

Data Protection Law, 2017 – Summary Fact Sheet

General

- passed on 27 March 2017, commencement expected in January 2019;
- seeks compliance with the European Commission’s “Adequacy Standard” under the EU Data Protection Directive (1995) and the EU General Data Protection Regulation;
- defines “personal data” as data relating to a living individual who can directly or indirectly be identified, including an expression of an opinion about, or an indication of intentions in respect of, the individual;
- defines “processing” broadly, including the collection, organization, storage, alteration, use, disclosure or destruction of personal data;
- applies to both public and private sector “data controllers”;
- places limits on how personal data may be used by, or shared with, third parties;
- provides special protections for particularly sensitive types of personal data.

Data Protection Principles (Schedule 1)

Personal data must:

1. be used fairly and only when specific conditions are met, for instance where consent has been given, where there is a legal obligation, or where it is necessary for performance of a contract.;
2. be obtained for one or more specified, lawful purposes, or compatible purposes;
3. be adequate, relevant and not excessive in relation to the purpose or purposes for which they are collected or used;
4. be accurate and up to date;
5. not be kept for longer than necessary;
6. be used in accordance with the rights of individuals as specified in the remainder of the draft Bill;
7. be protected by appropriate technical and organizational measures against unauthorized or unlawful use, and against loss, destruction or damage;
8. not be transferred abroad unless an adequate level of protection can be guaranteed.

Rights of Individuals

- the right to access your own personal data and certain information about its use; (s.8)
- the right to require that processing of your personal data cease; (s.10)
- the right to require that processing of your personal data for the purpose of direct marketing cease; (s.11)
- the right to require that a decision which significantly affects you, and which is made solely by automatic means, is reconsidered on another basis; (s.12)
- the right to seek compensation for damages caused by contravention of the Data Protection Law; (s.13)
- the right to seek rectification, blocking, erasure or destruction of inaccurate personal data; (s.14) and,
- the right to complain to the Ombudsman where it appears that a violation has occurred. (s.43)

Duties of Data Controllers

The Data Protection Law imposes certain specific obligations on the persons who control the use of personal data (“data controllers”), including:

- the duty to apply the data protection principles; (sch.1, para 6)
- the duty to respond in a timely fashion to requests from data subjects in relation to their personal data; (s.8)
- the duty to notify data subjects and the Ombudsman of any personal data breaches.(s.16)

Exemptions (ss.17-31)

There are exemptions to certain obligations in order to ensure that personal data can be used in appropriate circumstances, e.g. for national security, law enforcement, certain public functions, health care, education, social work, journalism, literature, art, research, history, statistics, information available under an enactment, legal proceedings, personal family or household affairs, honours, corporate finance, negotiations, legal privilege. The Cabinet may also develop further regulations relating to exemptions.

Enforcement (Parts 5-6)

The Ombudsman has the following powers:

- to hear, investigate and rule on complaints;
- to monitor, investigate and report on the compliance of data controllers under this Law;
- to intervene and deliver opinions and orders related to processing operations;
- to order the rectification, blocking, erasure or destruction of data;
- to impose a temporary or permanent ban on processing;
- to make recommendations for reform both of a general nature and directed at specific data controllers;
- to engage in proceedings where the provisions of this Law have been violated, or refer these violations to the appropriate authorities;
- to cooperate with international data protection supervisory authorities;
- to publicize and promote the requirements of this Law and the rights of data subjects under it;
- to do anything which appears to him to be incidental or conducive to the carrying out of his functions under this Law.

Offences and penalties (incl. fines and administrative penalties): (part 6)

- failing to make certain particulars available to a data subject in response to a request;
- failing to notify the data subject and the Ombudsman of a personal data breach;
- withholding, altering, suppressing or destroying information requested by the Ombudsman;
- knowingly or recklessly disclosing information;
- obstructing a warrant, or making a false statement;
- unlawfully obtaining, disclosing, selling or procuring personal data;
- failing to comply with an enforcement or monetary enforcement order;
- offences otherwise specified in Regulations.

For more information and guidance, please visit our website: www.ombudsman.ky