



STATUTORY INSTRUMENTS.

S.I. No. 220 of 2016



DATA PROTECTION ACT 1988 (SECTION 2A) REGULATIONS 2016

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WHEREAS section 2A of the Data Protection Act 1988 (No. 25 of 1988) provides that personal data shall not be processed by a data controller unless section 2 of that Act is complied with and at least one of a number of conditions specified in that section is met;

AND WHEREAS subsection (1)(d) of the said section 2A provides that one of those conditions is where the processing is necessary for the purposes of the legitimate interests pursued by the data controller or by a third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the fundamental rights and freedoms or legitimate interests of the data subject;

AND WHEREAS subsection (2) of the said section 2A provides that the Minister may, after consultation with the Data Protection Commissioner, by regulations specify particular circumstances in which subsection (1)(d) of section 2A is, or is not, to be taken as satisfied;

AND WHEREAS the processing by an air carrier or a sea carrier of certain personal data in respect of which it is a data controller, for the purposes of the disclosure of that data, in the circumstances set out in these regulations, to the Home Secretary of the United Kingdom, is necessary for the purposes of the legitimate interests pursued by that carrier and is also necessary for the purposes of the legitimate interests pursued by the Home Secretary;

NOW I, FRANCES FITZGERALD, Minister for Justice and Equality, in exercise of the powers conferred on me by sections 2A(1)(d) and 2A(2) of the Data Protection Act 1988 (as adapted by the Justice and Law Reform (Alteration of Name of Department and Title of Minister) Order 2011 (S.I. No. 138 of 2011)), having consulted with the Data Protection Commissioner, make the following regulations:

1. These Regulations may be cited as the Data Protection Act 1988 (Section 2A) Regulations 2016.

2. In these regulations—

“Act of 1988” means the Data Protection Act 1988 (No. 25 of 1988);

“air carrier” means an undertaking established in the State that provides air services;

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 6th May, 2016.*

“air service” has the meaning it has in Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008¹;

“established in the State” shall be construed in accordance with section 1(3B)(b) of the Act of 1988;

“Home Department” means the Home Department of the United Kingdom, which is also known as the Home Office;

“Home Secretary” means the Secretary of State for the Home Department;

“passenger” means a person carried by an air carrier on an aircraft or, as the case may be, a sea carrier in a passenger ship, other than a member of the crew of the aircraft or passenger ship concerned;

“passenger ship” means a sea-going ship that carries more than 12 passengers;

“relevant information” means—

- (a) in relation to a person carried or to be carried by an air carrier, the following, insofar as it is collected by the carrier—
 - (i) where he or she has, for the purpose of the flight, presented a travel document to the carrier concerned, the number, type, issuing state and expiry date of the travel document,
 - (ii) where he or she has, for the purpose of the flight, presented an identity document to the carrier concerned, the nature of the identity document,
 - (iii) his or her nationality, as provided to the carrier concerned,
 - (iv) his or her full names, as provided to the carrier concerned,
 - (v) his or her gender, as provided to the carrier concerned,
 - (vi) his or her date of birth, as provided to the carrier concerned,
 - (vii) the airport of arrival by the person into the United Kingdom or, as the case may be, the airport of departure by the person from the United Kingdom,
 - (viii) the code of transport used,
 - (ix) the scheduled departure and arrival times of the aircraft concerned,
 - (x) the total number of passengers and the total number of crew carried on the aircraft, and

¹OJ L 293/3 of 31.10.2008

- (xi) whether the person concerned is a member of the crew, and
- (b) in relation to a person carried or to be carried by a sea carrier, the following, insofar as it is collected by the carrier—
 - (i) where he or she has, for the purpose of the voyage, presented a travel document to the carrier concerned, the number, type, issuing state and expiry date of the travel document,
 - (ii) where he or she has, for the purpose of the voyage, presented an identity document to the carrier concerned, the nature of the identity document,
 - (iii) his or her nationality, as provided to the carrier concerned,
 - (iv) his or her full names, as provided to the carrier concerned,
 - (v) his or her gender, as provided to the carrier concerned,
 - (vi) his or her date of birth, as provided to the carrier concerned,
 - (vii) the port of arrival by the person into the United Kingdom or, as the case may be, the port of departure by the person from the United Kingdom,
 - (viii) the code of transport used,
 - (ix) the scheduled departure and arrival times of the passenger ship concerned,
 - (x) the total number of passengers and the total number of crew carried on the passenger ship, and
 - (xi) whether the person concerned is a member of the crew;

“sea carrier” means an undertaking established in the State that, for remuneration, carries passengers by sea in a passenger ship;

“United Kingdom” means the United Kingdom of Great Britain and Northern Ireland.

3. Section 2A (1)(d) of the Act of 1988 is to be taken as satisfied in relation to the processing by an air carrier of relevant information for the purposes of the disclosure of that information, in the circumstances specified in Regulation 5, to the Home Secretary.

4. Section 2A (1)(d) of the Act of 1988 is to be taken as satisfied in relation to the processing by a sea carrier of relevant information for the purposes of the disclosure of that information, in the circumstances specified in Regulation 6, to the Home Secretary.

5. The circumstances referred to in Regulation 3 are the following—
- (a) the relevant information relates to a person who is, or persons who are, carried or to be carried by the air carrier on a flight that—
 - (i) departs from the State and arrives in the United Kingdom, or
 - (ii) departs from the United Kingdom and arrives in the State,and
 - (b) the disclosure concerned has been requested by the Home Secretary.
6. The circumstances referred to in Regulation 4 are the following—
- (a) the relevant information relates to a person who is, or persons who are, carried or to be carried by the sea carrier on a voyage where the passenger ship concerned—
 - (i) departs from the State and arrives in the United Kingdom, or
 - (ii) departs from the United Kingdom and arrives in the State,and
 - (b) the disclosure concerned has been requested by the Home Secretary.



GIVEN under my Official Seal,
30 March 2016.

FRANCES FITZGERALD,
Minister for Justice and Equality.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ó
FOILSEACHÁIN RIALTAIS,
52 FAICHE STIABHNA, BAILE ÁTHA CLIATH 2
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