

Data Protection and PECR Training

Supporting notes and further reading

Module 10 : Exemptions part 1



Introduction

These notes are designed to set out the key points covered during module 10 of our data protection online training programme. These notes are not designed to replace the online module, but are intended to be a point of reference for your follow-up study. You may find it helpful to have these notes and the relevant legislation open whilst watching the online module:

- [The UK General Data Protection Regulation \(UK GDPR\)](#)
- [The Data Protection Act 2018 \(DPA\)](#)

This document contains:

- [Supporting notes](#)
- [Further reading](#)

Supporting notes

Module 10 explains how exemptions work and looks at three exemptions. It covers:

- [Exemptions: general](#)
- [Article 23](#)
- [The Schedules](#)
- [The listed UK GDPR provisions](#)
- [Exemptions in Schedule 2 Part 1](#)
- [Crime and taxation](#)
- [Immigration](#)
- [Information to be disclosed by law etc or in connection with legal proceedings](#)
- [Key phrases](#)

Exemptions: general

An [exemption](#) can affect or restrict the application of the UK GDPR provisions. For example, if an exemption applies, a controller may not have to comply with all the usual rights and obligations such as:

- the right to be informed;
- the right of access;
- dealing with other individual rights;
- reporting personal data breaches; and
- complying with the principles.

In all cases we recommend that a controller should identify and document its reasons for any exemption its relying on.

A controller isn't obliged to tell a data subject that they have applied an exemption.

It might do so if it helps the data subject understand why their request has been refused (eg if the request involves third party personal data).

The controller must also be careful not to give the data subject information which would undermine the exemption applied (eg it should not tell the data subject that data has been withheld because its disclosure would be likely to prejudice a criminal investigation).

We normally advise that controllers tell a data subject that they have had all the information they are entitled to.

It is important to know that the UK GDPR does not apply to the [processing of personal data by a natural person in the course of a purely personal or household activity](#).

This is not strictly an exemption but means domestic processing does not fall under the UK GDPR.

Example: an employer passes information about an employee to the Police because it suspects them of fraud

- the employee submits a subject access request to the employer
- the employer responds to the SAR providing all the personal data the employee is entitled to, but it does not reveal that it has passed some personal data to the Police
- a data subject would usually expect to be told if their data is shared with other organisations, but there is an exemption which allows the controller to withhold data if its disclosure would be likely to prejudice the detection of a crime
- the exemption means a controller does not comply with the usual obligation to fully respond to a subject access request

Example: an employer receives a court order for the personnel file of an employee to be provided to an insurance company for the assessment of a claim

- normally, the employer would not be able to disclose this information because the disclosure would be incompatible with the original purposes for collecting the data
- disclosure is not in accordance with the purpose limitation principle, but on this occasion the requirements of the purpose limitation principle do not prevent the disclosure
- because there is an exemption which allows such processing if required by law

Article 23

The UK exemptions are listed in the DPA, but the UK GDPR indicates where these exemptions are envisaged or are required.

A key article is [Article 23\(1\)](#) which concerns the restrictions on processing with respect to:

- the rights of the individual;
- the application of the UK GDPR principles to processing; and
- the obligation to report a personal data breach to a data subject.

It explains that the principles may only be restricted in so far as these correspond to the data subjects' rights and obligations provided for in Articles 12-22.

For example, an exemption might allow a controller to refuse the right of access to a data subject and restrict the scope of principle (a) transparency. But the security principle (f) cannot be restricted as this does not correspond to the rights and obligations provided for in Articles 12 to 22.

Many of the DPA exemptions refer back to the restrictions described in this Article.

The Schedules

The exemptions are found in Schedules 2 to 4 in the DPA.

Most of the key exemptions are found in [Schedule 2](#).

[Schedule 3](#) contains exemptions concerning: health, social work, education and child abuse data.

[Schedule 4](#) contains exemptions concerning disclosure which is prohibited or restricted by another enactment.

[Part 2 Chapter 2 section 15](#) of the DPA tells you that the exemptions are found in the Schedules.

The listed UK GDPR provisions

Each Part or Schedule lists the specific UK GDPR provisions which the exemptions in that Part restrict or adapt. These vary depending on the exemption and identify which rights or principles or UK GDPR obligations are affected by the exemption.

In some cases the exemptions are permissive and allow processing to take place - for example, they allow the disclosure of data.

We will discuss the exemption which permits a controller to disclose personal data to the Police for the [prevention or detection of a crime](#). But the controller doesn't have to make the disclosure – it can choose to apply the exemption if it wishes to. The exemption is permissive and not obligatory.

Exemptions in Schedule 2 Part 1

There are three exemptions in Schedule 2 Part 1 and these concern:

- [Crime and taxation](#);
- [Immigration](#); and
- [Information to be disclosed by law etc or in connection with legal proceedings](#).

Remember the listed UK GDPR provisions vary depending on the exemption and identify which rights and principles or UK GDPR obligations are affected by the exemption.

[Schedule 2 Part 1](#) lists its own UK GDPR provisions in paragraph 1(a). These are the rights and obligations which are affected by the exemptions in this Part.

Crime and taxation

[Schedule 2 Part 1 paragraph 2](#).

This says that the listed UK GDPR provisions and Article 34 (informing data subjects about a personal data breach) do not apply to personal data processed for any of the following purposes:

- a) the prevention or detection of crime,
- b) the apprehension or prosecution of offenders, or

- c) the assessment or collection of a tax or duty or an imposition of a similar nature,

to the extent that the application of those provisions would be likely to prejudice any of these purposes.

[The exemption](#) is permissive – it does not compel the controller to disclose data.

This is not an exemption the Police would use - [processing for law enforcement purposes by competent authorities](#) is covered in Part 3 of the DPA.

Example: the Police ask an organisation for information about a suspect in order to detect a crime

- the organisation chooses to provide the data
- it has an Article 6 basis for processing (Article 6(1)(f) legitimate interests) and a condition for processing because the data is criminal offence data (Schedule 1 paragraph 10: processing necessary for the prevention or detection of a crime)
- the **crime and taxation** exemption means that a controller is exempt from some obligations to the data subject including:
 - the right to be informed, the right of access, and
 - the Article 5 principles - so far as the principles correspond to these rights and obligations,

but only to the extent that the application of those provisions would be likely to prejudice the assessment or collection of a tax

- this includes the fairness/transparency requirement of principle (a) and the purpose limitation principle (b), but only to the extent that the application of those provisions would be likely to prejudice the purposes of the prevention or detection of a crime
- the exemption means the controller does not need to be transparent about the disclosure and can process the data for this new purpose, because this ensures that it does not prejudice the detection of a crime
- the controller makes the disclosure and documents its reasons for applying the exemption

Example: an employer informs HMRC that it suspects an employee has a second job and is avoiding paying tax

- the **crime and taxation** exemption means that a controller is exempt from some obligations to the data subject including:
 - the right to be informed, the right of access, and
 - the Article 5 principles - so far as the principles correspond to these rights and obligations,but only to the extent that the application of those provisions would be likely to prejudice the assessment or collection of a tax
- the employer is able to process the data for this new purpose and is not obliged to inform the individual that it has contacted HMRC because this would tip that person off about a possible investigation into their tax affairs and would be likely to prejudice any tax assessment

Immigration

[Schedule 2 Part 1 paragraph 4.](#)

The exemption gives its own list of UK GDPR provisions. These do not apply to personal data processed for the following purposes:

- a) the maintenance of effective immigration control, or
- b) the investigation or detection of activities that would undermine the maintenance of effective immigration control,

to the extent that the processing would be likely to prejudice these activities.

For example, if the exemption is applied, then a controller may not have to provide information about someone's immigration status.

Please see the [guidance](#) for further information about this exemption.

Information required to be disclosed by law etc or in connection with legal proceedings

[Schedule 2 Part 1 Paragraph 5.](#)

This [exemption](#) says that the listed UK GDPR provisions do not apply to personal data:

1. Consisting of information that the controller is obliged by an enactment to make available to the public, to the extent that the application of those provisions would prevent the controller from complying with that obligation.

For example, using their rights under data protection, a company director cannot insist that Companies House erase their name and an individual cannot insist that their name is removed from the electoral register.

This data must be made available to the public under law and data protection rights cannot change this.

Other legislation will usually apply, for example, a name can be hidden under company law and a name might be removed from the electoral register under other relevant law.

2. Where disclosure of the data is required by an enactment, a rule of law or an order of a court or tribunal, to the extent that the application of those provisions would prevent the controller from making the disclosure.

For example, an employer might hand over a personnel file to the Police if presented with a court order.

3. The listed UK GDPR provisions do not apply to personal data where disclosure of the data –

(a) is necessary for the purpose of, or in connection with, 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,

to the extent that the application of those provisions would prevent the controller from making the disclosure.

Example: a school passes the personal data of a child's parent to its solicitor

- the school wants to take legal action against the parent and the processing is necessary for the purpose of obtaining legal advice
- the exemption for **information in connection with legal proceedings** means the school is exempt from its obligations to the parent regarding:
 - the listed individual rights, and
 - the Article 5 principles - so far as the principles correspond to these rights and obligations,but only to the extent that the application of those provisions would prevent the school from making the disclosure.
- the parent (as the data subject) cannot object to the processing of their personal data or ask that it is erased and they cannot prevent the school from using the data for a new purpose

Example: an individual wants to take legal action following a traffic accident where the other person has driven off

- the individual notes the car number plate and contacts the DVLA in order to find out who owns the car - they want to take legal action against them and argue the DVLA must disclose the owner data for legal proceedings
- But the individual **cannot** use the exemption at paragraph 5(3)(a) to force the DVLA to make the disclosure
- the exemption for **information in connection with legal proceedings** is for the controller to apply and is not obligatory
- the DVLA must ask itself if disclosure is necessary and is entitled to refuse to disclose the owner of the other car

Example: the Police produce a court order compelling an organisation to provide specific personal data

- the exemption for **information to be disclosed by law or in connection with legal proceedings** means that the controller is exempt from its obligations to the data subject regarding:
 - the listed rights (for example, the right to object), and
 - the Article 5 principles - so far as the principles correspond to these rights,but only to the extent that the application of those provisions would prevent the disclosure
- the controller can process the data for the new purpose of the court order and the data subject cannot object because this would prevent the disclosure
- the controller should only disclose the relevant information, rather than all the data it holds about the data subject
- the controller still needs a basis for processing and a condition for processing criminal offence data. This might be Article 6(1)(c) legal obligation and Schedule 1 paragraph 10 preventing or detecting unlawful acts

Key phrases

There are some [key phrases](#) which appear in many of the exemptions. They ensure that exemptions are not applied as a blanket exemption but on a case by case basis and only where:

- The exemption is limited in its application and only applied '**to the extent**' that it is relevant.
- The processing **would be likely to prejudice** a specific function or purpose. This means:
 - the controller must be able to show a link between the prejudice and the exempt processing;
 - the risk has to be real and substantial – and not just be a possibility;

- the controller must be aware that prejudice changes over time. For example, the provision of data might prejudice an investigation, but once the investigation is completed, the prejudice no longer applies and the data might then be disclosed.
- The processing **is necessary for** a particular purpose.

Example: key phrases - the application of the crime and taxation exemption

- a controller has CCTV footage of an employee stealing money and reports them to the police
- the employee makes a SAR to the employer and asks for all their personal data
- the controller can only withhold data **to the extent that** its provision would be likely to prejudice the prevention and detection of a crime
- any other personal data must be provided to the data subject
- the exemption cannot be applied in a blanket fashion to all the data held

Example: key phrases - the application of an exemption for legal proceedings

- a school passes the personal data of a child's parent to its solicitor because it wants to take legal action against them
- the school can make the disclosure **if it is necessary for** the purpose of obtaining legal advice
- it should only disclose information for this purpose and shouldn't just hand over all the personal data it holds about the data subject

[Back to top](#)

Further reading

Exemptions

In the [Guide to the UK GDPR](#), have a look at the section [Exemptions](#).

Read the 'At a glance' points and the 'In brief' questions and answers:

- [What are exemptions?](#)
- [How do exemptions work?](#)

In the section [What exemptions are available?](#) Have a look at the following under Crime, law and public protection

- [Crime and taxation: general](#)
- [Crime and taxation: risk assessment](#)
- [Information required to be disclosed by law or in connection with legal proceedings](#)
- [Immigration](#)

Find an example of a bank applying the **crime and taxation exemption** when passing fraud data to the National Crime Agency (see the yellow boxes for examples).

Find an example of the Registrar of Companies applying the **exemption for information required to be disclosed by law** because the data is required by law to be made public.

Find an example of an employer disclosing personal data in response to a court order and using the **exemption for information required to be disclosed by law**.

There is detailed guidance about the [immigration exemption](#). Have a look at some of the key questions:

- [What is the immigration exemption?](#)
- [When should this exemption be used?](#)

Find an example of the **immigration exemption** being applied in practice (see the yellow boxes for examples).

[Back to top](#)

KNOWLEDGE SERVICES
UPDATED: 29 APRIL 2022