - (b) is necessary for the purpose of obtaining legal advice, or
 - (c) is otherwise necessary for the purposes of establishing, exercising or defending legal rights.

Unreported purposes 4-6 (public sector activities)

In Schedule 3 of the DPA.

These four purposes have no test of substantial public interest and no specific safeguards in the text (except possibly the through the word “necessary”)

Admin of justice **not reportable** as the Directive provisions do not apply to this processing (see Article 3)

7. (1) The processing is necessary-
- (a) for the administration of justice,
[\(aa\) for the exercise of any functions of either House of Parliament,](#)
 - (b) for the exercise of any functions conferred on any person by or under an enactment, or
 - (c) for the exercise of any functions of the Crown, a Minister of the Crown or a government department.
- (2) The Secretary of State may by order-
- (a) exclude the application of sub-paragraph (1) in such cases as may be specified, or
 - (b) provide that, in such cases as may be specified, the condition in sub-paragraph (1) is not to be regarded as satisfied unless such further conditions as may be specified in the order are also satisfied.

Unreported purpose 7 (fraud prevention)

It was introduced into Schedule 3 via Section 72 or the Serious Crime Act 2007 to facilitate processing of sensitive personal data for anti-fraud purposes by agencies such as CIFAS (UK Fraud Prevention). These are private sector organisations holding criminal personal data – that is why I am assuming that it is reportable.

There is no test of substantial public interest or additional safeguards explicitly in the provision.

These medical purposes are not notifiable to the Commission

The words highlighted identify considerable divergence from A.8(3) in the Directive, which provides of a limited list of processing purposes that does not include “medical research”. Also there is no requirement that the medical research has to be in the substantial public interest

Unreported purpose 8 (ethnic or racial monitoring)

This purpose has no test of substantial public interest and passes on the responsibility for specific safeguards to the data controller. What these safeguards are is an unknown quantity – the word “appropriate” means that they might be no need for additional safeguards

7A (1) The processing—

(a) is either—

(i) the disclosure of sensitive personal data by a person as a member of an anti-fraud organisation or otherwise in accordance with any arrangements made by such an organisation; or

(ii) any other processing by that person or another person of sensitive personal data so disclosed; and

(b) is necessary for the purposes of preventing fraud or a particular kind of fraud.

(2) In this paragraph “an 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.

8. (1) The processing is necessary for medical purposes and is undertaken by-

(a) a health professional, or

(b) a person who in the circumstances owes a duty of confidentiality which is equivalent to that which would arise if that person were a health professional.

(2) In this paragraph “medical purposes” **includes** the purposes of preventative medicine, medical diagnosis, **medical research**, the provision of care and treatment and the management of healthcare services.

9. (1) The processing-

(a) is of sensitive personal data consisting of information as to racial or ethnic origin,

(b) is necessary for the purpose of identifying or keeping under review the existence or absence of equality of opportunity or treatment between persons of different racial or ethnic origins, with a view to enabling such equality to be promoted or maintained, and

(c) is carried out with appropriate safeguards for the rights and freedoms of data subjects.

(2) The Secretary of State may by order specify circumstances in which processing falling

within sub-paragraph (1)(a) and (b) is, or is not, to be taken for the purposes of sub-paragraph (1)(c) to be carried out with appropriate safeguards for the rights and freedoms of data subjects.

This is the order making power which enables the Secretary of State to add new purposes

10. The personal data are processed in circumstances specified in an order made by the Secretary of State for the purposes of this paragraph.

The Data Protection (Processing of Sensitive Personal Data) Order 2000 (From SI 2000/417)

1. — (1) The processing—

- (a) is in the substantial public interest;
 - (b) is necessary for the purposes of the prevention or detection of any unlawful act; and
 - (c) must necessarily be carried out without the explicit consent of the data subject being sought so as not to prejudice those purposes.
- (2) In this paragraph, “act” includes a failure to act.

2. The processing—

- (a) is in the substantial public interest;
- (b) is necessary for the discharge of any function which is designed for protecting members of the public against—
 - (i) dishonesty, malpractice, or other seriously improper conduct by, or the unfitness or incompetence of, any person, or
 - (ii) mismanagement in the administration of, or failures in services provided by, any body or association; and

Unreported purpose 10

Paragraph 2 is a similar provision for cases where the processing is required to discharge functions which protect members of the public from certain conduct which may not constitute an unlawful act, such as incompetence or mismanagement.

Unreported purpose 11

Paragraph 3 of the Schedule covers certain disclosures for journalistic, artistic or literary purposes of personal data relating to a wide range of conduct (e.g. unlawful acts, dishonesty and incompetence etc.).

Member States have flexibility re the processing rules in relation to the special purpose

Unreported purpose 12

Paragraph 4 of the Schedule covers processing required to discharge functions involving the provision of services such as confidential counselling and advice, in circumstances where the consent of the data subject is not obtained for one of the specified reasons set out in the paragraph.

Very similar to the vital interests provisions that are specified in Article 8 of the Directive

(c) must necessarily be carried out without the explicit consent of the data subject being sought so as not to prejudice the discharge of that function.

3. — (1) The disclosure of personal data—

- (a) is in the substantial public interest;
- (b) is in connection with—
 - (i) the commission by any person of any unlawful act (whether alleged or established),
 - (ii) dishonesty, malpractice, or other unfitness or incompetence of, any person (whether alleged or established), or
 - (iii) mismanagement in the administration of, or failures in services provided by, any body or association (whether alleged or established);
- (c) is for the special purposes as defined in section 3 of the Act; and
- (d) is made with a view to the publication of those data by any person and the data controller reasonably believes that such publication would be in the public interest.

(2) In this paragraph, “act” includes a failure to act.

4. The processing—

- (a) is in the substantial public interest;
- (b) is necessary for the discharge of any function which is designed for the provision of confidential counselling, advice, support or any other service; and
- (c) is carried out without the explicit consent of the data subject because the processing—
 - (i) is necessary in a case where consent cannot be given by the data subject,
 - (ii) is necessary in a case where the data controller cannot reasonably be expected to obtain the explicit consent of the data subject, or

(iii) must necessarily be carried out without the explicit consent of the data subject being sought so as not to prejudice the provision of that counselling, advice, support or other service.

5. — (1) The processing—

(a) is necessary for the purpose of—

- (i) carrying on insurance business, or
- (ii) making determinations in connection with eligibility for, and benefits payable under, an occupational pension scheme as defined in section 1 of the Pension Schemes Act 1993;

(b) is of sensitive personal data consisting of information falling within section 2(e) of the Act relating to a data subject who is the parent, grandparent, great grandparent or sibling of—

- (i) in the case of paragraph (a)(i), the insured person, or
- (ii) in the case of paragraph (a)(ii), the member of the scheme;

(c) is necessary in a case where the data controller cannot reasonably be expected to obtain the explicit consent of that data subject and the data controller is not aware of the data subject withholding his consent; and

(d) does not support measures or decisions with respect to that data subject.

(2) In this paragraph—

- (a) “insurance business” means insurance business, as defined in section 95 of the Insurance Companies Act 1982 F3, falling within Classes I, III or IV of Schedule 1 (classes of long term business) or Classes 1 or 2 of Schedule 2 (classes of general business) to that Act, and
- (b) “insured” and “member” includes an individual who is seeking to become an insured person or member of the scheme respectively.

Unreported purpose 14

Paragraph 6 of the Schedule covers the processing of sensitive data that were already being processed before the coming into force of this Order in certain insurance and pension contexts. Like the provision in paragraph 5, the data controller must not continue to process these data if he is aware of the data subject withholding his consent to the processing.

Alternatively, the data controller may continue the processing in the case of group insurance or pension schemes even without the explicit consent of the data subject to avoid prejudice to that insurance policy or pension scheme.

Unreported purpose 15

Paragraph 7 of the Schedule to this Order makes similar provision in relation to the monitoring of equality between persons with different religious beliefs or between persons of differing physical or mental states or conditions

Like Paragraph 9 of Schedule 3 to the Data Protection Act 1998 which provides as a condition relevant to the processing is of personal data relating to racial or ethnic origin for the purposes of ethnic monitoring..

6. The processing—

(a) is of sensitive personal data in relation to any particular data subject that are subject to processing which was already under way immediately before the coming into force of this Order;

(b) is necessary for the purpose of—

- (i) carrying on insurance business, as defined in section 95 of the Insurance Companies Act 1982, falling within Classes I, III or IV of Schedule 1 to that Act; or
- (ii) establishing or administering an occupational pension scheme as defined in section 1 of the Pension Schemes Act 1993; and

(c) either—

- (i) is necessary in a case where the data controller cannot reasonably be expected to obtain the explicit consent of the data subject and that data subject has not informed the data controller that he does not so consent, or
- (ii) must necessarily be carried out even without the explicit consent of the data subject so as not to prejudice those purposes.

7. — (1) Subject to the provisions of sub-paragraph (2), the processing—

(a) is of sensitive personal data consisting of information falling within section 2(c) or (e) of the Act;

(b) is necessary for the purpose of identifying or keeping under review the existence or absence of equality of opportunity or treatment between persons—

- (i) holding different beliefs as described in
- (ii) of different states of physical or mental health or different physical or

Unreported purpose 13

Paragraph 5 of the Schedule covers processing in certain insurance or occupational pension scheme contexts, where details of particular relatives of the principal insured or member are required (e.g. health details of relatives used to calculate the life expectancy of the insured).

The data controller must not process these data to make decisions or take actions with respect to the relatives, nor if he is aware of the relative withholding his consent to the processing.

mental conditions as described in section 2(e) of the Act,

with a view to enabling such equality to be promoted or maintained;

(c) does not support measures or decisions with respect to any particular data subject otherwise than with the explicit consent of that data subject; and

(d) does not cause, nor is likely to cause, substantial damage or substantial distress to the data subject or any other person.

(2) Where any individual has given notice in writing to any data controller who is processing personal data under the provisions of sub-paragraph (1) requiring that data controller to cease processing personal data in respect of which that individual is the data subject at the end of such period as is reasonable in the circumstances, that data controller must have ceased processing those personal data at the end of that period.

8. — (1) Subject to the provisions of sub-paragraph (2), the processing—

(a) is of sensitive personal data consisting of information falling within section 2(b) of the Act;

(b) is carried out by any person or organisation included in the register maintained pursuant to section 1 of the Registration of Political Parties Act 1998 in the course of his or its legitimate political activities; and

(c) does not cause, nor is likely to cause, substantial damage or substantial distress to the data subject or any other person.

(2) Where any individual has given notice in writing to any data controller who is processing personal data under the provisions of sub-paragraph (1) requiring that data controller to cease processing personal data in respect of which that individual is the data subject at the end of such period as is reasonable in the circumstances, that data controller must have ceased processing those personal data at the end of that period.

Unreported Purpose 16

Paragraph 8 of the Schedule relates to the processing of information about political opinions by registered political parties, provided such processing does not cause substantial damage or distress to any person.

9. The processing—

(a) is in the substantial public interest;

(b) is necessary for research purposes (which expression shall have the same meaning as in section 33 of the Act);

(c) does not support measures or decisions with respect to any particular data subject otherwise than with the explicit consent of that data subject; and

(d) does not cause, nor is likely to cause, substantial damage or substantial distress to the data subject or any other person.

Unreported Purpose 17

Paragraph 9 of the Schedule covers, for example, processing in the course of maintaining archives where the sensitive personal data are not used to take decisions about any person without their consent and no substantial damage or distress is caused to any person by the keeping of those data.

Paragraph 10 of the Schedule covers processing by the police in the exercise of their common law powers. Not reportable because it relates to policing

10. The processing is necessary for the exercise of any functions conferred on a constable by any rule of law.

MORE CONDITIONS: SENSITIVE PERSONAL DATA

Sensitive Personal Data

SI 1811 deals with the prisoners, release from prison, informing MPs about the prisoner.

Specifies that information about a criminal conviction or caution may be processed for the purpose of administering an account relating to the payment card (or for cancelling the payment card) used in the commission of one of the listed offences relating to indecent images of children and for which the data subject has been convicted or cautioned

Dealing with disclosure to MPs and Councillors at the behest of a problem raised by a constituent (e.g. often about service provided by a public body)

The Data Protection (Processing of Sensitive Personal Data) Order 2009 (2009 No. 1811 S.I). (Arguably not reportable as deals with criminal justice)

The Data Protection (Processing of Sensitive Personal Data) Order 2006 (2006 No. 2068 S.I). (Arguably reportable as No 18 as the personal data are held by the financial; sector)

The Data Protection (Processing of Sensitive Personal Data) (Elected Representatives) Order 2002 (2002 No. 2905 S.I.)

(THIS IS THE ONLY PURPOSE REPORTED TO THE COMMISSION)