



Data Protection Act 1998

1998 CHAPTER 29

PART VI

MISCELLANEOUS AND GENERAL

[^{F1}Monetary penalties]

Textual Amendments

- F1** Ss. 55A - 55E and cross-heading inserted (1.10.2009 for certain purposes and 1.4.2010 to the extent that it is not already in force) by [Criminal Justice and Immigration Act 2008 \(c. 4\), ss. 144\(1\), 153](#); S.I. 2009/2606, [art. 2\(n\)](#); S.I. 2010/712, [art. 4](#)

[^{F2}55A Power of Commissioner to impose monetary penalty

- (1) The Commissioner may serve a data controller with a monetary penalty notice if the Commissioner is satisfied that—
 - (a) there has been a serious contravention of section 4(4) by the data controller,
 - (b) the contravention was of a kind likely to cause substantial damage or substantial distress, and
 - (c) subsection (2) or (3) applies.
- (2) This subsection applies if the contravention was deliberate.
- (3) This subsection applies if the data controller—
 - (a) knew or ought to have known —
 - (i) that there was a risk that the contravention would occur, and
 - (ii) that such a contravention would be of a kind likely to cause substantial damage or substantial distress, but
 - (b) failed to take reasonable steps to prevent the contravention.

Status: Point in time view as at 01/09/2013.

Changes to legislation: Data Protection Act 1998, Cross Heading: Monetary penalties is up to date with all changes known to be in force on or before 20 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- [The Commissioner may not be satisfied as mentioned in subsection (1) by virtue of ^{F3}(3A) any matter which comes to the Commissioner's attention as a result of anything done in pursuance of—
- (a) an assessment notice;
 - (b) an assessment under section 51(7).]
- (4) A monetary penalty notice is a notice requiring the data controller to pay to the Commissioner a monetary penalty of an amount determined by the Commissioner and specified in the notice.
 - (5) The amount determined by the Commissioner must not exceed the prescribed amount.
 - (6) The monetary penalty must be paid to the Commissioner within the period specified in the notice.
 - (7) The notice must contain such information as may be prescribed.
 - (8) Any sum received by the Commissioner by virtue of this section must be paid into the Consolidated Fund.
 - (9) In this section—
 - “data controller” does not include the Crown Estate Commissioners or a person who is a data controller by virtue of section 63(3);
 - “prescribed” means prescribed by regulations made by the Secretary of State.]

Textual Amendments

- F2** S. 55A inserted (1.10.2009 for certain purposes and 6.4.2010 to the extent that it is not already in force) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), [ss. 144\(1\), 153](#); [S.I. 2009/2606](#), [art. 2\(n\)](#); [S.I. 2010/712](#), [art. 4](#)
- F3** S. 55(3A) inserted (6.4.2010) by [Coroners and Justice Act 2009 \(c. 25\)](#), [ss. 175, 182](#), [Sch. 20 para. 13](#) (with [s. 180](#)); [S.I. 2010/816](#), [art. 2](#), [Sch. para. 19](#)

[^{F4}55B Monetary penalty notices: procedural rights

- (1) Before serving a monetary penalty notice, the Commissioner must serve the data controller with a notice of intent.
- (2) A notice of intent is a notice that the Commissioner proposes to serve a monetary penalty notice.
- (3) A notice of intent must—
 - (a) inform the data controller that he may make written representations in relation to the Commissioner's proposal within a period specified in the notice, and
 - (b) contain such other information as may be prescribed.
- (4) The Commissioner may not serve a monetary penalty notice until the time within which the data controller may make representations has expired.
- (5) A person on whom a monetary penalty notice is served may appeal to the Tribunal against—
 - (a) the issue of the monetary penalty notice;

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(b) the amount of the penalty specified in the notice.

(6) In this section, “prescribed” means prescribed by regulations made by the Secretary of State.]

Textual Amendments

F4 S. 55B inserted (1.10.2009 for certain purposes and 6.4.2010 to the extent that it is not already in force) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), **ss. 144(1)**, 153; S.I. 2009/2606, **art. 2(n)**; S.I. 2010/712, **art. 4**

[^{F5}55C Guidance about monetary penalty notices

(1) The Commissioner must prepare and issue guidance on how he proposes to exercise his functions under sections 55A and 55B.

(2) The guidance must, in particular, deal with—

- (a) the circumstances in which he would consider it appropriate to issue a monetary penalty notice, and
- (b) how he will determine the amount of the penalty.

(3) The Commissioner may alter or replace the guidance.

(4) If the guidance is altered or replaced, the Commissioner must issue the altered or replacement guidance.

[^{F6}(5) The Commissioner must consult the Secretary of State before issuing any guidance under this section.]

(6) The Commissioner must lay any guidance issued under this section before each House of Parliament.

(7) The Commissioner must arrange for the publication of any guidance issued under this section in such form and manner as he considers appropriate.

(8) In subsections (5) to (7), “ guidance ” includes altered or replacement guidance.]

Textual Amendments

F5 S. 55C inserted (1.10.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), **ss. 144(1)**, 153; S.I. 2009/2606, **art. 2(n)**

F6 S. 55C(5) substituted (1.9.2013) by [Protection of Freedoms Act 2012 \(c. 9\)](#), **ss. 106(3)**, 120 (with s. 97); S.I. 2013/1906, **art. 3(c)**

[^{F7}55D Monetary penalty notices: enforcement

(1) This section applies in relation to any penalty payable to the Commissioner by virtue of section 55A.

(2) In England and Wales, the penalty is recoverable—

- (a) if a county court so orders, as if it were payable under an order of that court;
- (b) if the High Court so orders, as if it were payable under an order of that court.

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- (3) In Scotland, the penalty may be enforced in the same manner as an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.
- (4) In Northern Ireland, the penalty is recoverable—
- (a) if a county court so orders, as if it were payable under an order of that court;
 - (b) if the High Court so orders, as if it were payable under an order of that court.]

Textual Amendments

F7 S. 55D inserted (6.4.2010) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), **ss. 144(1)**, 153; S.I. 2010/712, **art. 4**

[^{F8}55E Notices under sections 55A and 55B: supplemental

- (1) The Secretary of State may by order make further provision in connection with monetary penalty notices and notices of intent.
- (2) An order under this section may in particular—
- (a) provide that a monetary penalty notice may not be served on a data controller with respect to the processing of personal data for the special purposes except in circumstances specified in the order;
 - (b) make provision for the cancellation or variation of monetary penalty notices;
 - (c) confer rights of appeal to the Tribunal against decisions of the Commissioner in relation to the cancellation or variation of such notices;
 - (d) ^{F9}
 - (e) make provision for the determination of [^{F10}appeals made by virtue of paragraph (c)];
 - (f) ^{F11}
- (3) An order under this section may apply any provision of this Act with such modifications as may be specified in the order.
- (4) An order under this section may amend this Act.]

Textual Amendments

F8 S. 55E inserted (1.10.2009) by [Criminal Justice and Immigration Act 2008 \(c. 4\)](#), **ss. 144(1)**, 153; S.I. 2009/2606, **art. 2(n)**

F9 S. 55E(2)(d) omitted (18.1.2010) by virtue of [The Transfer of Tribunal Functions Order 2010 \(S.I. 2010/22\)](#), arts. 1(1), 5(1), **Sch. 2 para. 28(a)**

F10 Words in s. 55E(2)(e) substituted (18.1.2010) by [The Transfer of Tribunal Functions Order 2010 \(S.I. 2010/22\)](#), arts. 1(1), 5(1), **Sch. 2 para. 28(b)**

F11 S. 55E(2)(f) omitted (18.1.2010) by virtue of [The Transfer of Tribunal Functions Order 2010 \(S.I. 2010/22\)](#), arts. 1(1), 5(1), **Sch. 2 para. 28(c)**

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