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GDPR AND LED IMPLEMENTING REGULATIONS (AMENDMENT) REGULATIONS 2018

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Statutory Document No. 20XX/XXXX

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Data Protection Act 2018

GDPR AND LED IMPLEMENTING REGULATIONS (AMENDMENT) REGULATIONS 2018

Approved by Tynwald:

Coming into Operation:

1 January 2019

The Council of Ministers makes the following Regulations under section 5 of the Data Protection Act 2018.

1 Title

These Regulations are the GDPR and LED Implementing Regulations (Amendment) Regulations 2018.

2 Commencement

these Regulations come into operation on 1 January 2019.

3 Interpretation

In these Regulations, “**the principal Regulations**” means GDPR and LED Implementing Regulations 2018¹.

4 Amendment of regulation 51

Regulation 51(4) of the principal Regulations is amended by omitting “under Member State or Union law”.

5 Repeal and replacement of regulation 77

Regulation 77 of the principal Regulations is repealed and replaced with the following —

«77 **General functions under the applied GDPR and safeguards**

¹ SD No. 2018/0145

- (1) The Information Commissioner is the supervisory authority in the Island for the purposes of Article 51 of the applied GDPR.
- (2) General functions are conferred on the Information Commissioner by the following provisions of the applied GDPR —
 - (a) Article 57 (tasks); and
 - (b) Article 58 (powers).
- (3) The Information Commissioner's functions in relation to the processing of personal data to which the applied GDPR applies include —
 - (a) a duty to advise Tynwald, a Department or Statutory Board and other institutions and bodies on legislative and administrative measures relating to the protection of natural persons' rights and freedoms with regard to the processing of personal data; and
 - (b) a power to issue, on the Information Commissioner's own initiative or on request, opinions to Tynwald, a Department or Statutory Board, or other institutions and bodies as well as to the public on any issue related to the protection of personal data.
- (4) The Information Commissioner's functions under Article 58 of the applied GDPR are subject to the safeguards in paragraphs (5) to (9).
- (5) The Information Commissioner's power under Article 58(1)(a) of the applied GDPR may be exercised by giving an information notice under regulation 101.
- (6) The Information Commissioner's power under Article 58(1)(b) of the applied GDPR may be exercised —
 - (a) by the Information Commissioner, in accordance with regulation 104 (that is, by means of an assessment notice); or
 - (b) by an approved person, in accordance with regulation 78.
- (7) The Information Commissioner's powers under Article 58(1)(e) and (f) of the applied GDPR may be exercised —

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| | <ul style="list-style-type: none"> (a) in accordance with Schedule 4 (see regulation 111); or (b) to the extent that they are exercised in conjunction with the power under Article 58(1)(b) of the applied GDPR, in accordance with regulation 104 (that is, by means of an assessment notice). |
| (8) | <p>The following powers are exercisable only by giving an enforcement notice under regulation 106 —</p> <ul style="list-style-type: none"> (a) the Information Commissioner's powers under Article 58(2)(c) to (g) and (j) of the applied GDPR; (b) the Information Commissioner's power under Article 58(2)(h) of the applied GDPR to order a certification body to withdraw, or not to issue, a certification under Articles 42 and 43 of the applied GDPR. |
| (9) | <p>The Information Commissioner's powers under Articles 58(2)(i) and 83 (administrative fines) of the applied GDPR are exercisable only by giving a penalty notice under regulation 112.</p> |
| (10) | <p>This regulation is without prejudice to other functions conferred on the Information Commissioner, whether by the applied GDPR, these Regulations, or otherwise.».</p> |

6 Repeal and replacement of regulation 78

Regulation 78 of the principal Regulations is repealed and replaced with the following —

«78 Power to require data protection audits

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| (1) | <p>This regulation applies only where the circumstances make it reasonably impracticable for the Information Commissioner to conduct an audit in accordance with Article 58(1)(b) of the applied GDPR and regulation 77(6) of these Regulations.</p> |
| (2) | <p>Where this regulation applies, the Information Commissioner may instruct a controller or processor —</p> <ul style="list-style-type: none"> (a) to engage, for the purpose of conducting the audit, a person — <ul style="list-style-type: none"> (i) who is suitably qualified and experienced; and |

- (ii) with whom the controller or processor has agreed terms (including as to remuneration, which must be at the expense of the controller or processor);
 - (iii) who meets with the approval of the Information Commissioner (such approval to be signified in writing by the Information Commissioner);
 - (b) to ensure that the Information Commissioner is promptly furnished with a report on the findings of the audit,
and, subject to the right of appeal in paragraph (5), the controller or processor must comply with this instruction within the time limit stated in the terms of reference specified in accordance with paragraph (3).
- (3) The terms of reference for the audit referred to in paragraph (2) must be specified by the Information Commissioner.
- (4) The Information Commissioner's approval referred to in paragraph (2)(a) must not be unreasonably withheld.
- (5) A controller or processor aggrieved by an instruction given by the Information Commissioner under paragraph (2) may appeal to the Tribunal. The following provisions apply to any such appeal —
 - (a) where an appeal is filed, the appellant need not comply with the instruction in question until the appeal has been —
 - (i) decided against the appellant; or
 - (ii) abandoned without a determination having been made;
 - (b) the Tribunal may call upon the Information Commissioner to provide evidence that satisfies the Tribunal as to why —
 - (i) it is reasonably impracticable for the Information Commissioner to conduct the audit pursuant to paragraph (1);
 - (ii) the Information Commissioner has withheld approval pursuant to paragraph (4); or
 - (iii) the terms of reference for the audit specified by the Information

- Commissioner pursuant to paragraph (3) are justified;
- (c) after hearing an appeal, the Tribunal may —
 - (i) uphold the instruction of the Information Commissioner and order the appellant to comply with it;
 - (ii) modify the instruction to whatever extent it considers appropriate; or
 - (iii) overrule the Information Commissioner's instruction.
- (6) The Information Commissioner may publish a list of persons the Information Commissioner considers suitably qualified and experienced to conduct audits. Any such publication will not constitute satisfaction of the requirement imposed by paragraph (2)(a)(iii).

7 Amendment of regulation 96

Regulation 96 of the principal Regulations is amended in the heading by inserting «and processors» immediately after “controllers”.

8 Repeal and replacement of regulation 101

- (1) Regulation 101 of the principal Regulations is repealed and replaced with the following —

«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 24 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.

9 Repeal and replacement of regulation 103

Regulation 103 of the principal Regulations is repealed and replaced with the following —

«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.)

10 Repeal and replacement of regulation 104

Regulation 104 of the principal Regulations is repealed and replaced with the following —

«104 Assessment notice

- (1) The Information Commissioner may by written notice (an “**assessment notice**”) require a controller or processor to permit the Information Commissioner to carry out an assessment of whether the controller or processor has complied or is complying with data protection legislation.

- (2) An assessment notice may require the controller or processor to permit the Information Commissioner to do any of the following —
 - (a) to enter any premises or vehicle (both of which terms have in the regulation the same meanings as are ascribed to them in section 81(1) of the *Police Powers and Procedures Act 1998*) occupied or controlled by the controller or processor (excluding any dwelling house in respect of which either the Information Commissioner must have the consent of the occupier of the dwelling house or otherwise obtain a warrant in accordance with Schedule 4);
 - (b) to obtain access to any data processing equipment and means on the premises;
 - (c) to obtain access to all information, documents or material, necessary for the performance of his tasks;
 - (d) to observe the processing of personal data that takes place on the premises;
 - (e) to access all personal data on the premises necessary for the performance of his tasks under this Regulation;
 - (f) to interview any person who processes personal data for or on behalf of the controller or processor, provided that any interviewee must be provided with —
 - (i) notice of not less than 72 hours of the date and time of the prospective interview;
 - (ii) notice of the right to obtain legal advice or other professional advice prior to the prospective interview;
 - (iii) a reasonable period of not less than 72 hours for the purpose of obtaining such professional advice prior to the date and time of the interview set out in the notice;
 - (g) to be provided with a copy (in such form as may be requested) of any information, documents or materials accessed under regulation 104(2)(c) or personal data on the

- premises accessed under regulation 104(2)(e).
- (See Schedule 4, paragraph 2 for action that the Information Commissioner can take if the controller or processor fails to comply with an assessment notice.)
- (3) An assessment notice must provide information about the rights of appeal under regulation 120.
 - (4) An assessment notice may not require a person to do anything before the end of the period within which an appeal may be brought against the notice.
 - (5) If an appeal is brought against an assessment notice, the controller or processor need not comply with a requirement in the notice pending the determination of withdrawal of the appeal.
 - (6) If an assessment notice —
 - (a) states that, in the Information Commissioner's opinion, it is necessary for the controller or processor to comply with a requirement in the notice 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 controller or processor to comply with the requirement before the end of the period of 7 days beginning with the day on which the notice is given.
 - (7) The Information Commissioner may cancel an assessment notice by written notice to the controller or processor to whom it was given.
 - (8) Where the Information Commissioner gives an assessment notice to a processor, the Information Commissioner must, so far as reasonably practicable, give a copy of the notice to each controller for whom the processor processes personal data.
 - (9) The provisions of this regulation and of regulation 105 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 assessment notice.».

11 Amendment of regulation 106

Regulation 106 of the principal Regulations is amended in paragraph (5) by inserting «or processor» immediately after “a controller”.

12 Amendment of regulation 108

Regulation 108 of the principal Regulations is amended in paragraph (1)(b) by substituting «restriction of processing» for “restriction on processing”.

13 Amendment of regulation 112

Regulation 112 of the principal Regulations is amended by omitting paragraph (1) and substituting the following —

- «(1) If the Information Commissioner is satisfied that a person —
 - (a) has failed or is failing as described in regulation 106(2), (3), (4) or (5);
 - (b) has failed to comply with an information notice;
 - (c) has failed to comply with an assessment notice given, pursuant to regulation 77, in exercise of the Information Commissioner’s powers under Article 58(1) of the applied GDPR; or
 - (d) has failed to comply with an enforcement notice, the Information Commissioner may, by written notice (a “**penalty notice**”), require the person to pay to the Information Commissioner an amount specified in the notice.».

14 Amendment of regulation 117

(1) Regulation 117 of the principal Regulations is amended by omitting paragraph (1) and substituting the following —

- «(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;
 - (b) an assessment notice;
 - (c) an enforcement notice; or
 - (d) a penalty notice.».

15 Amendment of regulation 118

Regulation 118 of the principal Regulations is amended —

- (a) in the heading by substituting «corrective» for “regulatory”;
- (b) by substituting the following for paragraph (1) —
 - «(1) The Information Commissioner may produce and publish guidance about how the Information Commissioner proposes to exercise the Information Commissioner’s functions in connection with —
 - (a) information notices;
 - (b) assessment notices;
 - (c) enforcement notices; or
 - (d) penalty notices.».

16 Amendment of regulation 129

Regulation 129 of the principal Regulations is amended by omitting subparagraph (a) of paragraph (1) and substituting the following —

- «(a) the Information Commissioner —
 - (i) has served an information notice on a controller or processor; or
 - (ii) has, by means other than serving an information notice, made to the controller or processor a request for information;».

17 Repeal of regulation 131

Regulation 131 of the principal Regulations is repealed.

18 Amendment of regulation 132

Regulation 132 of the principal Regulations is amended in paragraph (3)(a) by substituting «regulation 130» for “regulation 135”.

19 Amendment of regulation 141

Regulation 141 of the principal Regulations is amended in paragraph (6) by substituting «paragraph 5» for “paragraph 6”.

20 Amendment of Schedule 2

- (1) Schedule 2 to the principal Regulations is amended as follows.
- (2) In paragraph 1 —
 - (a) in the heading, for “social services” substitute «social protection»;

- (b) in subparagraph (1), for “social services” substitute «social protection»;
 - (c) in subparagraph (3), in the definition of “social security law” omit “the law relating to”.
- (3) For paragraph 14, substitute the following —
- | | |
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| «14 | Insurance |
| (1) | Processing of personal data for insurance purposes is exempt from the listed applied GDPR provisions if the condition in this paragraph is met. |
| (2) | This condition is met if the processing — <ul style="list-style-type: none"> (a) is necessary for an insurance purpose; (b) is of personal data revealing racial or ethnic origin, religious or other philosophical beliefs or trade union membership, genetic data or data concerning health; and (c) is necessary for reasons of substantial public interest, subject to subparagraphs (3) and (4). |
| (3) | Subparagraph (4) applies where — <ul style="list-style-type: none"> (a) the processing is not carried out for the purposes of measures or decisions with respect to the data subject; and (b) the data subject does not have and is not expected to acquire — <ul style="list-style-type: none"> (i) rights against, or obligations in relation to, a person who is an insured person under an insurance contract to which the insurance purpose mentioned in subparagraph (2)(a) relates; or (ii) other rights or obligations in connection with such a contract. |
| (4) | Where this subparagraph applies, the processing does not meet the condition in subparagraph (2) unless, in addition to meeting the requirements in that subparagraph, it can reasonably be carried out without the consent of the data subject. |
| (5) | For the purposes of subparagraph (4), processing can reasonably be carried out without the consent of the data subject only where — <ul style="list-style-type: none"> (a) the controller cannot reasonably be expected to obtain the consent of the data subject; and |

- (b) the controller is not aware of the data subject's withholding consent.
 - (6) In this paragraph —
 - “insurance contract” means a contract of general insurance or long term insurance;
 - “insurance purpose” means —
 - (a) advising on, arranging, underwriting or administering an insurance contract;
 - (b) administering a claim under an insurance contract; or
 - (c) exercising a right, or complying with an obligation, arising in connection with an insurance contract, including a right or obligation arising under an enactment or rule of law;
 - “listed applied GDPR provisions” means the provisions of the applied GDPR listed in paragraph 9 of Schedule 9.
 - (7) The reference in subparagraph (5)(b) to a data subject withholding consent does not include a data subject merely failing to respond to a request for consent.
 - (8) Terms used in the definition of “insurance contract” in subparagraph (6) and also in an order made under section 22 of the Financial Services and Markets Act 2000 (of Parliament) have the same meaning in that definition as they have in that order.
- 14A Extension of conditions referring to substantial public interest**

The condition referred to in paragraph 14 is met if the processing would meet a condition in Schedule 9 but for an express requirement for the processing to be necessary for reasons of substantial public interest.».
- (4) In paragraph 15, immediately after subparagraph (7), insert the following —
 - «(8) This condition is met if the processing —
 - (a) would meet the condition in paragraph 14 of this Schedule (“the insurance condition”); or
 - (b) would meet the condition in paragraph 14A by virtue of the insurance condition,

but for the requirement for the processing to be processing of a category of personal data specified in paragraph 14(2)(b).»,

(5) In paragraph 16 —

(a) in subparagraph (1), insert the following immediately after head (a) —

«(ab) is of data concerning health, which relates to a data subject who is the parent, grandparent, great grandparent or sibling of a member of the occupational pension scheme;»;

(b) for subparagraph (3) substitute the following —

«(3) In this paragraph —

“member”, in relation to an occupational pension scheme, includes an individual who is seeking to become a member of the occupational pension scheme;

“occupational pension scheme” has the meaning given in section 1 of the Pension Schemes Act 1993 (of Parliament) as applied to the Island by SD 531/95.».

(6) In paragraph 18, immediately before the full stop at the end of subparagraph (3) insert «or a member elected to a local authority».

(7) For paragraph 21, substitute the following —

«21 **Standards of behaviour in sport**

(1) This condition is met if the processing —

- (a) is necessary for the purposes of measures designed to protect the integrity of a sport or a sporting event;
- (b) must be carried out without the consent of the data subject so as not to prejudice those purposes; and
- (c) is necessary for reasons of substantial public interest.

(2) In subparagraph (1)(a), the reference to measures designed to protect the integrity of a sport or a sporting event is a reference to measures designed to protect a sport or a sporting event against —

- (a) dishonesty, malpractice or other seriously improper conduct; or
- (b) failure by a person participating in the sport or event in any capacity to comply

with standards of behaviour set by a body or association with responsibility for the sport or event.».

(8) For paragraph 28, substitute the following —

«28 Legal claims and judicial acts

(1) This condition is met if 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.

(2) This condition is met if the processing is necessary when a court or tribunal is acting in its judicial capacity.

28A Publication of legal judgments

This condition is met if the processing —

- (a) consists of the publication of a judgment or other decision of a court or tribunal; or
- (b) is necessary for the purposes of publishing such a judgment or decision.»

21 Amendment of Schedule 7

- (1) Schedule 7 to the principal Regulations is amended as follows.
- (2) In paragraphs 8(2) and 9(2), for “Where a notification is given” substitute «Where an application is made».
- (3) In paragraph 16 —
 - (a) in subparagraph (a), for “data controller” substitute «controller or processor»;
 - (b) in subparagraphs (b)(i) and (e), insert «or processor» immediately after “controller”.
- (4) In paragraph 17 —
 - (a) in subparagraph (1)(a)(i), immediately after “the controller” insert «or processor»;
 - (b) in subparagraph (1)(a)(iii), for “data controller” substitute «controller or processor»;
 - (c) in subparagraph (1)(b)(ii), for “or” substitute «of»;

- (d) in subparagraph (1)(e), for “data controller” substitute «controller or processor»; and
- (e) for all the text appearing after subparagraph (1)(e), substitute the following —
 - «(2) Subparagraph (1)(c) does not apply to personal data processed by or obtained from a credit reference agency.».

22 Amendment of Schedule 9

- (1) Schedule 9 to the principal Regulations is amended as follows.
- (2) Insert the following cross-heading immediately before paragraph 2 —
 - «Data processed for the purpose of discharging statutory functions».
- (3) In paragraph 2(2) —
 - (a) for the comma at the end of head (d), substitute a full stop; and
 - (b) omit all the text from the end of head (d) to the end of paragraph 2.
- (4) Repeal paragraphs 4 and 5 and the associated cross-headings.
- (5) In paragraph 8 —
 - (a) in subparagraphs (1), (3) and (4), insert «or processor» immediately after “controller” wherever it appears;
 - (b) in subparagraph (2), insert «or processor’s» immediately after “controller’s”; and
 - (c) in subparagraph (5), for “data controller” substitute «controller or processor».
- (6) In paragraph 12 —
 - (a) in subparagraph (1)(a)(iii), for “First Deemster” substitute «First Deemster and Clerk of the Rolls»;
 - (b) in subparagraph (1), for head (a) substitute the following —
 - «(a) offices to which appointments are made by Her Majesty, namely —
 - (i) Lieutenant Governor;
 - (ii) Bishop of Sodor and Man;
 - (iii) First Deemster;
 - (iv) Second Deemster;
 - (v) Attorney General;
 - (vi) Incumbent of a Benefice;
 - (vii) Judge of Appeal;
 - viii) Solicitor General;»;
 - (c) in subparagraph (1), for head (b) substitute the following —

- «(b) acting judges, being offices to which appointments are made under the *High Court Act 1991*;
 - (c) offices to which appointments are made by the Lieutenant Governor;».
- (7) In paragraph 17, for “do not apply to a personal data” substitute «do not apply to personal data».
- (8) For paragraph 21, substitute the following —
 - «21. Personal data processed in connection with a trust (regardless of which jurisdiction’s law is the proper law of the trust) are exempt from the listed applied GDPR provisions to the extent that the application of those provisions is likely to —
 - (a) prejudice a power, discretion or duty of a trustee, contrary to the governing law of that trust; and
 - (b) result in the provision of information, or the disclosure of personal data, to a data subject who is the beneficiary of a trust prior to the occurrence of the triggering event for that trust.».
- (9) Immediately after paragraph 21, insert the following —
 - «*Insurance purposes*
 - 21A. (1) The listed applied GDPR provisions do not apply to personal data processed for an insurance purpose to the extent that the application of those provisions would be likely to prejudice that insurance purpose by the provision of information, or disclosure of personal data, to a data subject who is a beneficiary of an insurance contract prior to the occurrence of the triggering event for that contract.
 - (2) In this paragraph, “insurance contract” and “insurance purpose” have the same meaning as set out in paragraph 14 of Schedule 2.
- (10) In paragraph 23(3)(a), for “regulation 19” substitute «regulation 18».
- (11) In paragraph 26, immediately after the definition of “appropriate health professional” insert the following —
 - «“relevant period” means the period of 6 months ending with the day on which the opinion would be relied upon;».
- (12) In paragraph 27(2) —
 - (a) insert «the» between “prejudice” and “carrying out”; and
 - (b) insert «of» immediately before “social work” in the second place where it occurs.

- (13) In paragraph 28, immediately after subparagraph (6) insert the following

—

«(7) For the purposes of this paragraph, “a minor” is a natural person under the age of 18 years.».

MADE

W GREENHOW
Chief Secretary