

TABLE OF CONTENTS

	PAGE
<i>Preface</i>	v
<i>Introduction and Acknowledgements</i>	vii
<i>Table of Cases</i>	xlv
<i>Table of Statutes</i>	lix
<i>Table of Statutory Instruments</i>	lxxi
<i>Table of European Legislation</i>	lxxvii
PARA	
1. Background, History And Context	
Introduction	1–01
National And International Context Of The Data Protection Act 1998	
United Kingdom developments between 1960 and 1972	1–05
The Younger Report	1–06
The Lindop Report	1–07
International developments 1978–1982	1–08
OECD Guidelines 1980	
Summary of content	1–09
Council Of Europe Convention 1981	
Summary of content	1–10
Amendments to Treaty 108	1–11
Additional Protocol to the Convention	1–12
Implementation Of The Data Protection Act 1984	1–14
Directive 95/46/EC And UK Implementation	1–15
Implementation in the UK.....	1–17
UK reviews	1–19
Transfer of responsibility for data protection	1–21
Commission Action Against The UK.....	1–22
Data Protection In The European Order.....	1–23
Scope and application of Directive 95/46/EC.....	1–24
European background	1–30
Schengen Accord	1–31
Treaty of Maastricht 1991	1–32
Europol	1–33
Customs Information System	1–34
The Treaty of Amsterdam.....	1–35
Post-Amsterdam changes	1–37
European Data Protection Supervisor	1–38

CONTENTS

Co-Operation Over Policing And Anti-Terrorism	1-39
Background to the Framework Agreement on data protection.....	1-40
Council Framework Decision 2008/977/JHA	1-41
Instruments not affected by JHA 2008/977	1-42
Obligations in Framework Decision JHA 2008/977.....	1-43
Legal effect of third pillar instruments	1-44
Implementation of Framework Decision JHA 2008/977 in the UK	1-45
Lisbon Treaty And Charter Of Fundamental Rights	
Proposed Constitution.....	1-46
Charter of Fundamental Rights	1-47
The Treaty of Lisbon	1-48
Data protection provisions in the Treaty of Lisbon.....	1-49
UK opt-in to the Title VI instruments.....	1-50
Associated Areas	1-51
Directive 2002/58 concerning the Processing of Personal Data and the Protection of Privacy in the Electronic Communications Sector	1-52
Data Retention Directive	1-53
Review Of Directive 95/46—European Commission	
Commission position	1-56
Follow up programme	1-57
Commission's initiatives	
Other initiatives	
2009 Review	1-59
Stockholm Programme Post-2010	1-60
Negotiations on data sharing agreement with the US for law enforcement purposes.....	1-61
SWIFT/Terrorist Finance Tracking Program (TFTP)	1-62
PNR Agreements	1-63
Proposal For New Legislation	
A comprehensive approach to personal data protection in the European Union	1-68
Proposal from the Commission January 2012	1-69
Legislative process	1-70
Elements applicable to both instruments	1-72
Elements present in the draft Regulation.....	1-73
Elements applicable to the draft Directive only	1-74
Additional materials	
Websites.....	1-77
Statutory instruments	1-78
2. Privacy Rights Under The Human Rights Act 1998 And Remedies For The Misuse Of Private Information	
Introduction	2-01
Summary Of Main Points	2-02
Commercial Exploitation Image.....	2-03

CONTENTS

Protection Of Reputation	2-04
Background—Privacy Rights	2-06
UK background.....	2-07
Confidentiality—Before October 2000	2-08
Development of jurisprudence on confidentiality.....	2-09
Regulation of the press.....	2-15
Human Rights Act 1998 (HRA)	2-16
Interpreting legislation.....	2-17
Court rulings	2-18
Incompatibility.....	2-19
Acts of public authorities	2-20
Human Rights Act 1998 s.12	2-21
Effect on approach to interpretation.....	2-22
The Application Of The Convention Rights	2-23
Application to private bodies or persons	2-24
The nature of qualified rights.....	2-25
Article 8	2-26
Strasbourg cases on the right to private life and information uses	2-27
Strasbourg jurisprudence	2-28
Consent as a basis for interference	2-29
Relationship Between the Case Law and Directive 95/46	2-30
ECtHR cases on personal information	2-31
Collection of information	2-32
Covert collection.....	2-33
Maintenance of records	2-34
Access to information	2-35
Photography	2-36
Disclosure of information	2-37
Notice of disclosure	2-38
Sensitive data	2-39
Security of data	2-40
Cases before the European Court	2-41
Relation with Directive 95/46	2-42
Article 10	2-43
Political and journalistic materials	2-44
Freedom of Expression—UK case law	2-45
Procedure	2-46
UK cases	2-48
Development of the main principles—cases dealing with privacy and press intrusion	
Michael Douglas, Catherine Zeta-Jones, Northern & Shell Plc v Hello! Ltd	2-50
Theakston v MGN Ltd.....	2-55
A v B	2-56
Campbell v Mirror Group Newspapers	2-59
Re S (FC) (a child).....	2-65
McKennitt v Ash	2-66

CONTENTS

HRH Prince of Wales v Associated Newspapers Ltd.....	2-68
CC v AB	2-70
Murray v Big Pictures Ltd	2-71
Mosley v News Group Newspapers Ltd.....	2-73
Development of the main principles—cases other than celebrity and press intrusion	2-74
Cases on policing and security.....	2-78
Other cases.....	2-85
Injunctive Relief, Anonymity And The Use Of Super-Injunctions.....	2-89
Anonymity and the development of the “super-injunction”	2-90
Overview	2-97
 3. Interpretation Of The Act And Case Law Of The Court Of Justice Of The European Union	
Introduction	3-01
Summary Of Main Points	3-02
Approach To Interpretation	
Impact of Directive 95/46	3-03
Directive 2002/58/EC and the Privacy and Electronic Communications (EC Directive) Regulations 2003	3-08
Relation with the European Human Rights Instruments	3-09
Court Of Justice Of The European Union—Overview And Caselaw	
Jurisdiction.....	3-10
How cases are heard	3-11
Case law on data protection	3-12
Overview of case decisions on Directive 95/46 EC and 2002/58.....	3-13
Analysis Of Cases On Directive 2002/58 And Directive 95/46	
Directive 2002/58	3-14
Directive 95/46/EC	
Bodil Lindqvist v Aklagarkammaren i Jonkoping (C-101/01).....	3-16
Joined Cases C-465/00 Rechnugshof and Osterreichischer Rundfunk; C-138/01 Christa Neukomm and Osterreichischer Rundfunk; and C-139/01 Joseph Lauermann and Osterreichischer Rundfunk	3-17
Passenger Name Records (PNR)	
Background	3-18
Huber v Germany (C-524/06).....	3-22
College van Burgemeester en Wethouders van Rotterdam v Rijkeboer (C -553/07).....	3-23
Joined cases C-92/09 and C-93/09 Volker und Markus Schecke GbR v Land Hessen.....	3-24
Case Tietosuojavaitutettu v Satajunnan Markkinaporssi Oy and Satamedia Oy (C-73/07).....	3-25

CONTENTS

Scarlet Extended SA v Societe Belge des Auteurs, Compositeurs et Editeurs SCRL (SABAM) (C-70/10).....	3-27
Joined Cases C-468/10 and C469/10 Asociacion National de Establicimientos Financieros de Credito (ASNEF) and Federacion de Comercio Electronico y marketing Directo (FECEMD) v Administracion del Estado	3-29
European Commission v Bavarian Lager Co Ltd (C-28/08 P).....	3-30
Other International Instruments And Law Of Member States.....	3-31
Other international instruments	
Interpretative Relevance of the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (Treaty 108).....	3-32
Recommendations.....	3-33
Interpretative relevance of the OECD Guidelines	3-34
Decisions Of UK Courts And Tribunals	
Previous decisions on the Data Protection Act 1984.....	3-35
Decisions on the 1998 Act	3-36
<i>Hansard</i> And Explanatory Notes.....	3-37
Rules of statutory interpretation—general	3-38
Codes Of Practice And Guidance	
Codes of Practice.....	3-39
Guidance from the Information Commissioner	3-40
Article 29 Working Party	3-41
Impact of the draft Regulation in brief	3-42
Additional Materials	3-43
Data Protection Tribunal Cases 1984 Act.....	3-44
 4. Main Definitions, Scope And Territorial Application	
Introduction	4-01
Summary Of Main Points	4-02
Definitions	
Introduction.....	4-03
Personal data.....	4-04
Data relating to more than one person.....	4-05
Identified or identifiable—current guidance	4-06
Common Services Agency v Scottish Information Commissioner	4-08
R. (Department of Health) v Information Commissioner	4-09
Information which relates to an individual	4-10
Michael John Durant v Financial Services Authority	4-11
The application of the ruling in <i>Durant</i>	4-12
Infringement proceedings	4-14
Processing	4-15
Comment	4-18
Data	4-19

CONTENTS

Relevant filing system	4-20
Category (e) data	4-23
Data held by the authority	4-24
Structured manual data	4-25
Data controller	4-27
Data processor	4-30
Data subject	4-31
Obtaining, recording, using and disclosing	4-32
Third party	4-33
Recipient	4-34
Consent	4-35
Article 29 Working Party Opinion on the definition of consent	4-36
UK case law	4-37
Freely given	4-41
Specific	4-42
Informed	4-43
Consist of an indication of agreement	4-44
Unambiguous consent	4-45
Explicit consent	4-46
Application To The Crown And To The Houses Of Parliament	4-47
Territorial Application	4-49
Establishment	4-50
Representatives	4-52
Diplomatic arrangements	4-54
Impact of the draft Regulation in brief	4-55
Additional Materials	4-56
<i>Hansard</i> references	4-57
5. Grounds For The Processing Of Personal Data	
Introduction	5-01
Summary Of The Main Points	5-02
The meaning of the “necessary”	5-03
Sensitive personal data	5-04
Grounds For Processing	
Consent and explicit consent	
Consent to processing	5-08
Explicit consent to the processing	5-10
Schedule 2 Grounds	5-11
Contractual reasons	5-12
Non-contractual legal obligations	5-13
The data subject’s vital interests	5-14
Public functions	5-15
The data controller’s legitimate interests	5-16
Schedule 3 Grounds	
Legal obligations in the context of employment	5-20

CONTENTS

To protect the vital interests of the data subject or another person where consent cannot be given or is withheld	5-23
By certain non-profit making bodies in respect of their members	5-26
Where the information has been made public	5-27
In legal proceedings	5-28
To carry out certain public functions	5-29
Anti-fraud organisations	5-30
For medical purposes	5-31
Ethnic monitoring	5-32
Order making power	5-33
The Data Protection (Processing of Sensitive Personal Data) Order 2000	5-34
Substantial public interest	5-35
Necessary (for a particular purpose)	5-36
Safeguards	5-37
Paragraph 1	5-38
Paragraph 2	5-39
Paragraph 3	5-40
Paragraph 4	5-41
Paragraph 5	5-42
Paragraph 6	5-43
Paragraph 7	5-44
Paragraph 8	5-45
Paragraph 9	5-46
Paragraph 10	5-47
Elected representatives	5-48
Elected representatives	5-49
Relevant processing	5-50
Disclosures	5-51
The Data Protection (Processing of Sensitive Personal Data) Order 2006	5-52
Data Protection (Processing of Sensitive Personal Data) Order 2009	5-53
Data Protection (Processing of Sensitive Personal Data) Order 2012	5-54
Safeguards	5-55
Impact of the draft Regulation in brief	5-57
Additional Information	
Derivations	5-58
<i>Hansard</i> references	5-59
Previous case law	5-60
6. Principles One To Six Including Issues Common To The Exercise Of Individual Rights Under Principle 6	
Introduction	6-01
Summary Of Main Points	6-02
Enforcement	6-03

CONTENTS

The First Principle	6-04
Lawfully.....	6-05
Relation with the Human Rights Act (HRA).....	6-06
Breach of the criminal law	6-08
Hacking.....	6-09
Fraud based on identity theft.....	6-10
Obscenity and indecency.....	6-11
Confidentiality	6-12
Breach of contract or tortious wrongs.....	6-14
Powers of public bodies	6-15
Legitimate expectation	6-16
Breach of other statutory provisions or requirements of soft law	6-18
Does unlawful always mean unfair?	6-19
Breach of Article 8	6-20
Fairly.....	6-22
Fairness under the 1984 Act.....	6-23
Cases under the 1998 Act.....	6-25
Interpretation principles in the 1998 Act	6-26
The "specified information"	6-27
What is the specified information?	6-28
Providing the specified information.....	6-29
As far as practicable	6-32
Fairness and contract.....	6-33
Commissioner's Guidance.....	6-34
Article 29 Working Party Paper	6-35
European Court Opinion of Advocate General in <i>Rijkeboer</i>	6-36
Specific exemption in the case of third party obtaining.....	6-37
General identifiers	6-38
Rights to opt-out.....	6-39
Special cases—internet, telephone and fax.....	6-40
Other requirements of fairness	6-41
Consequences of breach of the first principle for legal proceedings.....	6-42
The Second Principle	6-43
Commissioner's view	6-46
Use for a new purpose: is consent always required?.....	6-47
The Third Principle	6-48
Interpretation under the 1984 Act	6-49
What is meant by "adequate, relevant and not excessive"?	6-50
The Fourth Principle	6-57
The Fifth Principle	6-59
Deletion and rights of subject access.....	6-62
Setting the standards for retention	6-63
Commissioner's guidance.....	6-64
Applying the standards.....	6-65

CONTENTS

Case law on retention of personal data	
European case law.....	6-66
UK case law	6-68
Current position on DNA retention.....	6-73
The Sixth Principle	6-74
Individual Rights-General Issues	6-75
Formalities Of Notices.....	6-76
Address for service	6-77
Notice in writing.....	6-78
Service by electronic means	6-79
Exercise Of Rights By Minors Or On Behalf Of Others	
Exercise of individual rights by children.....	6-80
Exercise of rights by agents	6-81
Exercise of rights on behalf of persons with disabilities.....	6-82
Litigation.....	6-84
Disability discrimination	6-85
Can The Rights Be Excluded?	6-86
The data protection principles and the individual rights	6-87
Effect of the Directive and the Human Rights Act 1998	6-89
Position of private bodies.....	6-91
Contract terms.....	6-92
The Unfair Terms in Consumer Contracts Regulations 1999 (SI 1999/2083)	6-93
Impact of the draft Regulation in brief	6-94
Records management process	6-95
Additional Information	
Derivations	6-96
Hansard references	
7. Security Obligations And The Use Of Data Processors	
Introduction	7-01
Summary Of Main Points	7-02
Analysis Of The Principle	7-03
Relation with the Directive	7-07
Relation With Other International Instruments	7-08
European case law	7-09
Security Obligations Under Other Provisions	
Financial services	7-10
Government Security Review and requirements	7-13
Data Handling Procedures Report/Security Policy	
Framework.....	7-14
Security standards	7-15
Guidance from the Commissioner on Security	7-16
Guidance from the Article 29 Working Party	7-17
Security Breach Notification To Regulators And Individuals.....	7-18
Security breach Notification to the Commissioner	7-21
Handling a breach of security	7-22

CONTENTS

Data Processor Appointments.....	7-23
Impact of the draft Regulation in brief.....	7-27
Processor contract clauses.....	7-28
Precedent data processor contract clauses	
Definitions.....	7-29
[Relevant Personal Data][Client Personal Data] means	
Supplier's obligations	
Additional Information	
Derivations.....	7-30
Hansard references.....	7-31
8. Overseas Or Cross-Border Transfers Of Personal Data <i>William Malcolm</i>	
Introduction.....	8-01
Summary Of The Main Points.....	8-04
What Is A Cross-Border Data Transfer?.....	8-05
Onward transfers.....	8-06
Adequate protection	
Provisions in the Act	8-07
Adequacy assessment.....	8-09
EU level.....	8-10
Article 29 Paper.....	8-11
Content Principles	8-12
Procedural and enforcement mechanisms.....	8-14
Adequacy through self-regulation.....	8-15
Evaluation of a Self-Regulatory Code.....	8-16
Adequacy through contract	8-17
Community Findings—States	8-18
Safe Harbor	8-19
Overview.....	8-20
Safe Harbor—the Privacy Principles	8-21
Comment	
The Frequently Asked Questions (FAQs)	8-22
US regulatory bodies and correspondence from them.....	8-23
Financial services	8-24
Can data processors join the Safe Harbor?	8-25
Safe Harbor and the Cloud.....	8-26
Contractual Clauses Approved By The Commission.....	8-27
Controller to controller contract.....	8-28
Contracts (Rights of Third Parties) Act 1999—England & Wales	8-30
Amendment of controller to controller clauses.....	8-31
Controller to processor contract	8-32
Amendment of controller to processor clauses.....	8-33
Contractual clauses for international transfers and the cloud	8-34

CONTENTS

Binding Corporate Rules	8-38
Article 29 Working Documents on Binding Corporate Rules (BCRs).....	8-39
Jurisdiction.....	8-42
Substantive Provisions	
Data Protection Lead.....	8-43
Description of processing and data flows	8-44
Data protection safeguards	8-45
Legally binding measures	
Compliance audit & training, and complaints	8-46
Mechanism for recording and reporting change	
Procedures and deliverables	8-47
Commissioner's Guidance.....	8-48
Fair processing and overseas transfers.....	8-51
Exemptions Or Derogations.....	8-52
Contractual Requirements.....	8-53
Substantial public interest	8-54
Legal proceedings	8-55
The data subject's vital interests	8-56
Public registers	8-57
The authority of the Commissioner	8-58
Contract clauses and authorisations	8-59
Enforcement	8-60
Impact of the draft Regulation in brief.....	8-61
Additional materials	8-66
Hansard references	8-67
Case law	8-68
9. Notification	
Introduction	9-01
Summary Of Main Points	9-02
The Duty To Notify	9-03
Scope of duty	9-04
Processing exempt from notification	
Exemptions under the Act	9-05
Other exemptions	9-06
Staff administration	9-08
Advertising, marketing and public relations.....	9-09
Accounts and records	9-10
Remote credit checks	9-11
Processing by non-profit making organisations	9-12
Processing for judicial functions	9-13
The Register	
Contents of the register	9-15
Name and address of data controller	9-17
Name and address of nominated representative	9-18
Recipients	9-19

CONTENTS

Form of notification.....	9-20
Statement of exempt processing	9-21
Additional information in the Register	9-22
Special Cases	9-23
Schools.....	9-24
Partnerships.....	9-25
Groups of companies.....	9-26
Fees	9-27
General Provisions	
Number of entries permitted	9-31
Refusal of a notification of entry	9-32
Duration of a register entry	9-33
Public access to the register	9-34
Certified copies.....	9-35
Applications For Registration	
Method of application	9-36
Security numbers	9-37
Accuracy of applications	9-38
Removal of an entry	9-39
Assignment of register entry	9-40
Changes.....	9-41
Obligations of Commissioner.....	9-42
Notification of security provisions.....	9-43
Assessable Processing.....	9-45
Types of processing	9-46
Time-limits.....	9-47
Voluntary Notification.....	9-48
Duty To Make Information Available.....	9-49
Offences	9-50
Data Protection Supervisors.....	9-51
Impact of the draft Regulation in brief.....	9-52
Additional Information	9-53
History Of Registration/Notification	9-54
Derivations.....	9-56
<i>Hansard</i> references	9-57
Previous case law	9-58
10. The Commissioner	
Introduction	10-01
Summary Of Main Points	
National Roles.....	10-03
Promotional work	
Good practice	10-04
Information and advice	10-05
Charges	10-06
International information	10-07
Codes of Practice	
Background and general comments.....	10-08

CONTENTS

Statutory codes under the DPA.....	10-09
Secretary of State sponsored codes under the DPA	10-11
Other codes.....	10-12
Current codes	10-13
Commissioner approved codes	10-14
Non-statutory relevant codes	10-15
Audit powers.....	10-16
Reports to Parliament	10-17
Funding for assistance in special cases.....	10-18
Disclosure of information to the Commissioner.....	10-19
Disclosures of information by and to the Commissioner	10-20
International Role	
General	10-21
Community Codes of Conduct.....	10-22
Article 29 Working Party	
Constitution	10-23
Role	10-24
Papers and opinions produced by the Article 29 Working Party.....	10-25
Article 31 Committee	10-26
Convention co-operation	10-27
Directive co-operation	10-28
Informal co-operation	10-29
Colonies	10-30
European supervisory bodies.....	10-31
Adequacy	10-32
Office Of The Commissioner	
Appointment and tenure	10-33
Independence Of The Supervisory Authority.....	10-34
Staff.....	10-35
Staff confidentiality	10-36
Formalities And Finance	10-37
Financial provisions and accounts	10-38
Impact of the draft Regulation in brief	10-39
Additional Information	
Derivations.....	10-40
<i>Hansard</i> references	10-41
Article 29 Working Party Papers.....	10-42
11. Subject Access Ellis Parry	
Introduction	11-01
Summary Of Main Points	11-03
Requirements for requesting information.....	11-04
Address for service	11-05
Requests in writing	11-06
Obligations of public authorities under the Freedom of Information Act (the “FOIA”)	11-07
Fees for subject access	11-08

CONTENTS

The Data Protection (Subject Access) (Fees and Miscellaneous Provisions) Regulations (SI 2000/191)	11-09
Treatment of requests	11-10
Credit reference agencies.....	11-11
Educational records	11-12
Health records	11-13
Retrievi ng The Information—Finding What The Data Subject Wants	
Authenticity of the request	11-14
Does all information have to be given?	11-15
What information must be given in response to an access request?.....	11-17
Obligation to confirm that processing is taking place.....	11-18
Obligation to describe the processing.....	11-19
Obligation to provide data sources	11-22
Obligation to describe the processing logic.....	11-23
Obligation to provide information constituting the personal data	11-25
Subject access to emails.....	11-27
Access to other data	11-28
Data about other living individuals.....	11-29
Is the third party information personal data about the requester?	11-31
Who is the third party and what does the requester know about them?	11-32
Consent	11-33
Confidentiality	11-34
Cases where the data controller is not obliged to provide access	11-39
Time For Response	11-40
Changes In The Personal Data.....	11-41
Offence of altering personal data	11-42
How Can The Information Be Given?	11-43
Exemptions	11-44
National security	11-45
Crime and taxation	11-46
Health, social work and education	11-47
Regulatory activity.....	11-48
Journalism, art and literature	11-49
Research, historical and statistical information	11-50
Other available exemptions	11-51
Relationship With Other Legal Constraints.....	11-52
Remedies For Failure To Give Subject Access	11-53
Data subject remedies.....	11-54
The Information Commissioner	11-56
Consumer Credit Act Information	11-58
The Consumer Credit (Credit Reference Agency) Regulations (SI 2000/290).....	11-59
Data about other persons may appear on consumer credit files	

CONTENTS

Accessible Records	11-63
Education Records	11-68
Section 12A Penalties	11-70
Impact Of The Draft Regulation In Brief.....	11-71
ADDITIONAL INFORMATION	
Derivations	
<i>Hansard</i> References.....	11-73
Previous case law	11-74
12. Rights to Prevent Processing	
Introduction	12-01
Summary Of Main Points	12-02
Right To Prevent Processing For Direct Marketing.....	12-03
Opt-out boxes and s.11	12-08
Commercial considerations and marketing options	12-10
Right To Prevent Other Processing	12-11
No right to object	12-12
Processing on the basis of consent.....	12-13
Grounds to which objections may be made.....	12-14
Which Processing Can Be Prevented?	12-15
Grounds Of Objection: What Does The Individual Have To Show?	12-16
Describe the data and the processing.....	12-17
Show substantial damage or distress is likely	12-18
Unwarranted damage and distress.....	12-19
Formalities of the objection	12-20
How should a data controller respond?	12-21
Objection to processing after the death of the data subject.....	12-22
Relation to the Principles	12-23
Powers of the court.....	12-24
How can an individual use this right?	12-25
Impact of the draft Regulation in brief	12-26
Checklist for data controllers	
How to use this checklist	12-27
Additional Information	
Compliance with the Directive.....	12-28
Derivations.....	12-29
<i>Hansard</i> references	12-30
Previous case law	12-31
13. Rights Relating To Automated Decisions	
Introduction	13-01
Summary Of Main Points	13-02
Processing Affected.....	13-03
Nature Of The Decision	13-04
Significant effects	13-05
Nature Of The Processing	13-06

CONTENTS

Exempt Decisions	13–07
Categories of exempt decisions.....	13–08
Contractual situations.....	13–09
Statutory authorisation	13–10
Safeguards	13–11
Prohibition notices served by individuals	13–12
Obligations of data controllers	13–13
Notification by data controller.....	13–14
Data subject response	13–15
Counter-notice by data controller.....	13–16
Breach Of S.12	
Failure to observe a s.12(1) or 12(2)(b) notice.....	13–17
Compensation.....	13–18
Powers of the Commissioner	13–19
Failure to serve a s.12(2)(a) notice	13–20
Practical Tools	
Examples of automated decision-making	13–21
Checklist for data controllers: automated decisions	
How to use this checklist.....	13–22
Impact of the draft Regulation in brief	13–23
Additional Information	
Derivations.....	13–24
<i>Hansard</i> references	13–25
Previous case law	13–26
14. Accuracy Of Personal Data, Compensation And Individual Remedies	
Introduction	14–01
Summary Of Main Points	14–02
Rights Orders Made By The Courts	
Subject access orders	14–03
Prevention of processing order.....	14–08
The direct marketing order	14–09
Automated decisions orders	14–10
Accuracy	
Accuracy of data.....	14–12
Accuracy Orders	14–14
Rectification orders.....	14–15
Blocking orders.....	14–17
Erasure and destruction	14–18
Erasure	14–19
Destruction	14–20
Verification inquiries	14–21
Supplemental statement	14–22
Communication orders	14–23
Compensation And Associated Court Orders	
Who can sue?.....	14–24
Representative actions	14–25

CONTENTS

Who can be sued?.....	14–26
Damages	14–27
Damages for distress	14–28
Categories of damages.....	14–29
Grounds for a claim.....	14–30
Level of payments for distress	14–32
Defences to an action for compensation	14–33
Moral damages	14–34
Associated orders.....	14–35
Other orders of the court—powers of the court	14–36
High Court.....	14–37
Injunctive relief.....	14–38
County Court	14–39
Financial Support For Litigation	14–40
Access to Commissioner's papers.....	14–41
Freedom of information	14–42
Obligations on the Commissioner to disclose information	14–43
Assistance in cases involving special purposes	14–44
Impact of the draft Regulation in brief	14–45
Additional Information	
Derivations.....	14–46
<i>Hansard</i> references	14–47
Previous case law	14–48
15. Exemptions For National Security, The Prevention And Detection Of Crime, Regulatory Purposes And Taxation	
Introduction	15–01
Summary Of Main Points	15–02
National Security	
Who can claim the exemption?	15–03
What does the exemption cover?	15–04
When can the exemption be claimed?	15–05
Certificates and evidence.....	15–06
Nature of appeals.....	15–07
Decisions on national security appeals	15–10
Crime And Taxation	
Who can claim the exemption?	15–20
What does the exemption cover?	15–21
When can the exemption be claimed?	15–22
Risk assessment classifications systems	15–25
Responding to requests by law enforcement agencies for personal data	15–26
Regulatory Activity	
Who can claim the exemption?	15–31
When can the exemption be claimed?	15–36
Armed Forces	
Who can claim the exemption?	15–37
What is covered?	15–38

CONTENTS

When can it be claimed?	15–39
Impact Of The Draft Regulation In Brief.....	15–40
Additional Information	
Derivations.....	15–41
<i>Hansard</i> references.....	15–42
Previous case law	15–43
16. Exemptions For Personal And Family Information, Health And Social Work, Employment And Schools	
Introduction	16–01
Summary Of Main Points.....	16–02
Personal And Family Information	16–03
Health Information.....	16–05
The Data Protection (Subject Access Modification) (Health)	
Order 2000 (SI 2000/413).....	
Introduction	16–06
Court proceedings	16–07
Serious harm to physical or mental health	16–08
Access by those acting on behalf of the data subject	16–09
Information about health professionals.....	16–10
Social Work Information.....	16–11
Court proceedings.....	16–12
Social work	16–13
Access by those acting on behalf of the data subject.....	16–15
Education Information	16–16
The Data Protection (Subject Access Modification) (Education)	
Order 2000 (SI 2000/414).....	16–17
Court proceedings	16–18
Educational records	16–19
Human Embryos	16–21
The Data Protection (Miscellaneous Subject Access Exemptions)	
Order 2000 (SI 2000/419).....	16–22
Background	16–24
Personnel Records	
Exemption for manual personnel records	16–25
Data covered by the exemption for personnel records.....	16–27
The position of contractors in relation to the personnel exemption.....	16–28
Impact of the draft Regulation in brief	16–30
Additional Information	
Derivations.....	16–31
<i>Hansard</i> references.....	16–32
Previous case law	16–33

CONTENTS

17. Freedom Of Expression And Exemptions For The Special Purposes	
Introduction	17–01
Background	17–02
Summary Of Main Points	17–03
Regulation Of The Press	17–04
<i>News of the World</i> convictions	17–06
Leveson Inquiry	17–07
Article 29 Working Party	17–08
What Are The Special Purposes?	17–09
UK case law	17–10
What Are The Grounds Of The Exemption?	17–12
With a view to publication	17–13
Publication in the public interest	17–14
Cases	17–17
The Canute Principle	17–20
Codes of practice	17–21
Incompatibility with the special purposes	17–26
What Does The Exemption Cover?	17–27
The Principles	17–28
Individual rights	17–29
How Long Do The Exemptions Last?	17–30
Application after publication	17–31
Facts	17–32
Restrictions On Individual Actions	17–34
Powers of the Commissioner	17–36
Special information notices	17–37
Information notices	17–38
Enforcement notices	17–39
The relevant time	17–41
Defence to section 55 offences	17–42
Provisions relating to monetary penalty notices	17–43
Assistance Of The Commissioner	17–44
Impact of the draft Regulation in brief	17–45
Practical Tools	
Example of the application of the special procedures applicable before publication—journalistic purposes	17–46
Additional Information	
Derivations	17–48
<i>Hansard</i> references	17–49
18. Research Ellis Parry	
Introduction	18–01
Human Rights Act 1998	18–02
The law of confidence	18–03
Ethical and professional standards	18–04
The use of records relating to individuals—general issues	18–05

CONTENTS

Genetic Material.....	18–06
Historical records.....	18–07
Records-based research	18–08
Summary Of Main Points.....	18–09
History	
Recommendations R(83)10 and R(97)18.....	18–10
Directive 95/46	18–11
Current Issues.....	18–12
Medical Research In The UK	
UK developments in the use of personal data in the NHS.....	18–13
Human Rights Act 1998	18–14
Guidance	
Ministry of Justice's Guidance to all public bodies	18–15
NHS Code of Practice.....	18–16
The National Health Service Act 2006 s.251	18–17
The Health Service (Control of Patient Information) Regulations 2002	18–18
The cancer registries	18–20
Research Purposes	
Data controller	18–21
Definitions	18–22
Effect Of The DPA On Research.....	18–23
Grounds for legitimate processing	18–24
Grounds for processing sensitive personal data.....	18–25
The application of the fair obtaining and processing codes	18–26
Applicable exemptions	18–27
Safeguard conditions	18–28
Exemption from Principle 2.....	18–29
Exemption from Principle 5.....	18–30
Exemption from the right of subject access	18–31
Permitted disclosures	18–32
Exemption for historical research	18–33
Example.....	18–34
Eligible manual data and eligible automated data not processed by reference to the data subject.....	18–35
Eligible automated data processed by reference to the data subject	18–36
Anonymisation And Pseudonymisation.....	18–37
Cases on anonymisation, pseudonymisation and disclosure.....	18–38
A Health Authority v X.....	18–39
R. v Department of Health Ex p. Source Informatics Limited.....	18–40
Common Services Agency v Scottish Information Commissioner (Scotland)	18–41
Future Developments	18–42
Impact of the draft Regulation in brief.....	18–43

CONTENTS

Practical Tools	
Data protection checklist for researchers	18–44
Additional Information	
<i>Hansard</i> references	18–45
19. Miscellaneous Exemptions	
Introduction	19–01
Summary Of Main Points	19–02
Business Exemptions	
Confidential references	19–03
Management forecasts	19–04
Negotiations	19–05
Corporate Finance.....	19–06
Financial instruments	19–07
Important interest of the United Kingdom	19–08
Corporate finance services	19–09
Relevant person	19–10
Legal Exemptions	
Legal professional privilege	19–11
Self-incrimination	19–12
Disclosures required by law or made in connection with legal proceedings, etc.	19–14
Mandatory disclosures	19–15
Elective disclosures	19–16
Legal rights disclosures.....	19–23
Government Uses	
Judicial appointments and honours	19–24
Parliamentary privilege.....	19–25
Educational Exemptions	
Examination marks	19–26
Examination scripts	19–27
Other Exemptions	
Publicly available information	19–28
Relation with the Freedom of Information Act 2000	19–29
Further Orders	
Orders under s.38	19–30
Crown employment	19–31
Further Powers	19–32
Impact of the draft Regulation in brief	19–33
Additional Information	
Derivations	19–34
<i>Hansard</i> references	19–35
Statutory instruments	19–36

CONTENTS

20. Civil Enforcement Powers Of The Commissioner	
Introduction	20–01
Summary Of Main Points	20–02
Enforcement Policy And Strategy	
Regulatory policy	20–03
Guiding principles	20–04
Initiation of regulatory action	20–05
Criteria on taking regulatory actions	20–06
Transparency	20–07
Working with other regulators	20–08
Joint enforcement action by the Article 29 Working Party	20–09
Requests For Assessment	
Individual request for assessment	20–10
Assessments in practice	20–14
Investigation in the absence of a request for assessment	20–16
Enforcement under the Privacy and Electronic Communications (EC Directive) 2003	20–17
Modification of powers in the Act	20–18
Information notices	20–19
Timescale for compliance	20–20
Third party information notices under PECR	20–22
Jurisdiction	20–24
Enforcement of information notices	20–25
Audit Powers	
Voluntary audits	20–26
Mandatory audit powers following assessment notices	20–28
Who is subject to the power?	20–29
Exemptions from coverage	20–30
Content of an assessment notice	20–31
Time for compliance	20–33
Withdrawal of notices	20–34
Code of Practice	20–35
Appeals against assessment notices	20–43
Audit powers under PECR	20–44
Failure to comply with the terms of an assessment notice or audit notice	20–48
Power to audit overseas information systems	20–49
Enforcement Notices	
When may they be served?	20–50
What can notices require?	20–51
Timescale for compliance	20–53
What must a notice contain?	20–54
Cancellation and variation	20–55
Enforcement notices served	20–56
PECR—Orders To Notify	20–57
Enforcement of PECR notification requirements	20–58
Can the Commissioner exercise any other powers in respect of breach of the notification requirements?	20–61

CONTENTS

Monetary Penalty Notices	20–62
What is a Monetary Penalty Notice?	20–63
Background and implementation	20–64
The nature of civil penalties	20–65
Exemptions	20–66
Special purposes	20–68
Further provisions covered by order	20–69
Power to amend the Act	20–70
What is covered by the power?	20–71
Guidance	20–72
Grounds for imposing a penalty	20–73
Mental element	20–74
Deliberate contravention	20–75
Knew or ought to have known	20–76
Failed to take reasonable steps	20–77
Other considerations	20–78
Procedure	20–79
Timescales	20–82
Level of penalty	20–83
Variation and cancellation	20–84
Appeals	20–85
Enforcement	20–86
Cases published to date	20–87
Service Of Notices	20–88
Rights Of Appeal	20–89
Use Of Undertakings	20–90
Effect of undertakings	20–92
Powers Under Other Consumer Protection Legislation	
Enterprise Act 2002	20–93
Unfair terms in Consumer Contract Regulations 1999 (UTCCR)	20–96
Enforcement Of Data Subject's Rights	20–100
Impact of the draft Regulation in brief	20–101
Powers of supervisory authorities	20–102
Cooperation with other supervisory authorities	20–103
Additional Materials	20–104
21. Criminal Offences, Warrants And Prosecutions	
Introduction	21–01
Summary Of Main Points	21–02
Entry And Inspection	21–03
Offences And Prosecutions	
Application to the Crown	21–12
Defence of due diligence	21–13
Admissibility of information provided in response to information notices	21–15
Knowing or reckless	21–16
Notification offences	21–19

CONTENTS

Failure to provide relevant particulars (s.24).....	21–20
Unlawful obtaining and disclosing of personal data	21–21
Offences in connection with warrants.....	21–33
Enforced subject access.....	21–34
Liability of directors.....	21–35
Prosecutions and penalties.....	21–36
Unlawful disclosure by the Commissioner's staff.....	21–37
Assessable processing.....	21–38
Procedural issues and delay	21–39
Prosecutions Under The 1984 Act.....	21–40
Impact of the draft Regulation in brief	21–41
Derivations.....	21–42
22. Electronic Communications And The Privacy And Electronic Communications (EC Directive) Regulations 2003	
Introduction And Background	22–01
Summary Of Main Points	22–04
Implementation Of Directive 2002/58.....	22–05
Article 29 Working Party	22–06
Regulation Of Electronic Communications.....	22–07
Communications Act 2003	22–09
Payphone Plus.....	22–10
Directive 2002/58	
Scope of the Directive	22–11
Technical features and standardisation	22–12
Services (digital and analogue exchanges).....	22–13
Method of implementation of the Directive	22–14
Are Communication Service Providers Processors Or Controllers?.....	22–15
Guidance From The Information Commissioner	22–16
Definitions And Other General Provision	22–17
PECR definitions	22–18
Communications Act definitions	22–19
Broadcasting Act definitions	22–20
Electronic Commerce (EC Directive) Regulations definition	22–21
Public electronic communications network and services	22–22
Direct Marketing	
Who is covered?	22–24
Direct marketing	22–25
Automated calling systems.....	22–27
Automated diallers and silent calls	22–28
E-Mail Marketing.....	22–29
Relevant provisions in Directive 2002/58.....	22–31
Scope	22–32
Individual and corporate subscribers	22–33
When is an e mail "unsolicited"?	22–35
For the time being	22–36

CONTENTS

"Soft opt in"	22–37
Means of refusing	22–38
E-mail marketing by charities	22–39
"We recognize that this disadvantages you".	22–40
ICO Guidance	22–41
Concealing the identity of the sender	22–42
Telephone Marketing	22–43
Unsolicited	22–44
Marketing By Fax	
Rights of individual subscribers	22–46
Consent	22–47
Rights of corporate subscribers	22–51
Information To Be Provided On Marketing	22–52
Stop Lists	22–53
Fax Preference Service (FPS) and Telephone Preference Service (TPS)	22–54
28-day time delay	22–55
Security Of Electronic Communications	22–56
Enhanced obligations of security	22–57
Extent of the obligation	22–59
Inventory of security breaches	22–60
Audit powers of the Commissioner	22–61
Personal Data Breach Obligations	22–63
Notification of breach	22–64
Contents of a notification	22–65
Encrypted information	22–66
How do the obligations apply to personal data which is part of the content of communications?	22–67
Provision of information on access	22–69
Cookies And Confidentiality Of Communications	22–70
Devices used to store information or gain access	22–71
Use of cookies to deliver advertising	22–72
Provisions in Directive 2009/136	22–73
Control of cookies	22–74
Browser settings as consent	22–75
Amendments to the cookie rules	22–76
Revised Article 5(3)	22–77
UK implementation	22–78
Timing of consent	22–79
Who must obtain consent?	22–80
Information Commissioner's policy on enforcement	22–81
Current initiatives in online behavioural advertising (OBA)	22–82
Comments	22–83
Traffic, Billing And Location Data	22–84
Meaning of the terms traffic data, location data, and value added service	22–85

CONTENTS

Permitted uses of traffic data	
Billing	22–86
Authorised activities	22–87
Marketing and value-added services	22–88
Dispute resolution	22–89
Customer inquiries	22–90
Prevention or detection of fraud	22–91
Management of billing or traffic	22–92
Restrictions on the processing of location data	22–93
Geolocation	22–94
Opinion 13/2011	22–95
Other location technologies	22–97
Radio Frequency Identification Devices (RFID)	22–98
Billing	
Itemised billing	22–99
Call forwarding	22–100
Calling or connected line identification	22–101
Calling Line Identification	22–102
Publicity	22–103
Malicious and nuisance calls	22–104
Emergency number calls	22–105
Preventing out-going presentation of CLI	22–106
Third country calls	22–107
Presenting in-coming presentation of CLI	22–108
Preventing outgoing presentation of CLI	22–109
Refusing calls without CLI	22–110
Co-operation by providers	22–112
Directories	22–113
Individual subscriber entries	22–115
Corporate subscriber entries	22–117
Directory inquiries	22–118
Reverse searching	22–119
Exemptions	22–121
Relationship between the exemptions in the Regulations and the DPA 98	22–122
National security	22–123
Legal proceedings and law enforcement	22–124
Enforcement And Individual Rights	
Compensation	22–125
Enforcement	22–126
Assistance of Ofcom	22–127
Enforcement notices and monetary penalty notices	22–128
Information notices and audits	22–129
Prosecutions and warrants	22–130
Third party notices	22–131
Pan European enforcement	22–132
Territorial Application	22–133
International review	22–134

CONTENTS

Additional Information	
Previous statutory instruments	22–135
Derivations	22–136
23. Monitoring Of Communications, Interception And Access To Encrypted Data	
Introduction	23–01
Background	23–02
Summary Of Main Points	23–03
Background	
Article 8 of the Convention rights	23–04
Article 5 of Directive 97/66 and 2002/58	23–06
Confidentiality of communications data	23–08
Copland v United Kingdom	23–09
Coverage Of Directives	23–10
Community competence	23–12
Scope Of Convention Rights	23–13
C v Police and Secretary of State for the Home Department	23–14
Regulation Of Investigatory Powers Act 2000	
Communications data	23–16
Definition of communications data	23–17
Specified interests or purposes	23–19
Codes of practice	23–21
Public and private systems	23–23
Interception Of Communications	23–24
Action by the European Commission	23–28
Unintentional Unlawful Interception	23–30
The Regulation of Investigatory Powers (Monetary Penalty Notices and Consents for Interceptions) Regulations 2011	23–32
Interception and the course of transmission	23–35
Access To Stored Voicemail	23–36
Actions for hacking of telephones against the <i>News of the World</i> journalists and others and Leveson	23–38
Public telecommunications service and system	23–40
Lawful authority	23–41
Interceptions—overseas authorities	23–42
Relation with orders under the Police and Criminal Evidence Act 1984 (PACE)	23–47
Monitoring For Intellectual Property Right Breaches	23–48
Monitoring Of Business Communications	23–51
Lawful Business Practice Regulations 2000 (LBP)	23–52
Recording and monitoring	23–53
Conditions relevant to all interception under the LBP	
Regulations	23–55
Monitoring and keeping records of communications	23–56
Standards purposes	23–57

CONTENTS

Regulatory or self-regulatory practices or procedures	23–58
Effective use of the system.....	23–59
Prevention and detection of crime.....	23–60
National security	23–61
Oversight of interception under the LBPR.....	23–62
Interception Or Monitoring Of “Personal” Communications	23–63
Do the Regulations apply to “personal” communications sent using an employer’s electronic communications system?	23–64
Right to private calls	23–65
Practical considerations in relation to private communications.....	23–66
Social media and employee privacy	23–67
Interception Under Warrants Issued Under RIPA	23–68
Interception for the purposes of e-mail screening	23–69
Access To Encryption Keys.....	23–70
Additional Information	
Extract employment practices code policy for the use of electronic communications.....	23–72
24. Retention Of Communications Data	
Introduction	24–01
Summary Of Main Points	24–02
Background	24–03
UK Background	24–07
Directive 2006/24.....	24–09
Definitions	24–13
The obligation to retain data	24–14
Procedures to provide access to data	24–15
Data storage and security requirements	24–16
Supervision, remedies and reports	24–17
Evaluation and future measures	
Evaluation Report of the Commission 2011	24–18
UK Implementation	
Background.....	24–19
Implementation	24–22
Data Retention (EC Directive) Regulations 2009	
Retention period and scope of data.....	24–23
Application	24–29
Security	24–30
Access and storage	24–31
Statistics	24–32
Payments.....	24–33
Public and private systems	24–34
Future Developments	24–35
Additional information	
Experts' Group on Data Retention.....	24–36

CONTENTS

25. Data Sharing Code Of Practice, Database Policy And Governance	
Introduction	25–01
Summary Of Main Points	25–02
Governance Of Major Databases	25–03
Database policy.....	25–04
Rowntree Trust Report And Government Response	25–05
Data Sharing	25–07
Powers to share data.....	25–08
Reliance on incidental powers	25–09
ECtHR cases	25–10
Sensitive personal data	25–11
Information obtained under compulsion	25–12
Conclusions.....	25–13
Law Of Confidence.....	25–14
Article 8 of the HRA	25–15
Relation with the law of libel and qualified privilege	25–16
Obligation to give notice of disclosures	25–20
Code Of Data Sharing Practice	25–21
Definition	25–22
Procedure for approval	25–23
Admissibility and impact.....	25–24
Provisions of the code	25–25
Definition of data sharing.....	25–26
Data sharing and the law	25–27
Deciding to share data	25–28
Fairness and transparency	25–29
Security	25–30
Governance	25–31
Individuals’ rights	25–32
Things to avoid.....	25–33
The Commissioner’s powers and penalties.....	25–34
Notification	25–35
Freedom of information	25–36
Data sharing agreements	25–37
Other materials	25–38
Ministry Of Justice Guidance	25–39
Background	25–40
Guidance—overview	25–41
Comment	25–42
Legal Guidance	25–43
Data Sharing In Other Areas Of The Public Sector	
Political background and proposals for statutory provisions	25–44
Additional Materials	25–45

CONTENTS

26. Freedom Of Information And Personal Data Sue Cullen	
Introduction	26-01
Summary Of The Impact Of The Access Regimes On Personal Data	26-04
Relation Between The FOIA And The EIR.....	26-06
Overview Of The Freedom Of Information Act 2000	26-07
Application of the FOIA	26-08
Who is a public authority under the FOIA?	26-09
How requests must be made	26-10
Obligation to respond to requests for information.....	26-11
Costs under the FOIA.....	26-12
Time for compliance with requests	26-13
The exemptions regime in the FOIA	26-14
Qualified exemptions and the public interest test.....	26-16
Refusals.....	26-18
Duty to help requesters, and the s.45 Code of Practice on handling requests.....	26-19
Obligations in relation to records keeping—the s.46 Code of Practice	26-20
Pro-active publication: publication schemes.....	26-21
The Tribunal and the role of the Information Commissioner.....	26-22
Enforcement.....	26-23
Interface with data protection.....	26-25
The exemption for personal data in the FOISA	26-28
Overview Of The Environmental Information Regulations 2004	
Application of the Regulations.....	26-29
Who is covered?	26-30
What is environmental information?.....	26-31
How requests can be made.....	26-32
Obligation to respond to requests for information.....	26-33
Costs of dealing with requests	26-34
Time for compliance with requests	26-35
Exceptions from the duty to disclose environmental information	26-36
Duty to help applicants, and Regulation 16 code of practice	26-38
Transferring requests, and complaints	26-39
Proactive publication of information	26-40
Information quality obligations	26-42
Enforcement.....	26-43
Interface with data protection.....	26-44
Overview—How Dealing With Personal Information Is Affected By The Access Regimes	
Exemption for third party personal data—section 40 and regulation 13.....	26-45
Record-Keeping And Personal Data	26-46
Anonymisation of personal data.....	26-47

CONTENTS

Requests for information relating to deceased persons	26-50
Defence against action for defamation	26-53
Disclosures other than under the access regimes.....	26-54
Publication schemes and personal data.....	26-55
Applicant's duty to assist authority in locating the data requested.....	26-56
Authority's duty to advise and assist applicants	26-58
Obtaining personal information and handling requests	26-59
Organisations only partly covered by the FOIA.....	26-61
Section 34 exemption	26-65
Extension of the definition of personal data and other amendments to the DPA.....	26-66
Effect of the extended definition on the rights of data subjects	26-67
Duties of public authorities in relation to category (e) personal data	26-68
Extended Right Of Access In Response To Requests For Information By The Data Subject	26-69
Transitional exemptions.....	26-70
Effect of the subject access exemptions under the DPA	26-71
Provisions of the access regimes for requests involving personal data of the applicant.....	26-72
Treating a request under the access regimes as a subject access	26-73
Applications For Personal Data By Third Parties	26-74
Exemption of third party data from the access under the access regimes	26-75
Absolute and qualified exemptions	26-76
Duty to confirm or deny that the authority holds information	26-77
Conditions for the application of the section 40(2) exemption	26-78
Condition applying to breach of principle.....	26-78
Disclosure of personal data “otherwise than under this Act”	26-79
Condition where section 10 notice would be contravened.....	26-83
Condition where the third party would not get subject access	26-84
Exemption from the duty to confirm or deny	26-85
Processing personal data in response to a request under the access regimes	26-87
No correspondence with DPA section 9A.....	26-88
Grounds For Processing In Response To A Request Under The Access Regimes	26-89
Schedule 2 conditions considered	26-94
Grounds for processing sensitive data under Schedule 3	26-108
Justifying the pre-disclosure processing.....	26-111

CONTENTS

Public Disclosures And Other Aspects Of The DPA	
Relation with section 35 and other exemptions in the DPA	26–113
Relation with the right in section 10 of the DPA	26–116
Penalties for wrongful disclosure of personal data under the access regimes	26–119
Application Of The Principles To Proposed Disclosures.....	26–121
Principle 1	26–123
Principle 2	26–130
Principles 3–5	26–133
Principle 6.....	26–134
Application of the rights at sections 11 and 12 to disclosures under the access regimes.....	26–136
Principles 7 and 8.....	26–139
Subject access exemption.....	26–140
Subject access exemptions in the DPA	26–142
Guidance Available On Disclosures Of Personal Data Under The Access Regimes	
Guidance on third party disclosures in the s.45 Code.....	26–143
Guidance and decisions published by the Commissioner and other sources	26–146
Relation Between Rights Of Access To Information And The European Convention On Human Rights And Fundamental Freedoms.....	26–148
Conclusion.....	26–150
Privacy and access.....	26–151
27. Access To Criminal Records And Enforced Subject Access	
Introduction	27–01
Summary Of Main Points	27–03
The Nature Of Criminal Records	27–04
Governance And Management Of Criminal Records	27–08
Independent adviser for criminality information	27–09
Weeding of criminal records	27–10
Background To The Protection And Disclosure Of Criminal Records	
Conflicting pressures	27–11
Rehabilitation Of Offenders Act 1974 (ROA)	27–12
Exemptions	27–13
Access to criminal records	27–14
Certificates Under The Police Act 1997.....	27–15
Criminal Convictions Certificates or Basic Disclosures.....	27–16
Criminal Records Certificates or Standard Disclosures	27–17
Enhanced Criminal Records Certificates or Enhanced Disclosures (ECRC).....	27–18
Discretion in making disclosures ECRC.....	27–19
Disclosures to registered persons	27–20
Legal use of enforced subject access	27–22

CONTENTS

Voluntary Disclosure Of Criminality Information	27–23
Child Sex Offender disclosure scheme	27–24
Domestic Violence Disclosure Scheme (Clare's Law)	27–25
Duty of care	27–26
Comments	27–27
Enforced Subject Access	27–28
Types of record covered by section 56	27–29
Convictions and cautions	27–30
Records relating to young persons	27–31
Prison information	27–32
National Insurance records	27–33
Police Act 1997	27–34
Safeguarding Vulnerable Groups Act 2006	27–35
Prohibited circumstances	27–36
Employment	27–37
Contract for services	27–38
The provision of goods or services	27–39
Empty records	27–40
Mens rea	27–41
Defences	27–42
Compulsion of law	27–43
Public interest	27–44
Prosecutions	
Prosecutors	27–45
Courts	27–46
Proceedings	27–47
Immunity from prosecution	27–48
Health records	27–49
Future challenges	27–51
Additional information	27–52
Directive	27–53
Hansard references	27–54
Previous case law	27–55
28. First-Tier Tribunal (Information Rights) And Upper Tribunal	
Introduction	28–01
Summary Of Main Points	28–02
History And Establishment	28–03
Constitution	28–05
Unified rules of procedure	28–07
Review and appellate functions	28–08
Appeals from the Upper Tribunal to the Court of Appeal	28–09
Judicial review functions of Upper Tribunal	28–10
Membership	28–11
New appointments	28–12
Transferred judges and members	28–13
Transfer of functions	28–14
Transitional provisions	28–15

CONTENTS

Secretariat.....	28–16
Members.....	28–17
Number of members of the Upper Tribunal	28–18
Jurisdiction	28–19
Appeals under the Data Protection Act.....	28–20
Appeals under the Privacy and Electronic Communications (EC Directive) Regulations 2003	28–21
Appeals under the Data Protection (Monetary Penalty) Regulations 2010 (DMPMR)	28–22
Appeals under the Freedom of Information Act 2000.....	28–23
Appeals under the Environmental Information Regulations 2005	28–24
Appeals under the INSPIRE Regulations 2009	28–25
Decisions of the Tribunals.....	28–26
All appeals.....	28–27
Specific provisions	
Application for cancellation or change of an enforcement notice under the DPA or PECR	28–28
Appeal against inclusion of an urgency provisions under the DPA or PECR	28–29
Special purpose determination under the DPA.....	28–30
Appeals against service of assessment notices under the DPA.....	28–31
Appeals against decision notices under the FOIA or EIRs.....	28–32
Appeals against monetary penalty notices under the DPA and PECR.....	28–33
Appeals against fixed monetary penalty notices under PECR.....	28–34
Appeals against third party notices under PECR	28–35
Appeals against the variation of a monetary penalty notice under the DMPMR.....	28–36
National Security Certificates—Data Protection Act	28–37
National Security Certificates—Freedom of Information Act and Environmental Information Regulations 2005	28–40
Procedure.....	28–42
Costs	28–46
29. Data Protection Law In The Channel Islands And The Isle Of Man	29–01
Summary Of Main Points	29–02
Relation With The Directive	29–03
Supervisory Authorities	29–04
Inter-Islands Co-Operation	29–06
Overview of differences	29–07
Jersey	29–08
Isle of Man	29–09
Guernsey.....	29–10

CONTENTS

Freedom of Information Act 2000 (FOIA)	29–11
Other Amendments To The Laws.....	29–12
Comparative Analysis	
Definition	29–13
Individual rights	
Subject access.....	29–14
Rights to object to processing.....	29–16
Rights of rectification and correction	29–17
Rectification and other remedies	29–18
Notification	29–19
Exemptions	29–23
Miscellaneous exemptions	29–32
Enforcement	29–33
Miscellaneous And General Provisions	29–34
Schedules 1–4	29–40
The principles and the interpretative provisions	29–41
Schedule 2.....	29–42
Schedule 3.....	29–43
Schedule 4.....	29–44
Register Of Electors—Isle Of Man	29–45
Secondary Legislation	29–46
Transitional Arrangements	29–47
Implementation of Directive 2002/58	29–48
Further information	
	PAGE
APPENDICES	
Appendix A: Implementation of Directive 95/46/EC in the United Kingdom	1027
Appendix B: Data Protection Act 1998	1038
Appendix C: Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data	1195
Appendix D: Privacy and Electronic Communications (EC Directive) Regulations	1224
Appendix E: The Privacy and Electronic Communications (EC Directive) (Amendment) Regulations 2011	1246
Appendix F: Regulation of Investigatory Powers Act 2000	1256
Appendix G: Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations	1268
Index	1271