

GDPR and LED Implementing Regulations 2018 and Data Protection (Application of GDPR) Order 2018 updates 2018

Overview

In July 2018, the GDPR and LED Implementing Regulations 2018 ("GLIR") were approved by Tynwald. These regulations set out the provision for the implementation of the GDPR and the LED on the Isle of Man.

In view of the responses to the consultation on the draft Regulations, when the GLIR were introduced, a commitment was given to further revise the GLIR to address and update issues such as enforcement powers, and further exemptions required.

Simultaneously work continues on development of policy as the new legal regime evolves, including review and updating of the enforcement powers of the Information Commissioner, and in the future, the creation of a new supervisory authority. A separate consultation is planned in the near future, to seek views on new areas of policy relating to the creation of that new supervisory authority, and new fees in respect of the funding of a new supervisory authority.

Although the mechanism for the legislation will remain the same, until the new supervisory authority is introduced, policy needs to continue to be developed to inform changes to the existing regime.

The proposed plan for developing the legislation is as follows:

Amending Regulations	New/revised exemptions Technical amendments to existing GLIR Updates to Tribunal Rules and UCR 2005
New Bill	Establishes new Supervisory Authority Functions, powers, Tribunal and Registration
GDPR and LED Implementing Regs 2018	Part 6 and Part 7 GLIR in new Bill in context of new Supervisory Authority Remaining parts to remain in Regulations

Why we are consulting

The consultation is to advise interested parties about changes planned to the Data Protection (Application of GDPR) Order 2018, and GLIR, and seeks views on the provisions of the proposed Amending Regulations, in relation to the proposed updates to the enforcement powers, exemptions, and processing conditions

Introduction

What is your name?

Name

What is your email address?

If you enter your email address then you will automatically receive an acknowledgement email when you submit your response.

Email (Required)

What is your organisation?

Organisation

May we publish your response?

Please read our **Privacy Policy** </privacy_policy/> for more details and your rights.

More information

- Publish in full – your first name and surname, organisation name, along with full answers **will** be published on the hub (your email will **not** be published)
- Publish anonymously – only your responses **will** be published on the hub (your name, organisation and email will **not** be published)
- Do not publish – **nothing will** be published publically on the hub (your response will only be part of a larger summary response document)

(Required)

Please select only one item

- Yes, you can publish my response in full Yes, you may publish my response anonymously
- No, please do not publish my response

Amendments to Existing Legislation

The following table summarises the changes which will be made by the Amending Regulations, together with amendments to follow in respect of Article 6 of the applied GDPR, the Isle of Man Data Protection Tribunal Rules 2003, and the Unsolicited Communications Regulations 2005:

Provision	Update/Amendment
Article 6, paragraph 3(b) Legal basis for legal obligation or performance of a task in Manx law	To be amended to include Member State law (which will until Brexit include UK)
Regulation 51 – Contract obligations limited to Member State/Union law for processing under Article 22 of the applied LED	To be amended to include law made anywhere
Regulation 106 – Failure to comply with Assessment Notice	To be amended to include processors
Regulation 118 – Guidance about regulatory action	Provision to remain, renamed 'corrective' rather than regulatory, in line with Article 58(2) of the applied GDPR
Regulation 129 – Alteration of personal data to prevent disclosure	To be amended to provide for any request for information, not intended to be restricted to Information Notices under Regulation 101
Regulation 131 – Special purposes proceedings	To be removed, whilst retaining the ability for the Information Commissioner to assist in special purposes proceedings.
Schedule 2 – Elected representatives	'Elected representative' extension to local authorities and legislative council, technical amendment.
Isle of Man Data Protection Tribunal Rules 2003	New rules to deal with all appeals and applications under GLIR
Unsolicited Communications Regulations 2005	Updated Regulations to include equivalent provisions of the new legislation, giving the Information Commissioner power to enforce using all powers in GLIR

1. Enforcement Provisions – Part 3 of the Implementing Regulations

The Information Commissioner has been provided with a full range of investigatory and corrective powers to carry out his tasks, in accordance with Articles 57 and 58 of the GDPR. In line with such powers, the GDPR and LED Implementing Regulations provide for various enforcement regimes.

The Cabinet Office invites feedback on the following proposals for updates to Part 3 of the Implementing Regulations. The proposals to update these provisions need to be balanced with the need to ensure that the powers have effective safeguards and are proportionate to the risks involved, particularly whilst the Information Commissioner remains a sole office holder, until the introduction of a new supervisory authority.

Provision	Proposed Update/Amendment
Regulation 77 – General Functions of the Information Commissioner	Amend to ensure powers may be exercised under appropriate enforcement provisions (including Regulation 101 and 104)
Regulation 78 – Data Protection Audits	Amend to ensure the Information Commissioner can approve (but not direct) the appointment of an appropriate external auditor, with some safeguards on the power to audit remaining
Regulation 101 – Information Notices	Amendment (to follow equivalent UK provision) so that if urgent a person must provide information to the Information Commissioner within 24 hours, instead of 7 days.
Regulation 103 – Failure to comply with assessment notices	Propose to remove offence for failure to comply as no longer required; failure to comply is covered in later Regulations (updates accordingly to Regulation 112 and Regulation 117 below)
Regulation 104 – Assessment Notices	Updates to ensure that the Information Commissioner can carry out an assessment without too much restriction, but balanced with safeguards particularly for individuals required to submit to interview
Regulation 112 and Regulation 117 – Penalties	Updates to include failure to comply with assessment notice/information notice, and a new provision in Regulation 117

Questions on changes to enforcement provision

Although the Cabinet Office invites responses to the questions set out in this consultation, all and any comments are welcome as any feedback received will help us to inform the amendments to the legislation.

Q.1a General Enforcement

In relation to general functions of the Information Commissioner under Regulation 77, do you think that the powers should exclusively be used with an Information Notice, or that it should be expanded as proposed to include powers which may be exercised under the appropriate enforcement provisions?

Please select only one item

- Yes, I think it should be expanded so that the Information Commissioner can use the appropriate power
- Yes I think it should be expanded, but it should be revised in a different way (comment - give us your suggestions for revision)
- No, I think it should be limited so that the Information Commissioner can only exercise these powers by an Information Notice
- I'm not sure

Please provide any comments

Q.1b Data Protection Audits

The proposal is to amend Regulation 78 so that the audit powers are not so restricted for the Information Commissioner, and to ensure that the Information Commissioner may approve (but not direct) the appointment of an appropriate external auditor. Do you agree with the proposed amendments?

Please select only one item

- Yes, I agree that these amendments would be necessary to ensure that the Information Commissioner is not restricted in audits
- Yes, I agree that some amendment is necessary, but there should be some restriction (comments – what restrictions do you think there should be, bearing in mind the requirement under the applied GDPR for the Information Commissioner to have all the powers granted under Article 58?)
- No, I think that there should be even less restriction (comments)
- No, I think that the provision should stay as it is set out in the current Regulations I'm not sure

Please provide any comments

Q.1c Information Notices

It is proposed to amend Regulation 101 in respect of Information Notices to accord with the equivalent UK provisions, so that a person must, if it is urgent, provide information to the Information Commissioner within 24 hours, rather than the existing 7 days. This has been reduced in the UK as a response to such high profile cases as Cambridge Analytica, to ensure that any evidence cannot be destroyed.

Do you agree with the reduction of the time from 7 days to 24 hours for provision of information to the Information under Information Notice provisions (where there is an urgency determined by the Information Commissioner)?

Please select only one item

- Yes, I think that this is proportionate to the level of risk for data breaches (only in cases of urgency)
- No, I think that the period is too short I think that it should be another time period I'm not sure

Please provide any comments

Q.1d Failure to comply with Assessment Notices

It is proposed to exclude the provision in Regulation 103 for the offence and corresponding defence for the failure to comply with an Information Notice, as both Regulation 112 and Regulation 117 could and should include these with the other forms of notice. Do you agree with this amendment?

Please select only one item

- Yes, I think the amendment is clearer No, I think the provision should stay the same
- No, I think the provision should be amended I'm not sure

Please provide any comments

Q.1e Assessment Notices

An assessment notice is an assessment of compliance, and so the powers for assessment notices are wide. There is a proposal to make some amendments to assessment notice provisions to ensure that the provisions are workable balanced against the need to ensure safeguards for controllers and processors subject to assessment proceedings. Do you agree that the amendments are appropriate?

Please select only one item

- Yes I think that the amendment makes this provision workable for the Information Commissioner
 Yes, I think there needs to be amendment, but there should be more safeguards
 No, I do not think that this provision should be amended I'm not sure

Please provide any comments

2. Conditions for processing, and exemptions

Following consultation, a number of areas were identified for inclusion in terms of exemptions or conditions for processing special categories of personal data (including criminal convictions). These exemptions and conditions are currently set out in Schedule 2 and Schedule 9 of the GDPR and LED Implementing Regulations. These broadly follow responses from consultation and the provision of Schedules 2-4 of the Data Protection Act 2018 (Act of Parliament). Various areas have been identified, in collaboration with the Information Commissioner, to amend either to add new exemptions and conditions, update existing provisions, or to clarify certain areas for ease of reading and interpretation.

In light of the formal re-assessment of adequacy, which will be based upon these regulations (or an amended format of such regulations set out in new primary legislation), it is important that the exemptions are not drafted too widely. The exemptions need to remain agile, to strike the right balance between ensuring the legitimate interests of business and the rights of the data subject.

The areas proposed to be updated are as follows:

Provision	Proposed Update/Amendment
Schedule 2 and Schedule 9 – Insurance conditions	Update to the insurance conditions and exemptions for disclosure of information to beneficiaries of insurance contracts (in a similar manner to the equivalent trust exemption)
Schedule 2 – Occupational pension schemes	Update to include parent, grandparent, great grandparent or sibling, or member of the occupational pension scheme
Schedule 2 – Anti-doping in sport	Update to enable processing of special category data to prevent doping in sporting environments, and include standards of behaviour in sport, in line with UK updates to equivalent provision
Schedule 2 – Publication of legal judgments	Include new condition akin to that set out in Schedule 1, part 2 of the Data Protection Act 2018 (UK)
Schedule 9 – Trust exemption	Amend so the exemption is more clearly defined, and to include beneficiaries, so relates only to personal data processed in connection with a trust where they are likely to prejudice a power, discretion or duty of a trustee, or provision of information to a data subject who is the beneficiary of a trust prior to the triggering event for that trust
Miscellaneous amendments	Technical updates to judicial appointments, clarification of minor as a natural person under the age of 18 in Schedule 9, and typographical updates in Schedule 7

Questions on changes to exemptions and conditions

Although the Cabinet Office invites responses to the questions set out in this consultation, all and any comments are encouraged to be made as any feedback will help us to inform the amendments to the legislation.

Q.2a Insurance Conditions

The insurance conditions are proposed to be amended to correct some technical issues, but also to include an exemption for disclosure of information to beneficiaries of insurance contracts (in a similar manner to trust beneficiaries in the equivalent exemption). Do you agree that there should be an update to the insurance conditions?

Please select only one item

- Yes, I agree with the conditions update as drafted in the proposed amending Regulations
- Yes, but I think there should be some more changes
- No, the insurance provisions should remain as drafted in the Implementing Regulations I'm not sure

Please provide any comments

Q.2b Occupational Pension Schemes

The conditions for processing for the purpose of occupational pension schemes are proposed to be updated to include members of the scheme and their closest relatives as equivalent to the provision as now enacted in the UK. Do you agree with this proposed update to this condition?

Please select only one item

- Yes I agree with the inclusion of the scheme member and relatives No, I think that this should be updated further
- No, I think that the provision should remain as drafted in the Implementing Regulations I'm not sure

Please provide any comments

Q.2c Anti-Doping in Sport

We already have a provision for anti-doping in sport, and it is proposed to update this provision in line with its UK equivalent as enacted, to enable processing of special category data to prevent doping in sporting environments, and expand to include standards of behaviour in sport. Do you agree with this proposed amendment?

Please select only one item

- Yes, I agree with the proposed amendment;
- No, I don't agree with the proposed amendment and the provision should stay as drafted in the Implementing Regulations;
- No, I don't agree with the proposed amendment, and I would suggest an alternative provision I'm not sure.

Please provide any comments

Q.2d Publication of legal judgments

It is proposed to include a new condition for processing in respect of the publication of legal judgments. This is in line with the equivalent UK provision set out in Schedule 1, part 2 of the Data Protection Act 2018 (UK) so that legal judgments can continue to be published. Do you agree with this amendment?

Please select only one item

- Yes, I agree with this amendment; No, I don't agree and the provisions should not include this condition;
- No, I don't agree, I think the provision should be included but revised I'm not sure

Please provide any comments

Q.2e Trust exemptions

The existing exemption for trusts was intended to address concerns about the knowledge of beneficiaries of the existence of a trust and their beneficial status, and impacts upon the discretion of a Trustee. It is imperative that exemptions are not too wide, so that they do not unnecessarily impact upon the rights of a data subject, and accordingly it is proposed to update this exemption to streamline this and relate it only to personal data processed in connection with a trust where it is likely to prejudice the trustees discretion. Do you agree with this amendment?

Please select only one item

- Yes, I agree with this amendment
- No, I don't agree with this amendment, and I think that the provision should stay as drafted in the Implementing Regulations
- No, I don't agree with this amendment, but I think that there should be some revision to it I'm not sure

Please provide any comments

General comments

Do you have any further general or specific comments regarding the Implementing Regulations and the proposed updates to them by the Amending Regulations?

Please provide any comments