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L.N. 188 of 2012

DATA PROTECTION ACT
(CAP. 440)
Data Protection (Processing of Personal Data in the Police Sector) (Amendment) Regulations, 2012

IN EXERCISE of the powers conferred by articles 5 and 54(m) of the Data Protection Act, the Minister for Justice, Dialogue and the Family, after consultation with the Information and Data Protection Commissioner, has made the following regulations:-

Citation.

1. The title of these regulations is the Data Protection (Processing of Personal Data in the Police Sector) (Amendment) Regulations, 2012, and theses regulations shall be read and construed as one with the Data Protection (Processing of Personal Data in the Police Sector), Regulations, hereinafter referred to as the "principal regulations".

S.L. 440.05

Substitutes regulation 3 of principal regulations.

2. Regulation 3 of the principal regulations shall be substituted by the following:

"Scope.

3. (1) The scope of these regulations is to ensure a high level of data protection in the Police sector, in accordance with the principles contained in Recommendation No. R (87) 15 of the Council of Europe.

(2) The Act shall be extended to apply to public bodies exercising police powers to the extent as is provided in these regulations.".

Amends regulation 4 of principal regulations.

3. Immediately after regulation 4(2) of the principal regulations there shall be added the following new sub-regulation:

"(3) Public bodies exercising police powers shall consult with the Information and Data Protection Commissioner, prior to processing personal data which will form part of a new filing system to be created where:

(a) sensitive personal data are to be processed; or

(b) the type of processing, in particular using new technologies, mechanism or procedures, holds otherwise specific risks for the fundamental rights and freedoms, and in particular the privacy of the data subject.".

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Amends regulation 9 of principal regulations.

4. In regulation 9(1) of the principal regulations, for the words "regarding the protection of the data subject" there shall be substituted the words "or regulation laying down specific rules on the processing or exchange of personal data in the context of police and judicial cooperation".

Substitutes regulation 14 of principal regulations.

5. Regulation 14 of the principal regulations shall be substituted by the following:

"Compensation for damages.

14. Where a data subject has suffered damage as a result of an unlawful processing operation, or of any act incompatible with these regulations, he shall be entitled to exercise an action for damages in accordance with article 46 of the Act.".

Renumbers regulation 15 of the principal regulations.

6. Regulation 15 shall be renumbered as regulation 18.

Adds new regulations to the principal regulations.

7. Immediately after regulation 14 of the principal regulations there shall be added the following regulations:

"Confidentiality of processing.

15. (1) Any person who has access to personal data which falls within the scope of these regulations may process such data only if that person is a member of, or acts on instructions of public bodies exercising police powers, unless he is required to do so by law.

(2) Persons working for a public body exercising police powers shall be bound by all the data protection rules applicable to such body and also any other law or legally binding instrument regulating confidentiality and secrecy applicable to their official capacity.

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Security of processing.

16. (1) Public bodies exercising police powers shall implement appropriate technical and organisational measures to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission over a network or the making available by granting direct automated access, and against all other unlawful forms of processing, taking into account in particular the risks represented by the processing and the nature of the data to be protected. Having regard to the state of the art and the cost of their implementation, such measures shall ensure a level of security appropriate to the risks represented by the processing and the nature of the data to be protected.

(2) In respect of automated data processing, public bodies exercising police powers shall implement measures designed to:

(a) deny unauthorised persons access to data-processing equipment used for processing personal data (equipment access control);

(b) prevent the unauthorised reading, copying, modification or removal of data media (data media control);

(c) prevent the unauthorised input of data and the unauthorised inspection, modification or deletion of stored personal data (storage control);

(d) prevent the use of automated data-processing systems by unauthorised persons using data communication equipment (user control);

(e) ensure that persons authorised to use an automated data-processing system only have access to the data covered by their access authorisation (data access control);

(f) ensure that it is possible to verify and establish to which bodies personal data have been or may be transmitted or made available using data communication equipment (communication control);

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(g) ensure that it is subsequently possible to verify and establish which personal data have been input into automated data-processing systems and when and by whom the data were input (input control);

(h) prevent the unauthorised reading, copying, modification or deletion of personal data during transfers of personal data or during transportation of data media (transport control);

(i) ensure that installed systems may, in case of interruption, be restored (recovery);

(j) ensure that the functions of the system perform, that the appearance of faults in the functions is reported (reliability) and that stored data cannot be corrupted by means of a malfunctioning of the system (integrity).

(3) Where a public bodies exercising police powers engages a processor to act upon its behalf within the meaning of article 25 of the Act, such processor may be designated only if it can guarantee observance of the requisite technical and organisational measures under sub-regulation (1) and comply with the instructions of the public bodies exercising police powers under regulation 15. The public bodies exercising police powers shall monitor the processor in those respects.

(4) Personal data may be processed by a processor only on the basis of a written contract or by any other legally binding instrument laying down specific data protection rules applicable to the entrusted data processing.

Independent supervision.

17. (1) The Information and Data Protection Commissioner shall be responsible for the independent supervision and to provide advice and monitor the application of these regulations.

(2) In order to ensure compliance with these regulations the Information and Data Protection Commissioner shall exercise the same functions and powers as conferred to him under the Act.

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(3) Pursuant to sub-regulation (2), the Information and Data Protection Commissioner may impose fines as stipulated in the Act and as may be prescribed by means of regulations laying down effective, proportionate and dissuasive penalties to be imposed in case of infringements of said Act and regulations made thereunder.".

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