

UKSA Guidance on Statistical Exemptions to the Data Subject Rights

The following provides guidance on the new and amended rights for data subjects found within the GDPR. Member States can make derogations to some of these rights through their own implementing laws, and the Data Protection Act 2018 does just that for the UK.

Note that if information is collected and used for statistical purposes but is then subsequently processed for non-statistical purposes the exemptions that follow will no longer apply.

Rights and exemptions

The following is a summary of the data subject rights, and where exemptions apply. Use of the exemptions is subject to conditions which are set out below.

Articles 13 and 14 provide data subjects with the **right to receive information** about how their personal data will be used. There is no exemption to this right specifically for statistical purposes, however the requirement on controllers to provide this information in cases where the personal data are collected indirectly (for example from an administrative source), falls away if to do so would constitute disproportionate effort. For more information see guidance on providing information to data subjects.

Article 15 reproduces the **right of access** previously available in the Data Protection Act 1998, which allows data subjects to access the personal data held about them by a controller, as well as receive information about how their personal data are processed. Information is exempt from this right if it is held for statistical purposes only, and so long as it is not possible to identify individuals from any statistical outputs.

Article 16 contains the **right to rectification** which gives data subjects the right to obtain from a controller rectification of inaccurate or incomplete personal data concerning him or her. Information is exempt from this right if it is held for statistical purposes only.

Article 17 is the **right to erasure**, also known as the **right to be forgotten**. This allows data subjects to expect their personal data to be deleted in some situations, including-

1. Where the processing is no longer necessary,
2. Where the data subject has withdrawn consent,
3. Where the data subject has objected to the processing,
4. Where personal data are being unlawfully processed.

Information is exempt from this right if it is used for statistical purposes only, unless consent was used as the lawful basis for processing and has subsequently been withdrawn.

Article 18 gives data subjects a **right to restriction of processing**, in the following circumstances-

1. Where the accuracy of personal data is contested,
2. Where processing is unlawful and the data subject opposes erasure,
3. Where the personal data are no longer needed for their original purpose but are required for a legal claim,
4. Where the data subject has objected to processing.

Information used for statistical purposes only is exempt from this right.

Article 19 is not a data subject right, but instead places an obligation on controllers to notify recipients of personal data when a data subject's rights under articles 16, 17 and 18 have been exercised. There is no exemption for information held for statistical purposes, however with exemptions for article 16, 17 and 18 in place the need to provide notification is unlikely to arise. Note that there is no obligation on the receiver of such a notification to take any action.

Article 20 states that data subjects shall have the right to **data portability**, which means that their data is transferred from one controller to another. There is no exemption for information held for statistical purposes, however the right can only be exercised where personal data are automatically processed on the basis of either consent or as a requirement for a contract.

Article 21 contains two separate **rights to object to processing**. The first is found in Article 21(1) and is a general right to object, for which an exemption exists in the Data Protection Act 2018 for processing for statistical purposes. There is also, in Article 21(6), a specific right to object to processing for statistical purposes, and this has no exemption. However, this right does not apply if the processing is carried out for reasons of public interest. Note also that this is not a balancing test (the public interest does not need to outweigh anything), but departments must be prepared to demonstrate the public interest of their processing.

The rights found in Articles 16, 17, 18 and 21, were previously available to data subjects under the Data Protection Act 1998, however there the rights could only be exercised where the processing of data caused unwarranted and substantial damage or distress. Under the GDPR, this threshold of damage and distress is not present, providing data subjects with greater scope for application of the rights.

For Articles 17, 18 and 21 the scope for where these rights can be applied has widened. Under the DPA 1998, the reason for requesting erasure/restriction or objecting to the processing of personal data was limited to cases where there were inaccuracies in the personal data. For the right to erasure as an example, the scope has widened to cases such as where personal data are no longer necessary; the data subject has withdrawn their consent (if applicable); the data subject objects and there are no overriding legitimate grounds for the processing.

In Summary

Article and Right	Is there an exemption for 'statistical purposes'
Articles 13 and 14 – Information to be provided to data subject	Only if 'disproportionate effort'
Article 15 – Right of access by the data subject	Yes
Article 16 – Right to rectification	Yes
Article 17 – Right to erasure	Yes
Article 18 - Right to restriction of processing	Yes
Article 19 – Notification obligation	No

Article 20 – Right to data portability	No
Article 21 – Right to object	Yes
Article 22 – Right not to be subject to automated decision making	No

Conditions on the use of exemptions

For some rights the statistical exemption exists within the GDPR, for others Article 89 of the GDPR allows the UK to derogate from data subject rights on condition that appropriate safeguards for the rights and freedoms of the data subject are met (See guidance on Statistical Processing Safeguards in the GDPR). These derogations are found within the Data Protection Act 2018.

*(1) The listed GDPR provisions do not apply to personal data processed for—
(a) scientific or historical research purposes, or
(b) statistical purposes,
to the extent that the application of those provisions would prevent or seriously impair the achievement of the purposes in question.
This is subject to sub-paragraph (3).*

*(2) For the purposes of this paragraph, the listed GDPR provisions are the following provisions of the GDPR (the rights in which may be derogated from by virtue of Article 89(2) of the GDPR)—
(a) Article 15(1) to (3) (confirmation of processing, access to data and safeguards for third country transfers);
(b) Article 16 (right to rectification);
(c) Article 18(1) (restriction of processing);
(d) Article 21(1) (objections to processing).*

*(3) The exemption in sub-paragraph (1) is available only where—
(a) the personal data is processed in accordance with Article 89(1) of the GDPR (as supplemented by section 19), and
(b) as regards the disapplication of Article 15(1) to (3), the results of the research or any resulting statistics are not made available in a form which identifies a data subject. – Schedule 2, Part 6, Section 27, DPA 2018*

Exemptions are available for Articles 15, 16, 17, 18 and 21(1), subject to several conditions.

The **first condition** is that the application of the right would prevent or seriously impair the processing of data for statistical purposes. Whether or not this is the case will depend on the context in question, but factors to consider are resource implications, available technologies and possible impact upon statistical production. As an example, complying with an application under Article 21 (the right to object) from an individual, or group of individuals, could impede statistical research by removing data partway through an analysis. If it is decided that compliance with a request would prevent or impair statistical production then the reasoning for this decision should be recorded.

The **second condition** is that the processing to which the right applies is in accordance with Article 89 and subject to appropriate safeguards. Further information can be found in the Guidance on GDPR Safeguards.

The **third condition** is that the exemption to Article 15 is only engaged where the statistical outputs do not identify any individual.