

Data (Use and Access) Bill [HL]

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Department for Science, Innovation and Technology, the Department of Health and Social Care, the Home Office, the Department for Business and Trade, HM Treasury and the Department for Energy Security and Net Zero, have been ordered to be published as HL Bill 40—EN.

EUROPEAN CONVENTION ON HUMAN RIGHTS

Baroness Jones of Whitchurch has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Data (Use and Access) Bill [HL] are compatible with the Convention rights.

Data (Use and Access) Bill [HL]

[AS INTRODUCED]

CONTENTS

PART 1

ACCESS TO CUSTOMER DATA AND BUSINESS DATA

Introductory

- 1 Customer data and business data

Data regulations

- 2 Power to make provision in connection with customer data
- 3 Customer data: supplementary
- 4 Power to make provision in connection with business data
- 5 Business data: supplementary
- 6 Decision-makers
- 7 Interface bodies

Enforcement

- 8 Enforcement of regulations under this Part
- 9 Restrictions on powers of investigation etc
- 10 Financial penalties

Fees etc and financial assistance

- 11 Fees
- 12 Levy
- 13 Financial assistance

Financial services sector

- 14 The FCA and financial services interfaces
- 15 The FCA and financial services interfaces: supplementary
- 16 The FCA and financial services interfaces: penalties and levies
- 17 The FCA and co-ordination with other regulators

Supplementary

- 18 Liability in damages

- 19 Duty to review regulations
- 20 Restrictions on processing and data protection
- 21 Regulations under this Part: supplementary
- 22 Regulations under this Part: Parliamentary procedure and consultation
- 23 Related subordinate legislation
- 24 Repeal of provisions relating to supply of customer data
- 25 Other defined terms
- 26 Index of defined terms for this Part

PART 2

DIGITAL VERIFICATION SERVICES

Introductory

- 27 Introductory

DVS trust framework and supplementary codes

- 28 DVS trust framework
- 29 Supplementary codes
- 30 Withdrawal of a supplementary code
- 31 Review of DVS trust framework and supplementary codes

DVS register

- 32 DVS register
- 33 Registration in the DVS register
- 34 Power to refuse registration in the DVS register
- 35 Registration of additional services
- 36 Supplementary notes
- 37 Addition of services to supplementary notes
- 38 Applications for registration, supplementary notes, etc
- 39 Fees for applications for registration, supplementary notes, etc
- 40 Duty to remove person from the DVS register
- 41 Power to remove person from the DVS register
- 42 Duty to remove services from the DVS register
- 43 Duty to remove supplementary notes from the DVS register
- 44 Duty to remove services from supplementary notes

Information gateway

- 45 Power of public authority to disclose information to registered person
- 46 Information disclosed by the Revenue and Customs
- 47 Information disclosed by the Welsh Revenue Authority
- 48 Information disclosed by Revenue Scotland
- 49 Code of practice about the disclosure of information

Trust mark

- 50 Trust mark for use by registered persons

Supplementary

- 51 Power of Secretary of State to require information
- 52 Arrangements for third party to exercise functions
- 53 Report on the operation of this Part
- 54 Index of defined terms for this Part
- 55 Powers relating to verification of identity or status

PART 3

NATIONAL UNDERGROUND ASSET REGISTER

- 56 National Underground Asset Register: England and Wales
- 57 Information in relation to apparatus: England and Wales
- 58 National Underground Asset Register: Northern Ireland
- 59 Information in relation to apparatus: Northern Ireland
- 60 Pre-commencement consultation

PART 4

REGISTERS OF BIRTHS AND DEATHS

- 61 Form in which registers of births and deaths are to be kept
- 62 Provision of equipment and facilities by local authorities
- 63 Requirements to sign register
- 64 Treatment of existing registers and records
- 65 Minor and consequential amendments

PART 5

DATA PROTECTION AND PRIVACY

CHAPTER 1

DATA PROTECTION

Terms used in this Chapter

- 66 The 2018 Act and the UK GDPR

Definitions in the UK GDPR and the 2018 Act

- 67 Meaning of research and statistical purposes
- 68 Consent to processing for the purposes of scientific research
- 69 Consent to law enforcement processing

Data protection principles

- 70 Lawfulness of processing
- 71 The purpose limitation
- 72 Processing in reliance on relevant international law

Processing of special categories of personal data

- 73 Elected representatives responding to requests
- 74 Processing of special categories of personal data

Data subject's rights

- 75 Fees and reasons for responses to data subjects' requests about law enforcement processing
- 76 Time limits for responding to data subjects' requests
- 77 Information to be provided to data subjects
- 78 Searches in response to data subjects' requests
- 79 Data subjects' rights to information: legal professional privilege exemption

Automated decision-making

- 80 Automated decision-making

Logging of law enforcement processing

- 81 Logging of law enforcement processing

Codes of conduct

- 82 General processing and codes of conduct
- 83 Law enforcement processing and codes of conduct

International transfers of personal data

- 84 Transfers of personal data to third countries and international organisations

Safeguards for processing for research etc purposes

- 85 Safeguards for processing for research etc purposes
- 86 Section 85: consequential provision

National security

- 87 National security exemption

Intelligence services

- 88 Joint processing by intelligence services and competent authorities
- 89 Joint processing: consequential amendments

Information Commissioner's role

- 90 Duties of the Commissioner in carrying out functions
- 91 Codes of practice for the processing of personal data
- 92 Codes of practice: panels and impact assessments
- 93 Manifestly unfounded or excessive requests to the Commissioner
- 94 Analysis of performance
- 95 Notices from the Commissioner

Enforcement

- 96 Power of the Commissioner to require documents
- 97 Power of the Commissioner to require a report
- 98 Assessment notices: removal of OFSTED restriction
- 99 Interview notices
- 100 Penalty notices
- 101 Annual report on regulatory action
- 102 Complaints by data subjects
- 103 Court procedure in connection with subject access requests
- 104 Consequential amendments to the EITSET Regulations

Protection of prohibitions, restrictions and data subject's rights

- 105 Protection of prohibitions, restrictions and data subject's rights

Miscellaneous

- 106 Regulations under the UK GDPR
- 107 Further minor provision about data protection

CHAPTER 2

PRIVACY AND ELECTRONIC COMMUNICATIONS

- 108 The PEC Regulations
- 109 Interpretation of the PEC Regulations
- 110 Duty to notify the Commissioner of personal data breach: time periods
- 111 Storing information in the terminal equipment of a subscriber or user
- 112 Emergency alerts: interpretation of time periods
- 113 Commissioner's enforcement powers
- 114 Codes of conduct

PART 6

THE INFORMATION COMMISSION

- 115 The Information Commission
- 116 Abolition of the office of Information Commissioner
- 117 Transfer of functions to the Information Commission
- 118 Transfer of property etc to the Information Commission

PART 7

OTHER PROVISION ABOUT USE OF, OR ACCESS TO, DATA

Information standards for health and social care

- 119 Information standards for health and adult social care in England

Smart meter communication services

- 120 Grant of smart meter communication licences

Information to improve public service delivery

- 121 Disclosure of information to improve public service delivery to undertakings

Retention of information by providers of internet services

- 122 Retention of information by providers of internet services in connection with death of child

Information for research about online safety matters

- 123 Information for research about online safety matters

Retention of biometric data

- 124 Retention of biometric data and recordable offences
 125 Retention of pseudonymised biometric data
 126 Retention of biometric data from INTERPOL

Trust services

- 127 The eIDAS Regulation
 128 Recognition of EU conformity assessment bodies
 129 Removal of recognition of EU standards etc
 130 Recognition of overseas trust products
 131 Co-operation between supervisory authority and overseas authorities
 132 Time periods: the eIDAS Regulation and the EITSET Regulations

PART 8

FINAL PROVISIONS

- 133 Power to make consequential amendments
 134 Regulations
 135 Extent
 136 Commencement
 137 Transitional, transitory and saving provision
 138 Short title

-
- Schedule 1 – National Underground Asset Register (England and Wales):
 monetary penalties
 Schedule 2 – National Underground Asset Register (Northern Ireland):
 monetary penalties
 Schedule 3 – Registers of births and deaths: minor and consequential
 amendments
 Part 1 – Amendments of the Births and Deaths Registration Act 1953
 Part 2 – Amendments of other legislation
 Schedule 4 – Lawfulness of processing: recognised legitimate interests

-
- Schedule 5 – Purpose limitation: processing to be treated as compatible with original purpose
 - Schedule 6 – Automated decision-making: minor and consequential amendments
 - Schedule 7 – Transfers of personal data to third countries etc: general processing
 - Schedule 8 – Transfers of personal data to third countries etc: law enforcement processing
 - Schedule 9 – Transfers of personal data to third countries etc: minor and consequential amendments and transitional provision
 - Part 1 – Minor and consequential amendments
 - Part 2 – Transitional provision
 - Schedule 10 – Complaints: minor and consequential amendments
 - Schedule 11 – Further minor provision about data protection
 - Schedule 12 – Storing information in the terminal equipment of a subscriber or user
 - Schedule 13 – Privacy and electronic communications: Commissioner’s enforcement powers
 - Schedule 14 – The Information Commission
 - Schedule 15 – Information standards for health and adult social care in England
 - Schedule 16 – Grant of smart meter communication licences
 - Part 1 – Amendments of the Energy Act 2008
 - Part 2 – Amendments of other legislation

[AS INTRODUCED]

A

B I L L

TO

Make provision about access to customer data and business data; to make provision about services consisting of the use of information to ascertain and verify facts about individuals; to make provision about the recording and sharing, and keeping of registers, of information relating to apparatus in streets; to make provision about the keeping and maintenance of registers of births and deaths; to make provision for the regulation of the processing of information relating to identified or identifiable living individuals; to make provision about privacy and electronic communications; to establish the Information Commission; to make provision about information standards for health and social care; to make provision about the grant of smart meter communication licences; to make provision about the disclosure of information to improve public service delivery; to make provision about the retention of information by providers of internet services in connection with investigations into child deaths; to make provision about providing information for purposes related to the carrying out of independent research into online safety matters; to make provision about the retention of biometric data; to make provision about services for the provision of electronic signatures, electronic seals and other trust services; and for connected purposes.

BE IT ENACTED by the King’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART 1

ACCESS TO CUSTOMER DATA AND BUSINESS DATA

Introductory

1 Customer data and business data

- (1) This Part confers powers on the Secretary of State and the Treasury to make provision in connection with access to customer data and business data.
- (2) In this Part—

5

“business data”, in relation to a trader, means –

- (a) information about goods, services and digital content supplied or provided by the trader,
- (b) information relating to the supply or provision of goods, services and digital content by the trader (such as, for example, information about –
 - (i) where goods, services or digital content are supplied or provided,
 - (ii) prices or other terms on which they are supplied or provided,
 - (iii) how they are used, or
 - (iv) their performance or quality),
- (c) information relating to feedback about the goods, services or digital content (or their supply or provision), and
- (d) information relating to the provision of information described in paragraphs (a) to (c) to a person in accordance with data regulations;

“customer data” means information relating to a customer of a trader, including –

- (a) information relating to goods, services and digital content supplied or provided by the trader to the customer or to another person at the customer’s request (such as, for example, information about –
 - (i) prices or other terms on which goods, services or digital content are supplied or provided to the customer or the other person,
 - (ii) how they are used by the customer or the other person, or
 - (iii) their performance or quality when used by the customer or the other person), and
- (b) information relating to the provision of information described in paragraph (a), or of other information relating to a customer of a trader, to a person in accordance with data regulations;

“data holder”, in relation to customer data or business data of a trader, means –

- (a) the trader, or
- (b) a person who, in the course of a business, processes the data;

“data regulations” means regulations under section 2 or 4 (and see section 23);

“trader” means a person who supplies or provides goods, services or digital content in the course of a business, whether acting personally or through another person acting in the trader’s name or on the trader’s behalf.

- (3) For the purposes of this Part, a person (“C”) is a customer of a trader (“T”) if C has at any time –

- (a) purchased goods, services or digital content supplied or provided by T (whether for use by C or another person),
 - (b) been supplied or provided by T with goods, services or digital content purchased from T by another person, or
 - (c) otherwise received goods, services or digital content free of charge from T. 5
- (4) In subsection (3), the references to purchase, supply, provision or receipt of goods, services or digital content at any time include purchase, supply, provision or receipt before this section comes into force.
- (5) In subsections (3) and (4), references to purchasing goods, services or digital content include entering into an agreement to do so. 10
- (6) In this Part –
 - (a) a reference to providing customer data or business data to a person (however expressed) includes a reference to providing the person with access to such data or with the ability to provide other persons with access to such data, and 15
 - (b) a reference to a person receiving customer data or business data (however expressed) includes a reference to a person obtaining access to such data or the ability to provide other persons with access to such data. 20

Data regulations

2 Power to make provision in connection with customer data

- (1) The Secretary of State or the Treasury may by regulations make provision requiring a data holder to provide customer data –
 - (a) to the customer, at the customer’s request, or 25
 - (b) to a person of a specified description who is authorised by the customer to receive the data (an “authorised person”), at the customer’s request or at the authorised person’s request.
- (2) In this Part, in relation to customer data, “third party recipient” means a person of a description specified by provision made under subsection (1)(b) (and see section 25(1)). 30
- (3) The Secretary of State or the Treasury may by regulations make provision enabling or requiring a data holder –
 - (a) to produce, collect or retain, or arrange for the production, collection or retention of, customer data; 35
 - (b) to make changes to customer data, including to require rectification of inaccurate customer data, at the request of a customer or authorised person.
- (4) The Secretary of State or the Treasury may by regulations make provision for a person who is an authorised person in relation to customer data to take, 40

on the customer’s behalf, action that the customer could take in relation to goods, services or digital content supplied or provided by a person who is, or has been, a data holder in relation to the customer data.

- (5) In deciding whether to make regulations under this section, the Secretary of State or the Treasury must have regard to (among other things) – 5
- (a) the likely effects for existing and future customers,
 - (b) the likely effects for data holders,
 - (c) the likely effect on small businesses and micro businesses,
 - (d) the likely effect on innovation in the supply or provision of goods, services and digital content affected by the regulations or other goods, services and digital content, and 10
 - (e) the likely effect on competition in markets for goods, services and digital content affected by the regulations or other markets.

3 Customer data: supplementary

- (1) This section is about provision that regulations under section 2 may (among other things) contain. 15
- (2) The regulations may include –
- (a) provision about the procedure by which customers authorise persons to receive customer data or to do other things;
 - (b) provision restricting the persons that may be authorised to persons that comply with specified conditions; 20
 - (c) provision for a specified person to decide whether a person satisfies the conditions for authorisation (and see section 6 for further provision about decision-makers).
- (3) The regulations may make provision about requests relating to customer data, including provision about the circumstances in which a data holder may or must refuse to act on a request. 25
- (4) The regulations may make provision about the providing of customer data and the taking of action described in section 2(4), including –
- (a) provision requiring a data holder to provide customer data on one or more occasions, for a specified period or at specified intervals; 30
 - (b) provision requiring a data holder, customer or third party recipient to use specified facilities or services, including dashboard services, other electronic communications services or application programming interfaces; 35
 - (c) provision requiring a data holder or third party recipient to comply with specified standards, or participate in specified arrangements, relating to, or to the use of, such facilities or services;
 - (d) provision requiring a data holder or third party recipient to provide, or arrange for, specified assistance in connection with the establishment, maintenance or management of such facilities or services; 40
 - (e) provision about interface bodies (see section 7).

- (5) The regulations may include—
- (a) provision enabling or requiring a data holder to produce, collect or retain, or arrange for the production, collection or retention of, records of customer data provided in accordance with the regulations;
 - (b) provision enabling or requiring a third party recipient to produce or retain, or arrange for the production or retention of, records of customer data received in accordance with the regulations. 5
- (6) The regulations may make provision requiring a person who, in the course of a business, processes customer data of a trader to assist, or take specified steps to assist, the trader in complying with regulations under this Part. 10
- (7) The regulations may make provision about the processing of customer data provided to a third party recipient in accordance with the regulations, including—
- (a) provision requiring a third party recipient to use specified facilities or services, including dashboard services, other electronic communications services or application programming interfaces; 15
 - (b) provision requiring a third party recipient to comply with specified standards, or participate in specified arrangements, relating to, or to the use of, such facilities or services;
 - (c) provision requiring a third party recipient to provide, or arrange for, specified assistance in connection with the establishment, maintenance or management of such facilities or services; 20
 - (d) provision about interface bodies (see section 7);
 - (e) provision about further disclosure of the data, including provision for a person to whom customer data is further disclosed to be subject to— 25
 - (i) some or all of the obligations imposed on a third party recipient by the regulations in relation to the customer data;
 - (ii) conditions imposed by the third party recipient.
- (8) The regulations may make provision enabling or requiring a data holder or a third party recipient to publish specified information relating to the rights and obligations of persons under the regulations, including— 30
- (a) information about the rights of customers in relation to customer data processed by the data holder or a third party recipient;
 - (b) information about the activities carried out by the data holder or a third party recipient in performance of their obligations under the regulations. 35
- (9) The regulations may make provision about complaints, including provision requiring data holders or third party recipients to implement procedures for the handling of complaints.
- (10) The regulations may make provision about procedures for the resolution of disputes, including— 40
- (a) provision appointing, or providing for the appointment of, a person to determine disputes;

- (b) provision about the person’s powers when determining disputes;
 - (c) provision about the effect of decisions relating to disputes;
 - (d) provision about the review of decisions relating to disputes;
 - (e) provision about appeals to a court or tribunal.
- (11) In subsections (4)(d) and (7)(c), references to assistance include actual or contingent financial assistance (such as, for example, a grant, loan, guarantee or indemnity or buying a company’s share capital). 5

4 Power to make provision in connection with business data

- (1) The Secretary of State or the Treasury may by regulations make provision requiring a data holder to publish business data or to provide business data – 10
- (a) to a customer of the trader to whom the business data relates, or
 - (b) to another person of a specified description.
- (2) In this Part, in relation to business data, “third party recipient” means a person of a description specified by provision made under subsection (1)(b) (and see section 25(1)). 15
- (3) The Secretary of State or the Treasury may by regulations make provision enabling or requiring a data holder to produce, collect or retain, or arrange for the production, collection or retention of, business data.
- (4) The Secretary of State or the Treasury may by regulations – 20
- (a) make provision requiring a public authority that is a third party recipient (whether by virtue of those regulations or other data regulations), or a person appointed by such a public authority, to publish business data or to provide business data –
 - (i) to a customer of the trader to whom the business data relates, or 25
 - (ii) to another person of a specified description,
 - (b) in relation to the public authority, or a person appointed by the public authority to do something described in paragraph (a), make any provision that could be made in relation to a data holder, in connection with business data, in reliance on subsection (3) or sections 5 to 21, other than provision imposing a levy on the public authority or person, and 30
 - (c) in relation to a person to whom the public authority is required to provide business data by virtue of provision made under paragraph (a)(ii), make any provision that could be made in relation to a third party recipient in reliance on sections 5 to 21. 35
- (5) In deciding whether to make regulations under this section, the Secretary of State or the Treasury must have regard to (among other things) – 40
- (a) the likely effects for existing and future customers,
 - (b) the likely effects for data holders,
 - (c) the likely effect on small businesses and micro businesses,

- (d) the likely effect on innovation in the supply or provision of goods, services and digital content affected by the regulations or other goods, services and digital content, and
- (e) the likely effect on competition in markets for goods, services and digital content affected by the regulations or other markets.

5

5 Business data: supplementary

- (1) This section is about provision that regulations under section 4 may (among other things) contain.
- (2) The regulations may require business data to be provided on request and make provision about requests, including—
 - (a) provision for requests to be made by a customer, a third party recipient or another person;
 - (b) provision about the circumstances in which a data holder may or must refuse to act on a request.
- (3) The regulations may make provision requiring business data to be provided to customers, or third party recipients, who are approved to receive it, including—
 - (a) provision restricting the persons that may be approved to persons that comply with specified conditions;
 - (b) provision for a specified person to decide whether a person satisfies the conditions for approval (and see section 6 for further provision about decision-makers).
- (4) The regulations may make provision about the providing or publishing of business data, including—
 - (a) provision requiring a data holder to provide or publish business data on one or more occasions, for a specified period or at specified intervals;
 - (b) provision requiring a data holder, customer or third party recipient to use specified facilities or services, including dashboard services, other electronic communications services or application programming interfaces;
 - (c) provision requiring a data holder or third party recipient to comply with specified standards, or participate in specified arrangements, relating to, or to the use of, such facilities or services;
 - (d) provision requiring a data holder or third party recipient to provide, or arrange for, specified assistance in connection with the establishment, maintenance or management of such facilities or services.
 - (e) provision about interface bodies (see section 7).
- (5) The regulations may include—
 - (a) provision enabling or requiring a data holder to produce, collect or retain, or arrange for the production, collection or retention of, records of business data provided in accordance with the regulations;

10

15

20

25

30

35

40

- (b) provision enabling or requiring a third party recipient to produce or retain, or arrange for the production or retention of, records of business data received in accordance with the regulations.
- (6) The regulations may make provision requiring a person who, in the course of a business, processes business data of a trader to assist, or take specified steps to assist, the trader in complying with regulations under this Part. 5
- (7) The regulations may make provision about the processing of business data provided to a third party recipient in accordance with the regulations, including—
- (a) provision requiring a third party recipient to use specified facilities or services, including dashboard services, other electronic communications services or application programming interfaces; 10
- (b) provision requiring a third party recipient to comply with specified standards, or participate in specified arrangements, relating to, or to the use of, such facilities or services; 15
- (c) provision requiring a third party recipient to provide, or arrange for, specified assistance in connection with the establishment, maintenance or management of such facilities or services;
- (d) provision about interface bodies (see section 7);
- (e) provision about further disclosure of the data, including provision for a person to whom business data is further disclosed to be subject to some or all of the obligations imposed on customers or third party recipients by the regulations in relation to the business data. 20
- (8) The regulations may make provision enabling or requiring a data holder or a third party recipient to publish specified information relating to the rights and obligations of persons under the regulations, including information about the activities carried out by the data holder or third party recipient in performance of their obligations under the regulations. 25
- (9) The regulations may make provision about complaints, including provision requiring data holders or third party recipients to implement procedures for the handling of complaints. 30
- (10) The regulations may make provision about procedures for the resolution of disputes, including—
- (a) provision appointing, or providing for the appointment of, a person to determine disputes; 35
- (b) provision about the person’s powers when determining disputes;
- (c) provision about the effect of decisions relating to disputes;
- (d) provision about the review of decisions relating to disputes;
- (e) provision about appeals to a court or tribunal.
- (11) In subsections (4)(d) and (7)(c), references to assistance include actual or contingent financial assistance (such as, for example, a grant, loan, guarantee or indemnity or buying a company’s share capital). 40

6 Decision-makers

- (1) This section is about the provision about decision-makers that regulations under section 2 or 4 may or must (among other things) contain.
- (2) In this Part, “decision-maker” means a person who is authorised or required to take a decision described in section 3(2)(c) (authorisation) or 5(3)(b) (approval). 5
- (3) The regulations may make provision about the appointment of a decision-maker.
- (4) The regulations may make provision enabling or requiring a decision-maker to suspend or revoke a decision. 10
- (5) The regulations may confer powers on a decision-maker for the purpose of monitoring compliance with conditions for authorisation or approval (“monitoring powers”) (and see section 8 for provision about enforcement of requirements imposed in exercise of those powers).
- (6) The monitoring powers that may be conferred on a decision-maker include powers to require the provision of documents or information (but such powers are subject to the restrictions in section 9 as well as any restrictions included in the regulations). 15
- (7) The regulations must make provision about the rights of persons affected by the exercise of a decision-maker’s functions under the regulations and such provision may include (among other things) – 20
 - (a) provision about the review of decision-makers’ decisions;
 - (b) provision about appeals to a court or tribunal.
- (8) The regulations may make provision about complaints, including provision requiring a decision-maker to implement procedures for the handling of complaints. 25
- (9) The regulations may make provision enabling or requiring a decision-maker to publish, or provide to a specified person, specified documents or information relating to the exercise of the decision-maker’s functions.
- (10) The regulations may make provision for a decision-maker to arrange for its monitoring powers to be exercised by another person. 30
- (11) The regulations may –
 - (a) provide for functions under the regulations to be exercisable by more than one decision-maker (whether jointly or concurrently);
 - (b) where functions of decision-makers are exercisable concurrently – 35
 - (i) provide for one of the decision-makers to be the lead decision-maker;
 - (ii) require the other decision-makers to consult the lead decision-maker before exercising the functions in a particular case; 40

- (iii) provide for the lead decision-maker to give directions as to which decision-maker is to exercise a function in a particular case.
- (12) The regulations may make provision enabling or requiring a decision-maker –
- (a) to produce guidance about how it proposes to exercise its functions under the regulations (including provision enabling or requiring decision-makers with functions exercisable jointly or concurrently to produce joint guidance), 5
 - (b) to publish the guidance, and
 - (c) to provide copies to specified persons. 10

7 Interface bodies

- (1) This section is about the provision that regulations under section 2 or 4 may (among other things) contain about bodies with one or more of the following tasks –
- (a) establishing a facility or service used, or capable of being used, for providing, publishing or otherwise processing customer data or business data or for taking action described in section 2(4) (referred to in this Part as an “interface”); 15
 - (b) setting standards, or making other arrangements, relating to, or to the use of, an interface (referred to in this Part as “interface standards” and “interface arrangements”); 20
 - (c) maintaining or managing an interface, interface standards or interface arrangements.
- (2) Such bodies are referred to in this Part as “interface bodies”.
- (3) The regulations may – 25
- (a) require a data holder or a third party recipient to set up an interface body;
 - (b) make provision about the type of body to be set up.
- (4) In relation to an interface body (whether or not it is required to be set up by regulations under section 2 or 4), the regulations may – 30
- (a) make provision about the body’s composition and governance;
 - (b) make provision requiring a data holder or a third party recipient to provide, or arrange for, assistance for the body;
 - (c) impose other requirements relating to the body on a person who is required to set it up or to provide, or arrange for, assistance for the body; 35
 - (d) make provision requiring the body to carry on all or part of a task described in subsection (1);
 - (e) make provision requiring the body to do other things in connection with its interface, interface standards or interface arrangements; 40

- (f) make provision about how the body carries out its functions (such as, for example, provision about the body’s objectives or matters to be taken into account by the body);
 - (g) confer powers on the body for the purpose of monitoring use of its interface, interface standards or interface arrangements (“monitoring powers”) (and see section 8 for provision about enforcement of requirements imposed in exercise of those powers); 5
 - (h) make provision for the body to arrange for its monitoring powers to be exercised by another person;
 - (i) make provision about the rights of persons affected by the exercise of the body’s functions under the regulations, including (among other things) – 10
 - (i) provision about the review of decisions made in exercise of those functions;
 - (ii) provision about appeals to a court or tribunal; 15
 - (j) make provision about complaints, including provision requiring the body to implement procedures for the handling of complaints;
 - (k) make provision enabling or requiring the body to publish, or provide to a specified person, specified documents or information relating to its interface, interface standards or interface arrangements; 20
 - (l) make provision enabling or requiring the body to produce guidance about how it proposes to exercise its functions under the regulations, to publish the guidance and to provide copies to specified persons.
- (5) The monitoring powers that may be conferred on an interface body include power to require the provision of documents or information (but such powers are subject to the restrictions in section 9 as well as any restrictions included in the regulations). 25
- (6) Examples of facilities or services referred to in subsection (1) include dashboard services, other electronic communications services and application programming interfaces. 30
- (7) In subsection (4)(b) and (c), the references to assistance include actual or contingent financial assistance (such as, for example, a grant, loan, guarantee or indemnity or buying a company’s share capital).

Enforcement

- 8 Enforcement of regulations under this Part** 35
- (1) The Secretary of State or the Treasury may by regulations make provision –
- (a) for the purpose of monitoring compliance with regulations under this Part or requirements imposed in exercise of a power conferred by such regulations, and
 - (b) for the enforcement of such regulations or requirements, 40
- including provision for monitoring or enforcement by a specified public authority.

- (2) In this Part, “enforcer” means a public authority that is authorised or required to carry out monitoring or enforcement described in subsection (1).
- (3) The following subsections and sections 9 and 10 make provision about what regulations under subsection (1) may or must (among other things) contain.
- (4) The regulations may confer powers of investigation on an enforcer, including— 5
 (a) powers to require the provision of documents or information,
 (b) powers to require an individual to attend at a place and answer questions, and
 (c) powers of entry, inspection, search and seizure,
 but such powers are subject to the restrictions in section 9 (as well as any restrictions included in the regulations). 10
- (5) The regulations may—
 (a) make provision enabling an enforcer to issue a notice (“a compliance notice”) requiring compliance with—
 (i) regulations under this Part; 15
 (ii) a condition for authorisation or approval imposed by a decision-maker;
 (iii) any other requirement imposed in exercise of a power conferred by regulations under this Part;
 (b) make provision for the enforcement of compliance notices, including provision for their enforcement as if they were orders of a court or tribunal; 20
 (c) make provision enabling an enforcer to publish a statement to the effect that the enforcer considers that a person is not complying with—
 (i) a requirement imposed by regulations under this Part, 25
 (ii) a requirement imposed by a compliance notice, or
 (iii) any other requirement imposed in exercise of a power conferred by regulations under this Part.
- (6) The regulations may make provision creating offences punishable with an unlimited fine, or a fine not exceeding a specified amount, in respect of— 30
 (a) the provision of false or misleading information in response to a request made in accordance with regulations under this Part;
 (b) an act or omission (including falsification) which prevents an enforcer, an interface body or a decision-maker from accessing information, documents, equipment or other material. 35
- (7) The regulations may make provision enabling a financial penalty to be imposed by an enforcer in respect of—
 (a) the provision of false or misleading information in response to a request made in accordance with regulations under this Part;
 (b) a failure to comply with a requirement imposed by regulations under this Part; 40
 (c) a failure to comply with a requirement imposed by a compliance notice;

- (d) a failure to comply with any other requirement imposed in exercise of a power conferred by regulations under this Part;
and see section 10 for further provision about financial penalties.
- (8) The regulations may make provision about the rights of persons affected by the exercise of an enforcer’s functions under the regulations, including— 5
- (a) provision about the review of a decision made in exercise of those functions;
 - (b) provision about appeals to a court or tribunal.
- (9) The regulations may make provision about complaints, including provision requiring an enforcer to implement procedures for the handling of complaints. 10
- (10) The regulations may make provision enabling or requiring an enforcer to publish, or to provide to a specified person, specified information relating to monitoring or enforcement described in subsection (1), including—
- (a) information about the exercise of the enforcer’s functions, either generally or in relation to a particular case, and 15
 - (b) information about convictions for offences.
- (11) The regulations may make provision for an enforcer to arrange for its powers of investigation under the regulations to be exercised by another person.
- (12) The regulations may— 20
- (a) provide for functions under the regulations to be exercisable by more than one enforcer (whether jointly or concurrently);
 - (b) where functions of enforcers are exercisable concurrently— 25
 - (i) provide for one of the enforcers to be the lead enforcer;
 - (ii) require the other enforcers to consult the lead enforcer before exercising the functions in a particular case;
 - (iii) provide for the lead enforcer to give directions as to which enforcer is to exercise a function in a particular case.
- (13) The regulations may make provision enabling or requiring an enforcer— 30
- (a) to produce guidance about how it proposes to exercise its functions under the regulations (including provision enabling or requiring enforcers with functions exercisable jointly or concurrently to produce joint guidance),
 - (b) to publish the guidance, and
 - (c) to provide copies to specified persons.
- 9 Restrictions on powers of investigation etc 35**
- (1) Regulations under this Part may not—
- (a) authorise entry to a private dwelling without a warrant issued by a justice, or
 - (b) require a person to provide information within subsections (2) to (7) to a decision-maker, an interface body or an enforcer. 40

- (2) Information is within this subsection if requiring a person to provide the information would involve an infringement of the privileges of either House of Parliament.
- (3) Information is within this subsection if it is information in respect of a communication which is made— 5
- (a) between a professional legal adviser and the adviser’s client, and
 - (b) in connection with the giving of legal advice to the client with respect to obligations, liabilities or rights imposed or conferred by or under regulations made under this Part.
- (4) Information is within this subsection if it is information in respect of a communication which is made— 10
- (a) between a professional legal adviser and the adviser’s client or between such an adviser or client and another person,
 - (b) in connection with, or in contemplation of, proceedings under or arising out of regulations made under this Part (including proceedings arising out of the exercise of powers conferred by such regulations), and 15
 - (c) for the purposes of such proceedings.
- (5) In subsections (3) and (4), references to the client of a professional legal adviser include references to a person acting on behalf of the client. 20
- (6) Information is within this subsection if requiring a person to provide the information would, by revealing evidence of the commission of an offence, expose the person to proceedings for that offence.
- (7) The reference to an offence in subsection (6) does not include an offence under— 25
- (a) regulations made under this Part;
 - (b) section 5 of the Perjury Act 1911 (false statements made otherwise than on oath);
 - (c) section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (false statements made otherwise than on oath); 30
 - (d) Article 10 of the Perjury (Northern Ireland) Order 1979 (S.I. 1979/1714 (N.I. 19)) (false statutory declarations and other false unsworn statements).
- (8) An oral or written statement provided by a person in response to a request for information made by a decision-maker, an interface body or an enforcer in accordance with regulations under this Part may not be used in evidence against that person on a prosecution for an offence (other than an offence under regulations made under this Part) unless in the proceedings— 35
- (a) in giving evidence the person provides information inconsistent with the statement, and 40
 - (b) evidence relating to the statement is adduced, or a question relating to it is asked, by that person or on that person’s behalf.
- (9) In this section, “justice” means—

- (a) in England and Wales, a justice of the peace,
- (b) in Scotland, a sheriff or summary sheriff, and
- (c) in Northern Ireland, a lay magistrate.

10 Financial penalties

- (1) This section is about provision that regulations under this Part conferring power on an enforcer to impose a financial penalty may or must (among other things) contain. 5
- (2) The regulations must provide for the amount of a financial penalty to be—
 - (a) a specified amount or an amount determined in accordance with the regulations, or 10
 - (b) an amount not exceeding such an amount, unless section 16 confers power to provide otherwise.
- (3) The regulations must include provision—
 - (a) requiring an enforcer to produce guidance about how the enforcer proposes to exercise any discretion to determine the amount of a financial penalty and to have regard to such guidance in exercising its discretion; 15
 - (b) requiring an enforcer to publish the guidance;
 - (c) requiring an enforcer, before imposing a financial penalty on a person, to give the person written notice (a “notice of intent”) of the proposed financial penalty; 20
 - (d) ensuring that the person is given an opportunity to make representations about the proposed financial penalty;
 - (e) requiring the enforcer, after the period for making representations, to decide whether to impose the financial penalty; 25
 - (f) requiring the enforcer, if they decide to impose the financial penalty, to give the person notice in writing (a “final notice”) imposing the penalty;
 - (g) enabling a person on whom a financial penalty is imposed to appeal to a court or tribunal in accordance with the regulations; 30
 - (h) as to the powers of the court or tribunal on such an appeal.
- (4) The regulations may include provision—
 - (a) requiring or enabling an enforcer to provide copies of guidance described in subsection (3)(a) to specified persons;
 - (b) enabling a notice of intent or final notice to be withdrawn or amended; 35
 - (c) requiring an enforcer to withdraw a final notice in specified circumstances;
 - (d) for a financial penalty to be increased in the event of late payment by—
 - (i) a specified amount or an amount determined in accordance with the regulations, or 40
 - (ii) an amount not exceeding such an amount;

- (e) as to how financial penalties are recoverable.

Fees etc and financial assistance

11 Fees

- (1) The Secretary of State or the Treasury may by regulations –
- (a) make provision enabling a person listed in subsection (2), or a person acting on their behalf, to require other persons to pay fees for the purpose of meeting expenses described in subsection (3), and 5
 - (b) make provision about what must or may be done with amounts paid as fees.
- (2) Those persons are – 10
- (a) data holders;
 - (b) decision-makers;
 - (c) interface bodies;
 - (d) enforcers;
 - (e) other persons on whom duties are imposed, or powers are conferred, by or under regulations made under this Part. 15
- (3) Those expenses are expenses incurred, or to be incurred, by the person listed in subsection (2), or a person acting on their behalf, in performing duties, or exercising powers, imposed or conferred on the person listed in subsection (2) by or under regulations made under this Part. 20
- (4) Regulations under subsection (1) –
- (a) may only provide for a fee to be payable by persons that appear to the Secretary of State or the Treasury to be capable of being directly affected by the performance of duties, or the exercise of powers, imposed or conferred by or under regulations made under this Part; 25
 - (b) may provide for the amount of a fee to be an amount which is intended to exceed the cost of the things in respect of which the fee is charged.
- (5) Regulations under subsection (1) must provide for the amount of a fee to be – 30
- (a) a specified amount or an amount determined in accordance with the regulations, or
 - (b) an amount not exceeding such an amount, unless section 15 confers power to provide otherwise.
- (6) Regulations under subsection (1) may provide for the amount, or maximum amount, of a fee to increase at specified times and by – 35
- (a) a specified amount or an amount determined in accordance with the regulations, or
 - (b) an amount not exceeding such an amount.

- (7) Regulations under subsection (1) enabling a person to determine the amount of a fee must require the person to publish information about the amount and how it is determined.
- (8) Regulations under subsection (1) may (among other things) make provision about—
 - (a) interest on any unpaid amounts;
 - (b) the recovery of unpaid amounts.

5

12 Levy

- (1) The Secretary of State or the Treasury may by regulations—
 - (a) impose, or provide for a specified public authority to impose, a levy on data holders or third party recipients for the purpose of meeting expenses described in subsection (2), and
 - (b) make provision about what must or may be done with funds raised by means of the levy.
- (2) Those expenses are expenses incurred, or to be incurred, during a period by a person listed in subsection (3), or a person acting on their behalf, in performing duties, or exercising powers, imposed or conferred on the person listed in subsection (3) by or under regulations made under this Part.
- (3) Those persons are—
 - (a) decision-makers;
 - (b) interface bodies;
 - (c) enforcers;
 - (d) public authorities subject to requirements imposed by regulations made in reliance on section 4(4).
- (4) Regulations under subsection (1) may only provide for a levy in respect of expenses of a person to be imposed on data holders or third party recipients that appear to the Secretary of State or the Treasury to be capable of being directly affected by the exercise of some or all of the functions conferred on the person by or under regulations made under this Part.
- (5) Regulations under subsection (1) providing for a specified public authority to impose a levy must—
 - (a) make provision about how the rate of the levy is to be determined;
 - (b) make provision about how the period in respect of which the levy is payable is to be determined;
 - (c) require the public authority to publish information about the rate, the period and how they are determined.
- (6) Regulations under subsection (1) may (among other things) make provision about—
 - (a) interest on any unpaid amounts payable by way of a levy;
 - (b) the recovery of such unpaid amounts.

10

15

20

25

30

35

40

13 Financial assistance

- (1) The Secretary of State or the Treasury may give financial assistance to a person for the purpose of—
 - (a) meeting expenses incurred, or to be incurred, by the person in performing duties, or exercising powers, imposed or conferred by or under regulations made under this Part, or 5
 - (b) exercising other functions in connection with such regulations.
- (2) But subsection (1) does not enable financial assistance to be provided to a person listed in subsection (3) or to a person acting on their behalf.
- (3) Those persons are— 10
 - (a) data holders,
 - (b) customers, or
 - (c) third party recipients, other than a third party recipient that is a public authority subject to requirements imposed by regulations made in reliance on section 4(4). 15
- (4) The financial assistance may be given on such terms and conditions as the Secretary of State or the Treasury considers appropriate.
- (5) In this section, “financial assistance” means any kind of financial assistance whether actual or contingent, including a grant, loan, guarantee or indemnity, but does not include buying a company’s share capital. 20

Financial services sector

14 The FCA and financial services interfaces

- (1) The Treasury may by regulations make provision enabling or requiring the Financial Conduct Authority (referred to in this Part as “the FCA”) to make rules— 25
 - (a) requiring financial services providers described in the regulations to use a prescribed interface, comply with prescribed interface standards or participate in prescribed interface arrangements, when providing or receiving customer data or business data which is required to be provided by or to the financial services provider by data regulations; 30
 - (b) requiring persons described in the regulations to use a prescribed interface, comply with prescribed interface standards or participate in prescribed interface arrangements, when the person, in the course of a business, receives, from a financial services provider, customer data or business data which is required to be provided to the person by data regulations; 35
 - (c) imposing interface-related requirements on a description of person falling within subsection (3).
- (2) Such rules are referred to in this Part as “FCA interface rules”.
- (3) The following persons fall within this subsection— 40

- (a) an interface body linked to the financial services sector;
 - (b) a person required by regulations made in reliance on section 7 to set up an interface body linked to the financial services sector;
 - (c) a person who uses an interface, complies with interface standards or participates in interface arrangements linked to the financial services sector or who is required to do so by data regulations or rules made by virtue of regulations under subsection (1)(a) or (b). 5
- (4) For the purposes of this section, requirements are interface-related if they relate to—
 - (a) the composition, governance or activities of an interface body linked to the financial services sector, 10
 - (b) an interface, interface standards or interface arrangements linked to the financial services sector, or
 - (c) the use of such an interface, compliance with such interface standards or participation in such interface arrangements. 15
- (5) For the purposes of this section—
 - (a) an interface body is linked to the financial services sector to the extent that its interface, interface standards or interface arrangements are linked to the financial services sector;
 - (b) interfaces, interface standards and interface arrangements are linked to the financial services sector to the extent that they are used, or intended to be used, by financial services providers (whether or not they are used, or intended to be used, by other persons). 20
- (6) The Treasury may by regulations make provision enabling or requiring the FCA to impose requirements on a person to whom FCA interface rules apply (referred to in this Part as “FCA additional requirements”) where the FCA considers it appropriate to impose the requirement—
 - (a) in response to a failure, or likely failure, by the person to comply with an FCA interface rule or FCA additional requirement, or
 - (b) in order to advance a purpose which the FCA is required to advance when exercising functions conferred by regulations under this section (see section 15(3)(a)). 25 30
- (7) Regulations under subsection (6) may, for example, provide for the FCA to impose requirements by giving a notice or direction.
- (8) The restrictions in section 9 apply in connection with FCA interface rules and FCA additional requirements as they apply in connection with regulations under this Part. 35
- (9) In section 9 as so applied—
 - (a) the references in subsections (1)(b) and (8) to an enforcer include the FCA, and
 - (b) the references in subsections (3) and (4) to regulations made under this Part include FCA interface rules and FCA additional requirements. 40
- (10) In this section—

“financial services provider” means a person providing financial services;
“prescribed” means prescribed in FCA interface rules.

15 The FCA and financial services interfaces: supplementary

- (1) This section is about provision that regulations under section 14 may or must (among other things) contain. 5
- (2) The regulations –
 - (a) may require or enable the FCA to impose interface-related requirements that could be imposed by regulations made in reliance on section 7(4) or (5), but
 - (b) may not require or enable the FCA to require a person to set up an interface body. 10
- (3) The regulations must –
 - (a) require the FCA, so far as is reasonably possible, to exercise functions conferred by the regulations in a manner which is compatible with, or which advances, one or more specified purposes; 15
 - (b) specify one or more matters to which the FCA must have regard when exercising functions conferred by the regulations;
 - (c) if they require or enable the FCA to make rules, make provision about the procedure for making rules, including provision requiring such consultation with persons likely to be affected by the rules or representatives of such persons as the FCA considers appropriate. 20
- (4) The regulations may –
 - (a) require the FCA to carry out an analysis of the costs and benefits that will arise if proposed rules are made or proposed changes are made to rules and make provision about what the analysis must include; 25
 - (b) require the FCA to publish rules or changes to rules and to provide copies to specified persons;
 - (c) make provision about the effect of rules, including provision about circumstances in which rules are void and circumstances in which a person is not to be taken to have contravened a rule; 30
 - (d) make provision enabling or requiring the FCA to modify or waive rules as they apply to a particular case;
 - (e) make provision about the procedure for imposing FCA additional requirements;
 - (f) make provision enabling or requiring the FCA to produce guidance about how it proposes to exercise its functions under the regulations, to publish the guidance and to provide copies to specified persons. 35
- (5) The regulations may require or enable the FCA to impose the following types of requirement on a person as FCA additional requirements – 40
 - (a) a requirement to review the person’s conduct;
 - (b) a requirement to take remedial action;

- (c) a requirement to make redress for loss or damage suffered by others as a result of the person’s conduct.
- (6) The regulations may require or enable FCA interface rules to require a person listed in subsection (7) to pay fees to an interface body, or to another person listed in that subsection, for the purpose of meeting expenses described in subsection (8). 5
- (7) Those persons are –
 - (a) persons falling within section 14(3)(b) or (c);
 - (b) financial services providers.
- (8) Those expenses are expenses incurred, or to be incurred, by the interface body or person listed in subsection (7), or a person acting on behalf of such a body or person, in performing duties, or exercising powers, imposed or conferred by –
 - (a) regulations under this Part, or
 - (b) rules made by virtue of regulations under section 14. 10 15
- (9) Regulations made in reliance on subsection (6) –
 - (a) may enable rules to provide for the amount of a fee to be an amount which is intended to exceed the cost of the things in respect of which the fee is charged;
 - (b) may require or enable rules to make provision about the amount, or maximum amount, of a fee, including provision about how a fee is to be determined; 20
 - (c) may require or enable rules to make provision about the amount, or maximum amount, by which the amount, or maximum amount, of a fee must or may increase and the times at which it must or may increase; 25
 - (d) must require rules, where relevant, to require a person who determines an amount referred to in paragraph (b) or (c) to publish information about the amount and how it is determined;
 - (e) may require or enable rules to make provision about – 30
 - (i) interest on any unpaid amounts;
 - (ii) the recovery of unpaid amounts.
- (10) Regulations under section 14 may provide that powers to make FCA interface rules include powers to do things described in section 21(1)(a) to (h) (supplementary powers) (ignoring the restriction in relation to fees in section 21(3)). 35
- (11) In this section, “financial services provider” and “interface-related” have the meaning given in section 14.
- (12) The reference in subsection (5)(c) to making redress includes –
 - (a) paying interest, and 40
 - (b) providing redress in the form of a remedy or relief which could not be awarded in legal proceedings.

16 The FCA and financial services interfaces: penalties and levies

- (1) Subsections (2) and (3) are about the provision that regulations made by the Treasury under this Part providing for the FCA to enforce requirements under FCA interface rules may (among other things) contain in relation to financial penalties. 5
- (2) The regulations may require or enable the FCA –
- (a) to set the amount or maximum amount of, or of an increase in, a penalty imposed in respect of failure to comply with a requirement imposed by the FCA in exercise of a power conferred by regulations under section 14 (whether imposed by means of FCA interface rules or an FCA additional requirement), or 10
 - (b) to set the method for determining such an amount.
- (3) Regulations made in reliance on subsection (2) –
- (a) must require the FCA to produce and publish a statement of its policy with respect to the amount of the penalties; 15
 - (b) may require the policy to include specified matters;
 - (c) may make provision about the procedure for producing the statement;
 - (d) may require copies of the statement to be provided to specified persons;
 - (e) may require the FCA to have regard to a statement published in accordance with the regulations. 20
- (4) The Treasury may by regulations –
- (a) impose, or provide for the FCA to impose, a levy on data holders or third party recipients for the purpose of meeting expenses incurred, or to be incurred, during a period by the FCA, or by a person acting on the FCA's behalf, in performing duties, or exercising powers, imposed or conferred on the FCA by regulations under section 14, and 25
 - (b) make provision about what must or may be done with funds raised by means of the levy. 30
- (5) Regulations under subsection (4) may only provide for a levy in respect of expenses of the FCA to be imposed on persons that appear to the Treasury to be capable of being directly affected by the exercise of some or all of the functions conferred on the FCA by regulations under section 14.
- (6) Regulations under subsection (4) providing for the FCA to impose a levy must – 35
- (a) make provision about how the rate of the levy is to be determined;
 - (b) make provision about how the period in respect of which the levy is payable is to be determined;
 - (c) require the FCA to publish information about the rate, the period and how they are determined. 40

- (7) Regulations under subsection (4) may (among other things) make provision about—
- (a) interest on any unpaid amounts payable by way of a levy;
 - (b) the recovery of such unpaid amounts.

17 The FCA and co-ordination with other regulators 5

The Treasury may by regulations amend section 98 of the Financial Services (Banking Reform) Act 2013 (payment systems: duty of the FCA and other regulators to ensure co-ordinated exercise of relevant functions) by—

- (a) amending the definition of “relevant functions” so as to add or remove a function conferred on the FCA by regulations under this Part, and 10
- (b) amending the definition of “objectives” so as to add or remove an objective of the FCA relevant to such a function.

Supplementary

18 Liability in damages

- (1) The Secretary of State or the Treasury may by regulations provide that a person listed in subsection (2) is not liable in damages for anything done or omitted to be done in the exercise of functions conferred by or under regulations made under this Part. 15
- (2) Those persons are—
- (a) a public authority; 20
 - (b) a member, officer or member of staff of a public authority;
 - (c) a person who could be held vicariously liable for things done or omitted to be done by a public authority.
- (3) Regulations under this section may not—
- (a) make provision removing liability for an act or omission which is shown to have been in bad faith, or 25
 - (b) make provision so as to prevent an award of damages made in respect of an act or omission on the ground that the act or omission was unlawful as a result of section 6(1) of the Human Rights Act 1998.

19 Duty to review regulations 30

- (1) The relevant person must, by regulations, provide for the review of provision made by the relevant person in exercise of powers to make regulations under other sections in this Part (“Part 1 provision”) (but see the exceptions in subsection (8)).
- (2) In this section, “the relevant person” means— 35
- (a) in relation to Part 1 provision made by the Secretary of State, the Secretary of State, and
 - (b) in relation to Part 1 provision made by the Treasury, the Treasury.

- (3) Regulations under subsection (1) must require the relevant person—
- (a) to review the Part 1 provision,
 - (b) to prepare and publish a report setting out the findings of each review, and
 - (c) to lay a copy of the report before Parliament. 5
- (4) The regulations must require the relevant person—
- (a) to publish the report setting out the findings of the first review of the Part 1 provision before the end of the period of 5 years beginning with the day on which the provision comes into force, and
 - (b) to publish reports setting out the findings of subsequent reviews at intervals of not more than 5 years. 10
- (5) The regulations must require that, in carrying out a review, the relevant person must consider whether the Part 1 provision remains appropriate, having regard to (among other things)—
- (a) the objectives it is intended to achieve, and 15
 - (b) to the extent that it is part of data regulations, the matters to which the relevant person was required to have regard in deciding whether to make the provision (see sections 2(5) and 4(5)).
- (6) The regulations must provide that the relevant person may omit material from a report before publication if the relevant person thinks that the publication of that material might harm the commercial interests of any person. 20
- (7) The regulations may (whether made by the Secretary of State or the Treasury) provide for the Secretary of State and the Treasury to carry out a joint review, and to produce a joint report, in respect of Part 1 provision made by the Secretary of State and Part 1 provision made by the Treasury. 25
- (8) Subsection (1) does not apply in relation to—
- (a) Part 1 provision that is required to be reviewed by the relevant person by virtue of existing regulations under this section, or
 - (b) Part 1 provision that makes, amends or revokes provision described in paragraph (a), 30
- nor does it require the relevant person to provide for the review of Part 1 provision that has been revoked.
- (9) Section 28 of the Small Business, Enterprise and Employment Act 2015 (duty to review regulatory provisions in secondary legislation) does not apply in relation to a power to make regulations under this Part. 35

20 Restrictions on processing and data protection

- (1) Except as provided by subsection (2), regulations under this Part may provide for the processing of information in accordance with the regulations not to be in breach of—
- (a) any obligation of confidence owed by the person processing the information, or 40

- (b) any other restriction on the processing of information (however imposed).
- (2) Regulations under this Part are not to be read as authorising or requiring processing of personal data that would contravene the data protection legislation (but in determining whether particular processing of data would do so, take into account the power conferred or duty imposed by the provision of the regulations in question). 5
- (3) In this section –
 - “the data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3(9) of that Act); 10
 - “personal data” has the same meaning as in that Act (see section 3(2) of that Act).

21 Regulations under this Part: supplementary

- (1) Regulations under this Part may (among other things) –
 - (a) make provision generally or in relation to particular cases; 15
 - (b) make different provision for different purposes or areas;
 - (c) make provision about the form and manner in which things must or may be done;
 - (d) make provision about the content of requests, notices or other documents; 20
 - (e) make provision about the time by which, or period within which, things must or may be done;
 - (f) make provision by reference to standards, arrangements, specifications or technical requirements as published from time to time;
 - (g) confer functions on a person, including functions involving the exercise of a discretion, and make provision in connection with the procedure for exercising the functions; 25
 - (h) make consequential, supplementary, incidental, transitional, transitory or saving provision.
- (2) Regulations under this Part may not require or enable a person to set the maximum amount of a fine for an offence, except that such regulations may make provision about the maximum amount referring to the standard scale, the statutory maximum or a similar amount. 30
- (3) Regulations under this Part may not require or enable a person to set the amount or maximum amount of, or of an increase in, a penalty or fee or to set the method for determining such an amount, except as provided by subsection (4) and sections 15 and 16. 35
- (4) Regulations under this Part –
 - (a) may make provision about the amount or method described in subsection (3) referring to a published index, and 40
 - (b) may require or enable a person to make decisions, in accordance with a maximum amount or method set out in the regulations, about the

amount of, or of an increase or reduction in, a penalty or fee payable in a particular case.

- (5) Regulations under this Part making the following types of provision may amend, repeal or revoke primary legislation—
- (a) provision about the handling of complaints; 5
 - (b) provision about the resolution of disputes;
 - (c) provision about appeals;
 - (d) provision described in subsection (1)(h).

22 Regulations under this Part: Parliamentary procedure and consultation

- (1) The following regulations under this Part are subject to the affirmative resolution procedure—
- (a) the first regulations under each of section 2(1), (3) and (4) making provision about a particular description of customer data,
 - (b) the first regulations under each of section 4(1), (3) and (4) making provision about a particular description of business data, 15
 - (c) regulations under section 2 or 4 which make the requirements of regulations under this Part more onerous for data holders or interface bodies,
 - (d) regulations under section 6(5), 7, 8, 11, 12, 14, 16, 17 or 18, and
 - (e) regulations described in section 21(5) which amend, repeal or revoke primary legislation. 20
- (2) Other regulations under this Part are subject to the negative resolution procedure.
- (3) Before making regulations described in subsection (1), the Secretary of State or the Treasury (as the case may be) must consult such of the following as the Secretary of State or the Treasury considers appropriate—
- (a) persons likely to be affected by the regulations or representatives of such persons; 25
 - (b) sectoral regulators with functions in relation to data holders likely to be affected by the regulations. 30
- (4) The requirement in subsection (3) may be satisfied by consultation undertaken before the day on which this Act is passed.

23 Related subordinate legislation

- (1) This section is about cases in which subordinate legislation, other than regulations under this Part, contains provision described in section 2(1) to (4) or 4(1) to (4) (and such provision is referred to in this section as “related subordinate legislation”). 35
- (2) The regulation-making powers under this Part may be exercised so as to make, in connection with the related subordinate legislation, any provision that they could be exercised to make as part of, or in connection with, 40

provision made under section 2(1) to (4) or, as appropriate, section 4(1) to (4).

(3) In this Part, references to “data regulations” include regulations made in reliance on subsection (2) to the extent that they make provision described in sections 2 to 7. 5

(4) In this section, “subordinate legislation” has the same meaning as in the Interpretation Act 1978 (see section 21 of that Act).

24 Repeal of provisions relating to supply of customer data

Omit sections 89 to 91 of the Enterprise and Regulatory Reform Act 2013 (supply of customer data). 10

25 Other defined terms

(1) In this Part—

“application programming interface” means a facility for allowing software to make use of facilities contained in other software;

“dashboard service” means an electronic communications service by means of which information may be requested by and provided to a person; 15

“digital content” means data which is produced and supplied in digital form;

“electronic communications service” has the meaning given by section 32 of the Communications Act 2003; 20

“goods” includes water, gas and electricity (however supplied);

“micro business” has the meaning given by section 33 of the Small Business, Enterprise and Employment Act 2015, read with any regulations under that section; 25

“primary legislation” means—

(a) an Act of Parliament;

(b) an Act of the Scottish Parliament;

(c) a Measure or Act of Senedd Cymru;

(d) Northern Ireland legislation; 30

“processing” has the same meaning as in the Data Protection Act 2018 (see section 3(4) of that Act) and related terms are to be interpreted accordingly;

“public authority” means a person whose functions—

(a) are of a public nature, or 35

(b) include functions of that nature;

“small business” has the meaning given by section 33 of the Small Business, Enterprise and Employment Act 2015, read with any regulations under that section;

“specified” means specified, or of a description specified, by regulations under this Part, or in exercise of a power conferred by such regulations, except to the extent otherwise provided in this Part;

“third party recipient” means—

- (a) in section 3, a third party in relation to customer data (see section 2(2)), 5
 - (b) in sections 4 and 5, a third party recipient in relation to business data (see section 4(2)), and
 - (c) in other sections, a third party recipient in relation to customer data or business data (see sections 2(2) and 4(2)). 10
- (2) In this Part, references to doing something “in the course of a business” include doing something in the course of—
- (a) a trade, craft or profession, or
 - (b) any other undertaking carried on for gain or reward.
- (3) In this Part— 15
- (a) references to making arrangements include producing model arrangements,
 - (b) references to managing a facility (or an interface that is a facility) include operating, or overseeing the operation, of a facility,
 - (c) references to managing a service (or an interface that is a service) include providing, or overseeing the provision of, a service, and 20
 - (d) references to managing standards or arrangements include assisting people to use them or overseeing how they are used.

26 Index of defined terms for this Part

The Table below lists provisions that define or otherwise explain terms defined for the purposes of this Part. 25

Term	Provision	
application programming interface	section 25(1)	
business, in the course of a	section 25(2)	
business data	section 1(2)	30
customer	section 1(3)	
customer data	section 1(2)	
dashboard service	section 25(1)	
data holder	section 1(2)	
data regulations	sections 1(2) and 23(3)	35
decision-maker	section 6(2)	

Term	Provision	
digital content	section 25(1)	
electronic communications service	section 25(1)	
enforcer	section 8(2)	
the FCA	section 14(1)	5
FCA additional requirement	section 14(6)	
FCA interface rules	section 14(2)	
goods	section 25(1)	
interface	section 7(1)	
interface arrangements	section 7(1)	10
interface body	section 7(2)	
interface standards	section 7(1)	
making arrangements	section 25(3)	
managing (facilities, services, standards or arrangements)	section 25(3)	15
micro business	section 25(1)	
monitoring powers (in sections 6 and 7)	section 6(5) or 7(4)(g) (as appropriate)	
primary legislation	section 25(1)	
processing	section 25(1)	20
providing customer data	section 1(6)(a)	
public authority	section 25(1)	
receiving customer data	section 1(6)(b)	
small business	section 25(1)	
specified	section 25(1)	25
third party recipient	section 25(1)	
trader	section 1(2)	

PART 2

DIGITAL VERIFICATION SERVICES

*Introductory***27 Introductory**

- (1) This Part contains provision to secure the reliability of digital verification services by means of – 5
- (a) a trust framework (see section 28),
 - (b) supplementary codes (see section 29),
 - (c) a register (see section 32),
 - (d) an information gateway (see section 45), and 10
 - (e) a trust mark (see section 50).
- (2) In this Part, “digital verification services” means verification services provided to any extent by means of the internet.
- (3) In subsection (2), “verification services” means services that are provided at the request of an individual and consist in – 15
- (a) ascertaining or verifying a fact about the individual from information provided otherwise than by the individual, and
 - (b) confirming to another person that the fact about the individual has been ascertained or verified from information so provided.

DVS trust framework and supplementary codes 20**28 DVS trust framework**

- (1) The Secretary of State must prepare and publish a document (“the DVS trust framework”) setting out rules concerning the provision of digital verification services.
- (2) Those rules may include (among other things) rules relating to, and to the conduct of, a person who provides such services; and references in this Part to a person providing services in accordance with the DVS trust framework (however expressed) include a person complying with such rules. 25
- (3) In preparing the DVS trust framework, the Secretary of State must consult – 30
- (a) the Information Commissioner, and
 - (b) such other persons as the Secretary of State considers appropriate.
- (4) The requirement in subsection (3) may be satisfied by consultation undertaken before the coming into force of this section.
- (5) The Secretary of State may revise and republish the DVS trust framework (whether following a review under section 31 or otherwise). 35

- (6) The DVS trust framework, and any revised version of the framework, must specify the time it comes into force (which must not be a time earlier than the time it is published).
- (7) The DVS trust framework, and any revised version of the framework, may –
 - (a) set out different rules for different digital verification services, 5
 - (b) specify that provisions come into force at different times for different purposes, and
 - (c) make transitional or saving provision.
- (8) Where the Secretary of State revises and republishes the DVS trust framework, the DVS trust framework (as revised) may provide that from a date, or from the end of a period, specified in the framework a pre-revision certificate is required to be ignored for the purposes of sections 33(1)(a), 35(1)(c), 40(1)(c) and 42(1)(c). 10
- (9) In subsection (8), a “pre-revision certificate” means a certificate which –
 - (a) certifies that digital verification services provided by the holder of the certificate are provided in accordance with the DVS trust framework, and 15
 - (b) was issued before the time the relevant revision to the DVS trust framework comes into force.
- (10) Provision included in the DVS trust framework in reliance on subsection (8) may make different provision in relation to different descriptions of pre-revision certificate. 20

29 Supplementary codes

- (1) The Secretary of State may prepare and publish one or more sets of rules concerning the provision of digital verification services which supplement the DVS trust framework. 25
- (2) In this Part, a set of rules published under subsection (1) is referred to as a supplementary code.
- (3) Those rules may include (among other things) rules relating to, and to the conduct of, a person who provides such services; and in this Part references to a person providing services in accordance with a supplementary code (however expressed) include a person complying with such rules. 30
- (4) In preparing a set of rules, the Secretary of State must consult –
 - (a) the Information Commissioner, and
 - (b) such other persons as the Secretary of State considers appropriate. 35
- (5) The requirement in subsection (4) may be satisfied by consultation undertaken before the coming into force of this section.
- (6) The Secretary of State may revise and republish a supplementary code (whether following a review under section 31 or otherwise).

- (7) A supplementary code, and any revised version of a supplementary code, must specify the time it comes into force (which must not be a time earlier than the time it is published).
- (8) A supplementary code, and any revised version of a supplementary code, may – 5
- (a) set out different rules for different digital verification services,
 - (b) specify that provisions come into force at different times for different purposes, and
 - (c) make transitional or saving provision.
- (9) Where the Secretary of State revises and republishes a supplementary code, the supplementary code (as revised) may provide that from a date, or from the end of a period, specified in the code a pre-revision certificate is required to be ignored for the purposes of sections 36(1)(a), 37(1)(c), 43(1)(c) and 44(1)(c). 10
- (10) In subsection (9), a “pre-revision certificate” means a certificate which – 15
- (a) certifies that digital verification services provided by the holder of the certificate are provided in accordance with the supplementary code, and
 - (b) was issued before the time the relevant revision to the supplementary code comes into force.
- (11) Provision included in a supplementary code in reliance on subsection (9) may make different provision in relation to different descriptions of pre-revision certificate. 20

30 Withdrawal of a supplementary code

- (1) The Secretary of State may determine to withdraw a supplementary code.
- (2) A determination must – 25
- (a) be published, and
 - (b) specify when the code is withdrawn, which must be a time after the end of the period of 21 days beginning with the day on which the determination is published.

31 Review of DVS trust framework and supplementary codes 30

- (1) At least every 12 months, the Secretary of State must –
- (a) carry out a review of the DVS trust framework, and
 - (b) at the same time, carry out a review of each supplementary code which has not been withdrawn.
- (2) In carrying out a review under subsection (1), the Secretary of State must consult – 35
- (a) the Information Commissioner, and
 - (b) such other persons as the Secretary of State considers appropriate.

DVS register

32 DVS register

- (1) The Secretary of State must establish and maintain a register of persons providing digital verification services.
- (2) The register is referred to in this Part as the DVS register. 5
- (3) The Secretary of State must make the DVS register publicly available.

33 Registration in the DVS register

- (1) The Secretary of State must register a person providing digital verification services in the DVS register if—
 - (a) the person holds a certificate from an accredited conformity assessment body certifying that digital verification services provided by the person are provided in accordance with the DVS trust framework, 10
 - (b) the person applies to be registered in the DVS register in respect of one or more of the digital verification services to which the certificate relates, 15
 - (c) the application complies with any requirements imposed by a determination under section 38, and
 - (d) the person complies with any regulations under section 39(1) requiring a fee to be paid.
- (2) But subsection (1) is subject to— 20
 - (a) the power to refuse registration under section 34(1), and
 - (b) the duties to refuse registration under sections 34(10) and 41(10).
- (3) If the conditions in paragraphs (a) to (d) of subsection (1) are not met, the Secretary of State may not register a person in the DVS register.
- (4) The register must record the digital verification services in respect of which a person is, from time to time, registered. 25
- (5) For the purposes of subsection (1)(a), a certificate is to be ignored if—
 - (a) it has expired in accordance with its terms,
 - (b) it has been withdrawn by the body that issued it, or
 - (c) it is required to be ignored by reason of provision included in the DVS trust framework under section 28(8). 30
- (6) In this Part, “accredited conformity assessment body” means a conformity assessment body that is accredited by the UK national accreditation body in accordance with Article 5 of the Accreditation Regulation as competent to carry out assessments of whether digital verification services are provided in accordance with the DVS trust framework. 35
- (7) In subsection (6)—

“the Accreditation Regulation” means Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93;

“conformity assessment body” has the same meaning as in the Accreditation Regulation (see Article 2(13) of that Regulation);

“the UK national accreditation body” means the UK national accreditation body for the purposes of Article 4(1) of the Accreditation Regulation.

5

34 Power to refuse registration in the DVS register

- (1) The Secretary of State may refuse to register a person providing digital verification services in the DVS register if the Secretary of State—
- (a) considers that it is necessary to do so in the interests of national security, or
- (b) is satisfied that the person is failing to comply with the DVS trust framework in respect of one or more of the digital verification services in respect of which the person applies to be registered.
- (2) Before refusing to register a person under this section the Secretary of State must, by written notice, inform the person that the Secretary of State intends to do so.
- (3) The notice must—
- (a) state the name and address of the person,
- (b) state the reason why the Secretary of State—
- (i) considers that it is necessary to refuse to register the person in the interests of national security, or
- (ii) is satisfied that the person is failing as mentioned in subsection (1)(b),
- (c) state whether the Secretary of State intends to specify a period in the notice under subsection (8) and, if so, what period is intended to be specified,
- (d) state that the person may make written representations to the Secretary of State about—
- (i) the Secretary of State’s intention to refuse to register the person in the DVS register, and
- (ii) where relevant, the period the Secretary of State intends to specify in the notice under subsection (8), and
- (e) specify the period within which such representations may be made.
- (4) Where the Secretary of State intends to refuse to register a person in reliance on subsection (1)(a), the requirement in subsection (3)(b) does not apply if, or to the extent that, the Secretary of State considers that stating the reason described in subsection (3)(b)(i) would be contrary to the interests of national security.

10

15

20

25

30

35

40

- (5) The period specified for making written representations must be a period of not less than 21 days beginning with the day on which the notice is given.
- (6) If the Secretary of State considers that it is appropriate for the person to have an opportunity to make oral representations about the matters mentioned in subsection (3)(d), the notice must also –
 - (a) state that the person may make such representations, and
 - (b) specify the arrangements for making such representations and the time at which, or the period within which, they may be made.
- (7) When deciding whether to refuse to register the person in the DVS register under this section, the Secretary of State must consider any oral or written representations made by the person in accordance with the notice.
- (8) Where the Secretary of State refuses to register the person in the DVS register under this section, the Secretary of State must by written notice inform the person that the person’s application for registration has been refused.
- (9) The Secretary of State may, in the notice given under subsection (8), state that any further application for registration made by the person during a period specified in the notice will be refused.
- (10) If the person applies to be registered in the DVS register during the period specified in the notice in reliance on subsection (9), the Secretary of State must refuse the application.
- (11) The period specified in the notice in reliance on subsection (9) must begin with the day on which the notice is given and must not exceed two years.

35 Registration of additional services

- (1) Subsection (2) applies if –
 - (a) a person is registered in the DVS register,
 - (b) the person applies for their entry in the register to be amended to record additional digital verification services that the person provides in accordance with the DVS trust framework,
 - (c) the person holds a certificate from an accredited conformity assessment body certifying that the person provides the additional services in accordance with the DVS trust framework,
 - (d) the application complies with any requirements imposed by a determination under section 38, and
 - (e) the person complies with any regulations under section 39(1) requiring a fee to be paid.
- (2) The Secretary of State must amend the DVS register to record that the person is also registered in respect of the additional services referred to in subsection (1).
- (3) If the conditions in paragraphs (a) to (e) of subsection (1) are not met, the Secretary of State may not amend the DVS register as described in subsection (2).

- (4) For the purposes of subsection (1)(c), a certificate is to be ignored if—
- (a) it has expired in accordance with its terms,
 - (b) it has been withdrawn by the body that issued it, or
 - (c) it is required to be ignored by reason of provision included in the DVS trust framework under section 28(8).

5

36 Supplementary notes

- (1) Subsection (2) applies if—
- (a) a person holds a certificate from an accredited conformity assessment body certifying that digital verification services provided by the person are provided in accordance with a supplementary code, 10
 - (b) the person applies for a note about one or more of the services to which the certificate relates to be included in the entry relating to that person in the DVS register,
 - (c) the application complies with any requirements imposed by a determination under section 38, and 15
 - (d) the person complies with any regulations under section 39(1) requiring a fee to be paid.
- (2) The Secretary of State must include a note in the entry relating to the person in the DVS register recording that the person provides, in accordance with the supplementary code referred to in subsection (1), the services in respect of which the person made the application referred to in that subsection. 20
- (3) But subsection (2) does not apply if the supplementary code referred to in subsection (1) has been withdrawn.
- (4) If the conditions in paragraphs (a) to (d) of subsection (1) are not met, the Secretary of State may not include a note described in subsection (2) in the DVS register. 25
- (5) For the purposes of subsection (1)(a), a certificate is to be ignored if—
- (a) it has expired in accordance with its terms,
 - (b) it has been withdrawn by the body that issued it, or
 - (c) it is required to be ignored by reason of provision included in the supplementary code as a result of section 29(9). 30
- (6) In this Part, a note included in the DVS register in accordance with subsection (2) is referred to as a supplementary note.

37 Addition of services to supplementary notes

- (1) Subsection (2) applies if— 35
- (a) a person has a supplementary note included in the DVS register relating to a supplementary code,
 - (b) the person applies for the note to be amended to record additional digital verification services that the person provides in accordance with that code, 40

-
- (c) the person holds a certificate from an accredited conformity assessment body certifying that the person provides the additional services in accordance with that code,
 - (d) the application complies with any requirements imposed by a determination under section 38, and 5
 - (e) the person complies with any regulations under section 39(1) requiring a fee to be paid.
 - (2) The Secretary of State must amend the note to record that the person also provides the additional services referred to in subsection (1) in accordance with the supplementary code to which the note relates. 10
 - (3) But subsection (2) does not apply if the supplementary code to which the note relates has been withdrawn.
 - (4) If the conditions in paragraphs (a) to (e) of subsection (1) are not met, the Secretary of State may not amend the note as described in subsection (2).
 - (5) For the purposes of subsection (1)(c), a certificate is to be ignored if— 15
 - (a) it has expired in accordance with its terms,
 - (b) it has been withdrawn by the body that issued it, or
 - (c) it is required to be ignored by reason of provision included in the supplementary code as a result of section 29(9).
- 38 Applications for registration, supplementary notes, etc** 20
- (1) The Secretary of State may determine—
 - (a) the form of an application under section 33, 35, 36 or 37,
 - (b) the information to be contained in or provided with the application,
 - (c) the documents to be provided with the application, and
 - (d) the manner in which the application is to be submitted. 25
 - (2) A determination may make different provision for different purposes.
 - (3) The Secretary of State must publish a determination.
 - (4) The Secretary of State may revise a determination.
 - (5) If the Secretary of State revises a determination the Secretary of State must publish the determination as revised. 30
- 39 Fees for applications for registration, supplementary notes, etc**
- (1) The Secretary of State may by regulations make provision for or in connection with—
 - (a) the payment of fees for applications under sections 33, 35, 36 and 37, and 35
 - (b) the payment of fees in connection with continued registration in the DVS register.

- (2) The regulations may not provide for payment of fees to anyone other than the Secretary of State.
- (3) The regulations must—
- (a) specify the amount, or the maximum amount of a fee, or
 - (b) provide for a fee, or the maximum amount of a fee, to be determined in accordance with regulations. 5
- (4) The regulations may provide for the amount of a fee to exceed the administrative costs of determining the application or the administrative costs associated with the continued registration (as the case may be).
- (5) Regulations under subsection (1) may (among other things) make provision about the following— 10
- (a) when fees are to be paid;
 - (b) the manner in which fees are to be paid;
 - (c) the payment of discounted fees;
 - (d) exceptions to requirements to pay fees; 15
 - (e) the refund of fees (in whole or in part);
 - (f) interest on any unpaid amounts,
- including provision conferring functions on the Secretary of State in relation to the matters in paragraphs (a) to (e).
- (6) A fee payable under regulations made under subsection (1)(b), and any interest payable in respect of it, is recoverable summarily (or, in Scotland, recoverable) as a civil debt. 20
- (7) The regulations may—
- (a) make different provision for different purposes;
 - (b) make transitional, transitory or saving provision. 25
- (8) Regulations under this section are subject to the negative resolution procedure.

40 Duty to remove person from the DVS register

- (1) The Secretary of State must remove a person from the DVS register if the person—
- (a) asks to be removed from the register, 30
 - (b) ceases to provide all of the digital verification services in respect of which the person is registered in the register, or
 - (c) no longer holds a certificate from an accredited conformity assessment body certifying that at least one of those digital verification services is provided in accordance with the DVS trust framework. 35
- (2) For the purposes of subsection (1)(c), a certificate is to be ignored if—
- (a) it has expired in accordance with its terms,
 - (b) it has been withdrawn by the body that issued it, or
 - (c) it is required to be ignored by reason of provision included in the DVS trust framework under section 28(8). 40

41 Power to remove person from the DVS register

- (1) The Secretary of State may remove a person from the DVS register if—
 - (a) the Secretary of State is satisfied that the person is failing to comply with the DVS trust framework when providing one or more of the digital verification services in respect of which the person is registered, 5
 - (b) the person has a supplementary note included in the DVS register and the Secretary of State is satisfied that the person is failing to comply with the supplementary code to which the note relates when providing one or more of the digital verification services recorded in the note,
 - (c) the Secretary of State is satisfied that the person has failed to provide the Secretary of State with information in accordance with a notice under section 51, or 10
 - (d) the Secretary of State considers that it is necessary to do so in the interests of national security.
- (2) Before removing a person from the DVS register under this section the Secretary of State must, by written notice, inform the person that the Secretary of State intends to do so. 15
- (3) The notice must—
 - (a) state the name and address of the person,
 - (b) state the reason why the Secretary of State— 20
 - (i) is satisfied that the person is failing or has failed as mentioned in subsection (1)(a) to (c), or
 - (ii) considers that it is necessary to remove the person from the DVS register in the interests of national security,
 - (c) state whether the Secretary of State intends to specify a period in the notice under subsection (8) and, if so, what period is intended to be specified, 25
 - (d) state that the person may make written representations to the Secretary of State about—
 - (i) the Secretary of State’s intention to remove the person from the DVS register, and 30
 - (ii) where relevant, the period the Secretary of State intends to specify in the notice under subsection (8), and
 - (e) specify the period within which such representations may be made.
- (4) The requirement in subsection (3)(b) does not apply if, or to the extent that, the Secretary of State considers that stating the reason described in subsection (3)(b)(ii) would be contrary to the interests of national security. 35
- (5) The period specified for making written representations must be a period of not less than 21 days beginning with the day on which the notice is given.
- (6) If the Secretary of State considers that it is appropriate for the person to have an opportunity to make oral representations about the matters mentioned in subsection (3)(d), the notice must also— 40
 - (a) state that the person may make such representations, and

- (b) specify the arrangements for making such representations and the time at which, or the period within which, they may be made.
- (7) When deciding whether to remove the person from the DVS register under this section, the Secretary of State must consider any oral or written representations made by the person in accordance with the notice. 5
- (8) Where the Secretary of State removes the person from the DVS register under this section, the Secretary of State must by written notice inform the person of that.
- (9) The Secretary of State may, in the notice given under subsection (8), state that any application for re-registration made by the person during a period specified in the notice will be refused. 10
- (10) If the person applies to be re-registered during the period specified in the notice in reliance on subsection (9), the Secretary of State must refuse the application.
- (11) The period specified in the notice in reliance on subsection (9) must begin with the day on which the notice is given and must not exceed two years. 15

42 Duty to remove services from the DVS register

- (1) Where a person is registered in the DVS register in respect of digital verification services, subsection (2) applies if the person—
- (a) asks for the register to be amended so that the person is no longer registered in respect of one or more of those services, 20
- (b) ceases to provide one or more of those services (but not all of them), or
- (c) no longer holds a certificate from an accredited conformity assessment body certifying that all of those services are provided in accordance with the DVS trust framework. 25
- (2) The Secretary of State must amend the register to record that the person is no longer registered in respect of (as the case may be)—
- (a) the service or services mentioned in a request described in subsection (1)(a), 30
- (b) the service or services which the person has ceased to provide, or
- (c) the service or services for which there is no longer a certificate as described in subsection (1)(c).
- (3) For the purposes of subsection (1)(c), a certificate is to be ignored if—
- (a) it has expired in accordance with its terms, 35
- (b) it has been withdrawn by the body that issued it, or
- (c) it is required to be ignored by reason of provision included in the DVS trust framework under section 28(8).

43 Duty to remove supplementary notes from the DVS register

- (1) The Secretary of State must remove a supplementary note included in the entry in the DVS register relating to a person if—
 - (a) the person asks for the note to be removed,
 - (b) the person ceases to provide all of the digital verification services to which the note relates, 5
 - (c) the person no longer holds a certificate from an accredited conformity assessment body certifying that at least one of those digital verification services is provided in accordance with the supplementary code to which the note relates, or 10
 - (d) the supplementary code to which the note relates has been withdrawn.
- (2) For the purposes of subsection (1)(c), a certificate is to be ignored if—
 - (a) it has expired in accordance with its terms,
 - (b) it has been withdrawn by the body that issued it, or
 - (c) it is required to be ignored by reason of provision included in the supplementary code as a result of section 29(9). 15

44 Duty to remove services from supplementary notes

- (1) Where a person has a supplementary note included in their entry in the DVS register in respect of digital verification services, subsection (2) applies if the person—
 - (a) asks for the note to be amended so that it no longer records one or more of those services,
 - (b) ceases to provide one or more of the services recorded in the note (but not all of them), or
 - (c) no longer holds a certificate from an accredited conformity assessment body certifying that all of the services included in the note are provided in accordance with a supplementary code. 25
- (2) The Secretary of State must amend the supplementary note so it no longer records (as the case may be)—
 - (a) the service or services mentioned in a request described in subsection (1)(a), 30
 - (b) the service or services which the person has ceased to provide, or
 - (c) the service or services for which there is no longer a certificate as described in subsection (1)(c).
- (3) For the purposes of subsection (1)(c), a certificate is to be ignored if—
 - (a) it has expired in accordance with its terms,
 - (b) it has been withdrawn by the body that issued it, or
 - (c) it is required to be ignored by reason of provision included in the supplementary code as a result of section 29(9). 35

*Information gateway***45 Power of public authority to disclose information to registered person**

- (1) This section applies where –
- (a) a person is registered in the DVS register, and
 - (b) an individual makes a request to the person for the provision of digital verification services in respect of which the person is registered. 5
- (2) A public authority may disclose to the person information relating to the individual for the purpose of enabling the person to provide the digital verification services for the individual.
- (3) A disclosure of information under this section does not breach – 10
- (a) any obligation of confidence owed by the public authority making the disclosure, or
 - (b) any other restriction on the disclosure of information (however imposed).
- (4) But this section does not authorise a disclosure of information which – 15
- (a) would contravene the data protection legislation (but in determining whether a disclosure would do so, the power conferred by this section is to be taken into account), or
 - (b) is prohibited by any of Parts 1 to 7 or Chapter 1 of Part 9 of the Investigatory Powers Act 2016. 20
- (5) This section does not authorise a public authority to disclose information obtained by the authority otherwise than in connection with the exercise by the authority of functions of a public nature.
- (6) This section does not affect a power to disclose information that exists apart from this section. 25
- (7) A public authority may charge a person fees in respect of the disclosure to the person of information under this section.
- (8) In this section –
- “data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3(9) of that Act); 30
 - “public authority” means a person whose functions –
 - (a) are of a public nature, or
 - (b) include functions of that nature.

46 Information disclosed by the Revenue and Customs

- (1) This section applies where the Revenue and Customs disclose personal information to a person under section 45 for the purpose of enabling the person to provide digital verification services for an individual. 35

-
- (2) The person must not further disclose the information otherwise than for the purpose of providing digital verification services for the individual, except with the consent of the Commissioners for His Majesty’s Revenue and Customs.
- (3) Any other person who receives the information, whether directly or indirectly from the person to whom the Revenue and Customs disclose the information, must not further disclose the information, except with the consent of the Commissioners for His Majesty’s Revenue and Customs. 5
- (4) If a person discloses information in contravention of this section, section 19 of the Commissioners for Revenue and Customs Act 2005 (offence of wrongful disclosure) applies in relation to that disclosure as it applies in relation to a disclosure of information in contravention of section 20(9) of that Act. 10
- (5) In this section –
 “personal information” means information relating to a person whose identity – 15
 (a) is specified in the information, or
 (b) can be deduced from it;
 “the Revenue and Customs” has the meaning given by section 17(3) of the Commissioners for Revenue and Customs Act 2005.
- 47 Information disclosed by the Welsh Revenue Authority 20**
- (1) This section applies where the Welsh Revenue Authority discloses personal information to a person under section 45 for the purpose of enabling the person to provide digital verification services for an individual.
- (2) The person must not further disclose the information otherwise than for the purpose of providing digital verification services for the individual, except with the consent of the Welsh Revenue Authority. 25
- (3) Any other person who receives the information, whether directly or indirectly from the person to whom the Welsh Revenue Authority discloses the information, must not further disclose the information, except with the consent of the Welsh Revenue Authority. 30
- (4) A person who discloses information in contravention of subsection (2) or (3) commits an offence.
- (5) It is a defence for a person charged with an offence under subsection (4) to prove that the person reasonably believed – 35
 (a) that the disclosure was lawful, or
 (b) that the information had already lawfully been made available to the public.
- (6) A person who commits an offence under subsection (4) is liable – 40
 (a) on summary conviction in England and Wales, to imprisonment for a term not exceeding the general limit in a magistrates’ court or a fine (or both);

- (b) on summary conviction in Scotland, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both);
 - (c) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum (or both); 5
 - (d) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both).
- (7) In this section, “personal information” means information relating to a person whose identity – 10
- (a) is specified in the information, or
 - (b) can be deduced from it.

48 Information disclosed by Revenue Scotland

- (1) This section applies where Revenue Scotland discloses personal information to a person under section 45 for the purpose of enabling the person to provide digital verification services for an individual. 15
- (2) The person must not further disclose the information otherwise than for the purpose of providing digital verification services for the individual, except with the consent of Revenue Scotland.
- (3) Any other person who receives the information, whether directly or indirectly from the person to whom Revenue Scotland discloses the information, must not further disclose the information, except with the consent of Revenue Scotland. 20
- (4) A person who discloses information in contravention of subsection (2) or (3) commits an offence. 25
- (5) It is a defence for a person charged with an offence under subsection (4) to prove that the person reasonably believed –
- (a) that the disclosure was lawful, or
 - (b) that the information had already lawfully been made available to the public. 30
- (6) A person who commits an offence under subsection (4) is liable –
- (a) on summary conviction in England and Wales, to imprisonment for a term not exceeding the general limit in a magistrates’ court or a fine (or both);
 - (b) on summary conviction in Scotland, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both); 35
 - (c) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum (or both); 40

- (d) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both).
- (7) In this section, “personal information” means information relating to a person whose identity –
 - (a) is specified in the information, or 5
 - (b) can be deduced from it.

49 Code of practice about the disclosure of information

- (1) The Secretary of State must prepare and publish a code of practice about the disclosure of information under section 45.
- (2) The code of practice must be consistent with the code of practice prepared under section 121 of the Data Protection Act 2018 (data-sharing code) and issued under section 125(4) of that Act (as altered or replaced from time to time). 10
- (3) A public authority must have regard to the code of practice in disclosing information under section 45. 15
- (4) The Secretary of State may from time to time revise and republish the code of practice.
- (5) In preparing or revising the code of practice, the Secretary of State must consult –
 - (a) the Information Commissioner, 20
 - (b) the Welsh Ministers,
 - (c) the Scottish Ministers,
 - (d) the Department of Finance in Northern Ireland, and
 - (e) such other persons as the Secretary of State considers appropriate.
- (6) The requirement in subsection (5) may be satisfied by consultation undertaken before the coming into force of this section. 25
- (7) The Secretary of State may not publish the first version of the code of practice unless a draft of the code has been laid before, and approved by a resolution of, each House of Parliament.
- (8) The Secretary of State may not republish the code of practice following its revision unless –
 - (a) a draft of the code as revised has been laid before each House of Parliament, and
 - (b) the 40-day period has expired without either House of Parliament resolving not to approve the draft. 30
- (9) “The 40-day period” means –
 - (a) the period of 40 days beginning with the day on which the draft is laid before Parliament, or 35

- (b) if the draft is not laid before each House on the same day, the period of 40 days beginning with the later of the days on which it is laid before Parliament.
- (10) In calculating the 40-day period, no account is to be taken of any whole days that fall within a period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days. 5
- (11) In this section, “public authority” means whose functions—
- (a) are of a public nature, or
 - (b) include functions of that nature.

Trust mark 10

50 Trust mark for use by registered persons

- (1) The Secretary of State may designate a mark for use in the course of providing, or offering to provide, digital verification services.
- (2) A mark designated under this section must be published by the Secretary of State. 15
- (3) A mark designated under this section may not be used by a person in the course of providing, or offering to provide, digital verification services unless the person is registered in the DVS register in respect of those digital verification services.
- (4) The Secretary of State may enforce subsection (3) in civil proceedings for an injunction or, in Scotland, an interdict. 20

Supplementary

51 Power of Secretary of State to require information

- (1) The Secretary of State may by written notice require—
 - (a) an accredited conformity assessment body, or 25
 - (b) a person registered in the DVS register,
 to provide the Secretary of State with information that the Secretary of State reasonably requires for the purposes of the exercise of the Secretary of State’s functions under this Part.
- (2) A notice under this section must state why the information is required for the purposes of the exercise of those functions. 30
- (3) A notice under this section—
 - (a) may specify or describe particular information or a category of information;
 - (b) may specify the form in which the information must be provided; 35
 - (c) may specify the time at which, or the period within which, the information must be provided;

- (d) may specify the place where the information must be provided.
- (4) A notice under this section that is given to a person registered in the DVS register must provide information about the consequences under section 41 of failure to comply with the notice.
- (5) The Secretary of State may cancel a notice under this section by notice to the person to whom it was given. 5
- (6) A disclosure of information required by a notice under this section does not breach—
- (a) any obligation of confidence owed by the person making the disclosure, or 10
 - (b) any other restriction on the disclosure of information (however imposed).
- (7) But a notice under this section does not require a disclosure of information if the disclosure—
- (a) would contravene section 46, 47 or 48, 15
 - (b) would contravene the data protection legislation (but in determining whether a disclosure would do so, the duty imposed by the notice is to be taken into account), or
 - (c) is prohibited by any of Parts 1 to 7 or Chapter 1 of Part 9 of the Investigatory Powers Act 2016. 20
- (8) A notice under this section does not require a person to provide the Secretary of State with information in respect of a communication which is made—
- (a) between a professional legal adviser and the adviser’s client, and
 - (b) in connection with the giving of legal advice to the client with respect to obligations, liabilities or rights under this Part. 25
- (9) In subsection (8), references to the client of a professional legal adviser include references to a person acting on behalf of the client.
- (10) A notice under this section does not require a person to provide the Secretary of State with information if doing so would, by revealing evidence of the commission of an offence, expose the person to proceedings for that offence. 30
- (11) The reference to an offence in subsection (10) does not include an offence under—
- (a) section 5 of the Perjury Act 1911 (false statements made otherwise than on oath);
 - (b) section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (false statements made otherwise than on oath); 35
 - (c) Article 10 of the Perjury (Northern Ireland) Order 1979 (S.I. 1979/1714 (N.I. 19)) (false statutory declarations and other false unsworn statements).
- (12) In this section, “data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3(9) of that Act). 40

52 Arrangements for third party to exercise functions

- (1) The Secretary of State may make arrangements for a person prescribed by regulations under this section to exercise a relevant function of the Secretary of State (and, where arrangements are made, references in this Part, or in regulations made under this Part, to the Secretary of State are to be read accordingly). 5
- (2) Arrangements under this section may –
- (a) provide for the Secretary of State to make payments to the person, and
 - (b) make provision as to the circumstances in which any such payments are to be repaid to the Secretary of State. 10
- (3) Regulations under this section are subject to the affirmative resolution procedure.
- (4) In this section, “relevant function” means a function of the Secretary of State conferred by or under this Part (including the function of charging or recovering fees under regulations under section 39) other than a power to make regulations. 15
- (5) If a person exercises the function of charging or recovering fees by virtue of arrangements under this section, the person must pay the fees to the Secretary of State, except to the extent that the Secretary of State directs otherwise. 20

53 Report on the operation of this Part

- (1) The Secretary of State must prepare and publish reports on the operation of this Part.
- (2) The first report must be published within the period of 12 months beginning with the day on which section 28 comes into force. 25
- (3) The reports must be published not more than 12 months apart.

54 Index of defined terms for this Part

The Table below lists provisions that define or otherwise explain terms defined for the purposes of this Part.

Term	Provision	
accredited conformity assessment body	section 33(6)	
digital verification services	section 27(2)	
the DVS register	section 32(2)	
the DVS trust framework	section 28(1)	
supplementary code	section 29(2)	35

Term	Provision
supplementary note	section 36(6)

55 Powers relating to verification of identity or status

- (1) In section 15 of the Immigration, Asylum and Nationality Act 2006 (penalty for employing a person subject to immigration control), after subsection (7) insert— 5
- “(8) An order under subsection (3) containing provision described in subsection (7)(a), (b) or (c) may, in particular—
- (a) specify a document generated by a DVS-registered person or a DVS-registered person of a specified description; 10
 - (b) specify a document which was provided to such a person in order to generate such a document;
 - (c) specify steps involving the use of services provided by such a person.
- (9) In subsection (8), “DVS-registered person” means a person who is registered in the DVS register maintained under Part 2 of the Data (Use and Access) Act 2024 (“the DVS register”). 15
- (10) An order under subsection (3) which specifies a description of DVS-registered person may do so by, for example, describing a DVS-registered person whose entry in the DVS register includes a note relating to specified services (see section 36 of the Data (Use and Access) Act 2024).” 20
- (2) In section 34 of the Immigration Act 2014 (requirements which may be prescribed for the purposes of provisions about occupying premises under a residential tenancy agreement)— 25
- (a) in subsection (1)—
 - (i) in paragraph (a), after “occupiers” insert “, a DVS-registered person or a DVS-registered person of a prescribed description”,
 - (ii) in paragraph (b), after “occupiers” insert “, a DVS-registered person or a DVS-registered person of a prescribed description”, 30
 - and
 - (iii) in paragraph (c), at the end insert “, including steps involving the use of services provided by a DVS-registered person or a DVS-registered person of a prescribed description”, and
 - (b) after that subsection insert— 35
- “(1A) An order prescribing requirements for the purposes of this Chapter which contains provision described in subsection (1)(a) or (b) may, in particular—

-
- (a) prescribe a document generated by a DVS-registered person or a DVS-registered person of a prescribed description;
- (b) prescribe a document which was provided to such a person in order to generate such a document. 5
- (1B) In subsections (1) and (1A), “DVS-registered person” means a person who is registered in the DVS register maintained under Part 2 of the Data (Use and Access) Act 2024 (“the DVS register”).
- (1C) An order prescribing requirements for the purposes of this Chapter which prescribes a description of DVS-registered person may do so by, for example, describing a DVS-registered person whose entry in the DVS register includes a note relating to prescribed services (see section 36 of the Data (Use and Access) Act 2024).” 10 15
- (3) In Schedule 6 to the Immigration Act 2016 (illegal working compliance orders etc), after paragraph 5 insert—
- “Prescribed checks and documents*
- 5A (1) Regulations under paragraph 5(6)(b) or (c) may, in particular—
- (a) prescribe checks carried out using services provided by a DVS-registered person or a DVS-registered person of a prescribed description; 20
- (b) prescribe documents generated by such a person;
- (c) prescribe documents which were provided to such a person in order to generate such documents. 25
- (2) In sub-paragraph (1), “DVS-registered person” means a person who is registered in the DVS register maintained under Part 2 of the Data (Use and Access) Act 2024 (“the DVS register”).
- (3) Regulations under paragraph 5(6)(b) or (c) which prescribe a description of DVS-registered person may do so by, for example, describing a DVS-registered person whose entry in the DVS register includes a note relating to prescribed services (see section 36 of the Data (Use and Access) Act 2024).” 30

PART 3

NATIONAL UNDERGROUND ASSET REGISTER

56 National Underground Asset Register: England and Wales

- (1) After section 106 of the New Roads and Street Works Act 1991 insert—

“PART 3A

5

NATIONAL UNDERGROUND ASSET REGISTER: ENGLAND AND WALES

The register

106A National Underground Asset Register

- (1) The Secretary of State must keep a register of information relating to apparatus in streets in England and Wales. 10
- (2) The register is to be known as the National Underground Asset Register (and is referred to in this Act as “NUAR”).
- (3) NUAR must be kept in such form and manner as may be prescribed.
- (4) The Secretary of State must make arrangements so as to enable any person who is required, by a provision of this Act, to enter information into NUAR to have access to NUAR for that purpose. 15
- (5) Regulations under subsection (3) are subject to the negative procedure.
- (6) The obligations of the Secretary of State under subsection (1) and under Article 45A(1) of the Street Works (Northern Ireland) Order 1995 (S.I. 1995/3210 (N.I. 19)) (keeping of register of information relating to apparatus in streets in Northern Ireland) may be discharged by the keeping of a single register in relation to England, Wales and Northern Ireland. 20

106B Initial upload of information into NUAR

- (1) Before the end of the initial upload period an undertaker having apparatus in a street must enter into NUAR— 25
- (a) all information that is included in the undertaker’s records under section 79(1) on the archive upload date, and
- (b) any other information of a prescribed description that is held by the undertaker on that date. 30
- (2) The duty under subsection (1) does not apply in such cases as may be prescribed.
- (3) Information must be entered into NUAR under subsection (1) in such form and manner as may be prescribed.

- (4) An undertaker who fails to comply with a duty placed on the undertaker under this section –
- (a) commits an offence, and
 - (b) is liable to compensate any person in respect of damage or loss incurred by the person in consequence of the failure. 5
- (5) A person who commits an offence under subsection (4)(a) is liable on summary conviction to a fine.
- (6) In criminal or civil proceedings against an undertaker arising out of a failure to comply with a duty under this section, it is a defence for the undertaker to show that all reasonable care was taken to secure that no such failure occurred by –
- (a) the undertaker and the undertaker’s employees, and
 - (b) any contractor of the undertaker and the undertaker’s employees. 10
- (7) Section 95 applies in relation to an offence under this section as it applies in relation to an offence under Part 3. 15
- (8) For the purposes of subsection (1) the Secretary of State must by regulations –
- (a) specify a date as “the archive upload date”, and
 - (b) specify a period beginning with that date as the “initial upload period”. 20
- (9) Regulations under this section are subject to the negative procedure.

106C Access to information kept in NUAR

- (1) The Secretary of State may by regulations make provision for or in connection with making information kept in NUAR available. 25
- (2) The regulations may (among other things) –
- (a) make provision about which information, or descriptions of information, may be made available;
 - (b) make provision about the descriptions of person to whom information may be made available; 30
 - (c) make provision for information to be made available subject to exceptions;
 - (d) make provision requiring or authorising the Secretary of State to adapt, modify or obscure information before making it available; 35
 - (e) make provision authorising all information kept in NUAR to be made available to prescribed descriptions of person under prescribed conditions;
 - (f) make provision about the purposes for which information may be made available; 40

- (g) make provision about the form and manner in which information may be made available;
 - (h) make provision for or in connection with the granting of licences by the Secretary of State in relation to any non-Crown IP rights that may exist in relation to information made available (including provision about the form of a licence and the terms and conditions of a licence); 5
 - (i) make provision for information to be made available for free or for a fee;
 - (j) make provision about the amounts of the fees, including provision for the amount of a fee to be an amount which is intended to exceed the cost of the things in respect of which the fee is charged; 10
 - (k) make provision about how funds raised by means of fees must or may be used, including provision for funds to be paid to persons who are required, by a provision of this Act, to enter information into NUAR. 15
- (3) Except as otherwise prescribed and subject to section 106H, processing of information by the Secretary of State in exercise of functions conferred by or under section 106A or this section does not breach— 20
- (a) an obligation of confidence owed by the Secretary of State, or
 - (b) any other restriction on the processing of information (however imposed).
- (4) Regulations under this section are subject to the affirmative procedure.
- (5) In this section— 25
- “database right” has the same meaning as in Part 3 of the Copyright and Rights in Databases Regulations 1997 (S.I. 1997/3032);
 - “non-Crown IP right” means any copyright, database right or other intellectual property right which is not owned by the Crown. 30

Requirements for undertakers to pay fees and provide information

106D Fees payable by undertakers in relation to NUAR

- (1) The Secretary of State may by regulations make provision requiring undertakers having apparatus in a street to pay fees to the Secretary of State for or in connection with the exercise by the Secretary of State of any function conferred by or under this Part. 35
- (2) The regulations may—
- (a) specify the amounts of the fees, or the maximum amounts of the fees, or 40

- (b) provide for the amounts of the fees, or the maximum amounts of the fees, to be determined in accordance with the regulations.
- (3) In making the regulations the Secretary of State must seek to secure that, so far as possible and taking one year with another, combined NUAR income matches combined NUAR expenses. 5
- (4) Except where the regulations specify the amounts of the fees –
- (a) the amounts of the fees must be specified by the Secretary of State in a statement, and
- (b) the Secretary of State must –
- (i) publish the statement, and 10
- (ii) lay it before Parliament.
- (5) Regulations under subsection (1) may make provision about –
- (a) when a fee is to be paid;
- (b) the manner in which a fee is to be paid;
- (c) the payment of discounted fees; 15
- (d) exceptions to requirements to pay fees;
- (e) the refund of all or part of a fee which has been paid.
- (6) Before making regulations under subsection (1), the Secretary of State must consult –
- (a) such representatives of persons likely to be affected by the regulations as the Secretary of State considers appropriate, and 20
- (b) such other persons as the Secretary of State considers appropriate.
- (7) Subject to the following provisions of this section regulations under subsection (1) are subject to the affirmative procedure. 25
- (8) Regulations under subsection (1) that only make provision of a kind mentioned in subsection (2) are subject to the negative procedure.
- (9) But the first regulations under subsection (1) that make provision of a kind mentioned in subsection (2) are subject to the affirmative procedure. 30
- (10) In this section –
- “combined NUAR expenses” means the sum of –
- (a) expenses incurred by the Secretary of State in, or in connection with, exercising functions conferred by or under this Part (including expenses not directly connected with the keeping of NUAR), and 35
- (b) expenses incurred by the Secretary of State in, or in connection with, exercising functions conferred by or under Articles 45A to 45H of, and Schedule 2ZA to, the Street Works (Northern Ireland) Order 1995 (S.I. 1995/3210 (N.I. 19)) (including expenses not directly 40

connected with the keeping of the register kept under Article 45A(1) of that Order);

“combined NUAR income” means the sum of—

- (a) income received by the Secretary of State from fees payable under regulations under subsection (1), and 5
- (b) income received by the Secretary of State from fees payable under regulations under Article 45D(1) of the Street Works (Northern Ireland) Order 1995 (S.I. 1995/3210 (N.I. 19)).

106E Providing information for purposes of regulations under section 106D 10

- (1) The Secretary of State may by regulations make provision requiring undertakers having apparatus in a street to provide information to the Secretary of State for either or both of the following purposes—
 - (a) assisting the Secretary of State in determining the provision that it is appropriate for regulations under section 106D(1) or a statement under section 106D(4) to make; 15
 - (b) assisting the Secretary of State in determining whether it is appropriate to make changes to such provision.
- (2) The Secretary of State may by regulations make provision requiring undertakers having apparatus in a street to provide information to the Secretary of State for either or both of the following purposes—
 - (a) ascertaining whether a fee is payable by a person under regulations under section 106D(1); 20
 - (b) working out the amount of a fee payable by a person.
- (3) Regulations under subsection (1) or (2) may require an undertaker to notify the Secretary of State of any changes to information previously provided under the regulations. 25
- (4) Regulations under subsection (1) or (2) may make provision about—
 - (a) when information is to be provided (which may be at prescribed intervals); 30
 - (b) the form and manner in which information is to be provided;
 - (c) exceptions to requirements to provide information.
- (5) Regulations under subsection (1) or (2) are subject to the negative procedure.

Monetary penalties 35

106F Monetary penalties

Schedule 5A makes provision about the imposition of penalties in connection with requirements imposed by regulations under sections 106D(1) and 106E(1) and (2).

*Exercise of functions by third party***106G Arrangements for third party to exercise functions**

- (1) The Secretary of State may make arrangements for a prescribed person to exercise a relevant function of the Secretary of State.
- (2) More than one person may be prescribed. 5
- (3) Arrangements under this section may –
 - (a) provide for the Secretary of State to make payments to the person, and
 - (b) make provision as to the circumstances in which such payments are to be repaid to the Secretary of State. 10
- (4) In the case of the exercise of a function by a person authorised by arrangements under this section to exercise that function, a reference in this Part or in regulations under this Part to the Secretary of State in connection with that function is to be read as a reference to that person. 15
- (5) Arrangements under this section do not prevent the Secretary of State from exercising a function to which the arrangements relate.
- (6) Except as otherwise prescribed and subject to section 106H, the disclosure of information between the Secretary of State and a person in connection with the person’s entering into arrangements under this section or exercise of functions to which such arrangements relate does not breach –
 - (a) an obligation of confidence owed by the person making the disclosure, or
 - (b) any other restriction on the disclosure of information (however imposed). 25
- (7) Regulations under this section are subject to the affirmative procedure.
- (8) In this section “relevant function” means a function of the Secretary of State conferred by or under this Part (including the function of charging or recovering fees under regulations under section 106D) other than –
 - (a) a power to make regulations, or
 - (b) a function under section 106D(4) (specifying of fees etc). 30
- (9) If a person exercises the function of charging or recovering fees by virtue of arrangements under this section, the person must pay the fees to the Secretary of State, except to the extent that the Secretary of State directs otherwise. 35

Data protection

106H Data protection

- (1) A duty or power to process information that is imposed or conferred by or under this Part does not operate to require or authorise the processing of personal data that would contravene the data protection legislation (but in determining whether processing of personal data would do so, that duty or power is to be taken into account). 5
- (2) In this section—
 - “the data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3(9) of that Act); 10
 - “personal data” has the same meaning as in that Act (see section 3(2) of that Act).

Supplementary provisions

106I Regulations under this Part

- (1) In this Part “prescribed” means prescribed by regulations made by the Secretary of State. 15
- (2) Regulations under this Part may make—
 - (a) different provision for different purposes;
 - (b) supplementary and incidental provision.
- (3) Regulations under this Part are to be made by statutory instrument. 20
- (4) Before making regulations under this Part the Secretary of State must consult the Welsh Ministers and the Department for Infrastructure in Northern Ireland.
- (5) Where regulations under this Part are subject to “the affirmative procedure” the regulations may not be made unless a draft of the statutory instrument containing them has been laid before and approved by a resolution of each House of Parliament. 25
- (6) Where regulations under this Part are subject to “the negative procedure” the statutory instrument containing the regulations is subject to annulment in pursuance of a resolution of either House of Parliament. 30
- (7) Any provision that may be made in regulations under this Part subject to the negative procedure may be made in regulations subject to the affirmative procedure.

106J Interpretation

- (1) In this Part the following terms have the same meaning as in Part 3— 35

- “apparatus” (see sections 89(3) and 105(1));
- “in” (in a context referring to apparatus in a street) (see section 105(1));
- “street” (see section 48(1) and (2));
- “undertaker” (in relation to apparatus or in a context referring to having apparatus in a street) (see sections 48(5) and 89(4)). 5
- (2) In this Part “processing” has the same meaning as in the Data Protection Act 2018 (see section 3(4) of that Act) and “process” is to be read accordingly.”
- (2) Section 166 of the New Roads and Street Works Act 1991, so far as relating to Part 3A of that Act (inserted by subsection (1)), extends to England and Wales. 10
- (3) In section 167 of that Act (Crown application), after subsection (5) insert—
- “(5A) The provisions of Part 3A of this Act (National Underground Asset Register: England and Wales) bind the Crown. 15
- “(5B) Nothing in subsection (5A) is to be construed as authorising the bringing of proceedings for a criminal offence against a person acting on behalf of the Crown.”
- (4) Schedule 1 to this Act inserts Schedule 5A into the New Roads and Street Works Act 1991 (monetary penalties). 20

57 Information in relation to apparatus: England and Wales

- (1) The New Roads and Street Works Act 1991 is amended in accordance with subsections (2) to (6).
- (2) For the italic heading before section 79 (records of location of apparatus) substitute “Duties in relation to recording and sharing of information about apparatus”. 25
- (3) In section 79—
- (a) for the heading substitute “Information in relation to apparatus”;
- (b) in subsection (1), for paragraph (c) substitute—
- “(c) being informed of its location under section 80(2)(a),”; 30
- (c) after subsection (1A) (as inserted by section 46(2) of the Traffic Management Act 2004) insert—
- “(1B) An undertaker must, except in such cases as may be prescribed, record in relation to every item of apparatus belonging to the undertaker such other information as may be prescribed as soon as reasonably practicable after— 35
- (a) placing the item in the street or altering its position,
- (b) inspecting, maintaining, adjusting, repairing, altering or renewing the item,

- (c) locating the item in the street in the course of executing any other works, or
 - (d) receiving any such information in relation to the item under section 80(2)(a).”;
 - (d) omit subsection (3); 5
 - (e) in subsection (3A) (as inserted by section 46(4) of the Traffic Management Act 2004) –
 - (i) for “to (3)” substitute “and (2A)”;
 - (ii) for “subsection (1)” substitute “this section”;
 - (f) after subsection (3A) insert – 10
 - “(3B) Except in such cases as may be prescribed, where an undertaker records information as required by subsection (1) or (1B), or updates such information, the undertaker must, within a prescribed period, enter the recorded or updated information into NUAR. 15
 - (3C) Information must be entered into NUAR under subsection (3B) in such form and manner as may be prescribed.”;
 - (g) in subsection (4)(a), omit “not exceeding level 5 on the standard scale”;
 - (h) after subsection (6) insert –
 - “(7) In this section “prescribed” means – 20
 - (a) in subsections (1) to (2) –
 - (i) in relation to apparatus in streets in England, prescribed by regulations made by the Secretary of State;
 - (ii) in relation to apparatus in streets in Wales, 25 prescribed by regulations made by the Secretary of State or the Welsh Ministers;
 - (b) otherwise, prescribed by regulations made by the Secretary of State.
 - (8) Before making regulations under this section the Secretary of State must consult the Welsh Ministers. 30
 - (9) For the meaning of “NUAR”, see section 106A.”
- (4) For section 80 (duty to inform undertakers of location of apparatus) substitute –
 - “80 Duties to report missing or incorrect information in relation to apparatus 35**
 - (1) Subsection (2) applies where a relevant person executing works of any description in a street finds an item of apparatus which does not belong to the person in relation to which prescribed information –
 - (a) is not entered in NUAR, or 40
 - (b) is entered in NUAR but is incorrect.

- (2) Except in such cases as may be prescribed, the person must—
- (a) take such steps as are reasonably practicable to inform the undertaker to whom the item belongs of the missing or incorrect information, and
 - (b) if (having taken such steps) the person is unable to inform the undertaker to whom the item belongs of the missing or incorrect information, enter into NUAR, in such form and manner as may be prescribed, prescribed information in relation to the item. 5
- (3) A person who fails to comply with subsection (2) commits an offence. 10
- (4) A person who commits an offence under subsection (3) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (5) Before making regulations under this section the Secretary of State must consult— 15
- (a) the Welsh Ministers,
 - (b) such representatives of persons likely to be affected by the regulations as the Secretary of State considers appropriate, and
 - (c) such other persons as the Secretary of State considers appropriate. 20
- (6) For the purposes of this section a person executing works in a street is a “relevant person” if the person has, pursuant to regulations under section 106C(1), access to NUAR in relation to the street in question.
- (7) For the meaning of “NUAR”, see section 106A.”
- (5) Before section 81 (duty to maintain apparatus) insert— 25
- “Other duties and liabilities of undertakers in relation to apparatus”.*
- (6) In section 104 (regulations)—
- (a) in subsection (1)—
 - (i) after “Part” insert “, except in section 79,”;
 - (ii) omit from “, which” to the end; 30
 - (b) after subsection (1) insert—
 - “(1A) Regulations under this Part may make—
 - (a) different provision for different cases;
 - (b) supplementary or incidental provision.”;
 - (c) in subsection (2), after “Regulations” insert “made by the Secretary of State”; 35
 - (d) after subsection (2) insert—
 - “(2A) Regulations made by the Welsh Ministers under section 79 are to be made by statutory instrument and a statutory instrument

containing such regulations is subject to annulment in pursuance of a resolution of Senedd Cymru.”

- (7) In consequence of the provision made by subsection (4), omit section 47 of the Traffic Management Act 2004.
- (8) The Street Works (Records) (England) Regulations 2002 (S.I. 2002/3217) have effect as if the reference to England in regulation 1(2) were a reference to England and Wales. 5
- (9) The Street Works (Records) (Wales) Regulations 2005 (S.I. 2005/1812) are revoked.
- (10) In Schedule 7B to the Government of Wales Act 2006 (general restriction on competence of Senedd Cymru), in paragraph 11(6)(b) (exceptions to restrictions relating to Ministers of the Crown), before sub-paragraph (i) insert— 10
- “(ai) section 79 of the New Roads and Street Works Act 1991;”.

58 National Underground Asset Register: Northern Ireland 15

- (1) The Street Works (Northern Ireland) Order 1995 (S.I. 1995/3210 (N.I. 19)) is amended in accordance with subsections (2) to (4).
- (2) In Article 2 (interpretation), in paragraph (2)—
- (a) after the definition of “in” insert—
- ““NUAR provision” means any of Articles 45A to 45H and Schedule 2ZA;” 20
- (b) in the definition of “prescribed”—
- (i) for “means” substitute “means—”;
- (ii) the words from “prescribed by” to the end become paragraph (a); 25
- (iii) at the beginning of that paragraph insert “except in Articles 39 and 40 and a NUAR provision;”;
- (iv) after that paragraph insert—
- “(b) in Article 40 and a NUAR provision, prescribed by regulations made by the Secretary of State;” 30
- (3) After Article 45 insert—

“National Underground Asset Register

45A National Underground Asset Register

- (1) The Secretary of State must keep a register of information relating to apparatus in streets in Northern Ireland. 35
- (2) The register is to be known as the National Underground Asset Register (and is referred to in this Order as “NUAR”).

- (3) NUAR must be kept in such form and manner as may be prescribed.
- (4) The Secretary of State must make arrangements so as to enable any person who is required, by a provision of this Order, to enter information into NUAR to have access to NUAR for that purpose.
- (5) The obligations of the Secretary of State under paragraph (1) and under section 106A(1) of the New Roads and Street Works Act 1991 (keeping of register of information relating to apparatus in streets in England and Wales) may be discharged by the keeping of a single register in relation to England, Wales and Northern Ireland. 5

45B Initial upload of information into NUAR 10

- (1) Before the end of the initial upload period an undertaker having apparatus in a street must enter into NUAR—
 - (a) all information that is included in the undertaker’s records under Article 39(1) on the archive upload date, and
 - (b) any other information of a prescribed description that is held by the undertaker on that date. 15
- (2) The duty under paragraph (1) does not apply in such cases as may be prescribed.
- (3) Information must be entered into NUAR under paragraph (1) in such form and manner as may be prescribed. 20
- (4) An undertaker who fails to comply with a duty placed on the undertaker under this paragraph—
 - (a) commits an offence, and
 - (b) is liable to compensate any person in respect of damage or loss incurred by the person in consequence of the failure. 25
- (5) A person who commits an offence under paragraph (4)(a) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (6) In criminal or civil proceedings against an undertaker arising out of a failure to comply with a duty under this Article, it is a defence for the undertaker to show that all reasonable care was taken to secure that no such failure occurred by—
 - (a) the undertaker and the undertaker’s employees, and
 - (b) any contractor of the undertaker and the undertaker’s employees. 30
- (7) For the purposes of paragraph (1) the Secretary of State must by regulations—
 - (a) specify a date as “the archive upload date”, and
 - (b) specify a period beginning with that date as the “initial upload period”. 40

45C Access to information kept in NUAR

- (1) The Secretary of State may by regulations make provision for or in connection with making information kept in NUAR available.
- (2) The regulations may (among other things) –
 - (a) make provision about which information, or descriptions of information, may be made available; 5
 - (b) make provision about the descriptions of person to whom information may be made available;
 - (c) make provision for information to be made available subject to exceptions; 10
 - (d) make provision requiring or authorising the Secretary of State to adapt, modify or obscure information before making it available;
 - (e) make provision authorising all information kept in NUAR to be made available to prescribed descriptions of person under prescribed conditions; 15
 - (f) make provision about the purposes for which information may be made available;
 - (g) make provision about the form and manner in which information may be made available; 20
 - (h) make provision for or in connection with the granting of licences by the Secretary of State in relation to any non-Crown IP rights that may exist in relation to information made available (including provision about the form of a licence and the terms and conditions of a licence); 25
 - (i) make provision for information to be made available for free or for a fee;
 - (j) make provision about the amounts of the fees, including provision for the amount of a fee to be an amount which is intended to exceed the cost of the things in respect of which the fee is charged; 30
 - (k) make provision about how funds raised by means of fees must or may be used, including provision for funds to be paid to persons who are required, by a provision of this Order, to enter information into NUAR. 35
- (3) Except as otherwise prescribed and subject to Article 45H, processing of information by the Secretary of State in exercise of functions conferred by or under Article 45A or this Article does not breach –
 - (a) an obligation of confidence owed by the Secretary of State, or
 - (b) any other restriction on the processing of information (however imposed). 40
- (4) In this Article –

“database right” has the same meaning as in Part 3 of the Copyright and Rights in Databases Regulations 1997 (S.I. 1997/3032);

“non-Crown IP right” means any copyright, database right or other intellectual property right which is not owned by the Crown; 5

“processing” has the same meaning as in the Data Protection Act 2018 (see section 3(4) of that Act).

45D Fees payable by undertakers in relation to NUAR

- (1) The Secretary of State may by regulations make provision requiring undertakers having apparatus in a street to pay fees to the Secretary of State for or in connection with the exercise by the Secretary of State of any function conferred by or under a NUAR provision. 10
- (2) The regulations may –
 - (a) specify the amounts of the fees, or the maximum amounts of the fees, or 15
 - (b) provide for the amounts of the fees, or the maximum amounts of the fees, to be determined in accordance with the regulations.
- (3) In making the regulations the Secretary of State must seek to secure that, so far as possible and taking one year with another, combined NUAR income matches combined NUAR expenses. 20
- (4) Except where the regulations specify the amounts of the fees –
 - (a) the amounts of the fees must be specified by the Secretary of State in a statement, and
 - (b) the Secretary of State must – 25
 - (i) publish the statement, and
 - (ii) lay it before Parliament.
- (5) Regulations under paragraph (1) may make provision about –
 - (a) when a fee is to be paid;
 - (b) the manner in which a fee is to be paid; 30
 - (c) the payment of discounted fees;
 - (d) exceptions to requirements to pay fees;
 - (e) the refund of all or part of a fee which has been paid.
- (6) Before making regulations under paragraph (1), the Secretary of State must consult – 35
 - (a) such representatives of persons likely to be affected by the regulations as the Secretary of State considers appropriate, and
 - (b) such other persons as the Secretary of State considers appropriate.
- (7) In this Article – 40

“combined NUAR expenses” means the sum of—

- (a) expenses incurred by the Secretary of State in, or in connection with, exercising functions conferred by or under a NUAR provision (including expenses not directly connected with the keeping of NUAR), and 5
- (b) expenses incurred by the Secretary of State in, or in connection with, exercising functions conferred by or under Part 3A of the New Roads and Street Works Act 1991 (including expenses not directly connected with the keeping of the register kept under section 106A(1) of that Act); 10

“combined NUAR income” means the sum of—

- (a) income received by the Secretary of State from fees payable under regulations under paragraph (1), and
- (b) income received by the Secretary of State from fees payable under regulations under section 106D(1) of the New Roads and Street Works Act 1991. 15

45E Providing information for purposes of regulations under Article 45D

- (1) The Secretary of State may by regulations make provision requiring undertakers having apparatus in a street to provide information to the Secretary of State for either or both of the following purposes— 20
 - (a) assisting the Secretary of State in determining the provision that it is appropriate for regulations under Article 45D(1) or a statement under Article 45D(4) to make;
 - (b) assisting the Secretary of State in determining whether it is appropriate to make changes to such provision. 25
- (2) The Secretary of State may by regulations make provision requiring undertakers having apparatus in a street to provide information to the Secretary of State for either or both of the following purposes—
 - (a) ascertaining whether a fee is payable by a person under regulations under Article 45D(1); 30
 - (b) working out the amount of a fee payable by a person.
- (3) Regulations under paragraph (1) or (2) may require an undertaker to notify the Secretary of State of any changes to information previously provided under the regulations. 35
- (4) Regulations under paragraph (1) or (2) may make provision about—
 - (a) when information is to be provided (which may be at prescribed intervals);
 - (b) the form and manner in which information is to be provided;
 - (c) exceptions to requirements to provide information. 40

45F Monetary penalties

Schedule 2ZA makes provision about the imposition of penalties in connection with requirements imposed by regulations under Articles 45D(1) and 45E(1) and (2).

45G Arrangements for third party to exercise functions

5

- (1) The Secretary of State may make arrangements for a prescribed person to exercise a relevant function of the Secretary of State.
- (2) More than one person may be prescribed.
- (3) Arrangements under this Article may –
 - (a) provide for the Secretary of State to make payments to the person, and 10
 - (b) make provision as to the circumstances in which such payments are to be repaid to the Secretary of State.
- (4) In the case of the exercise of a function by a person authorised by arrangements under this Article to exercise that function, a reference in a NUAR provision or in regulations under a NUAR provision to the Secretary of State in connection with that function is to be read as a reference to that person. 15
- (5) Arrangements under this Article do not prevent the Secretary of State from exercising a function to which the arrangements relate. 20
- (6) Except as otherwise prescribed and subject to Article 45H, the disclosure of information between the Secretary of State and a person in connection with the person’s entering into arrangements under this Article or exercise of functions to which such arrangements relate does not breach – 25
 - (a) an obligation of confidence owed by the person making the disclosure, or
 - (b) any other restriction on the disclosure of information (however imposed).
- (7) In this Article “relevant function” means a function of the Secretary of State conferred by or under a NUAR provision (including the function of charging or recovering fees under regulations under Article 45D) other than – 30
 - (a) a power to make regulations, or
 - (b) a function under Article 45D(4) (specifying of fees etc). 35
- (8) If a person exercises the function of charging or recovering fees by virtue of arrangements under this Article, the person must pay the fees to the Secretary of State, except to the extent that the Secretary of State directs otherwise.

45H Data protection

- (1) A duty or power to process information that is imposed or conferred by or under a NUAR provision does not operate to require or authorise the processing of personal data that would contravene the data protection legislation (but in determining whether processing of personal data would do so, that duty or power is to be taken into account). 5
- (2) In this Article –
“the data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3(9) of that Act); 10
“personal data” has the same meaning as in that Act (see section 3(2) of that Act);
“processing” has the same meaning as in that Act (see section 3(4) of that Act).”
- (4) In Article 59 (regulations) – 15
(a) before paragraph (1) insert –
“(A1) Before making regulations under a NUAR provision the Secretary of State must consult the Department for Infrastructure and the Welsh Ministers.
(A2) Regulations under Article 39 or 40 or under a NUAR provision may make supplementary or incidental provision.”; 20
(b) in paragraph (1), after “Order” insert “, other than regulations made by the Secretary of State,”;
(c) before paragraph (2) insert –
“(1B) For the purposes of the Statutory Instruments Act 1946 a power of the Secretary of State to make regulations under this Order is exercisable by statutory instrument, and that Act applies in relation to a document by which such a power is exercised as if this Order were an Act of Parliament passed after the commencement of that Act. 25
30
(1C) Regulations made by the Secretary of State under Articles 39, 40, 45A, 45B and 45E are subject to the negative Westminster procedure.
(1D) Subject to paragraphs (1E) and (1F), regulations made by the Secretary of State under Articles 45C, 45D and 45G and paragraph 1 of Schedule 2ZA are subject to the affirmative Westminster procedure. 35
(1E) Regulations under Article 45D(1) that only make provision of a kind mentioned in Article 45D(2) are subject to the negative Westminster procedure. 40

- (1F) But the first regulations under Article 45D(1) that make provision of a kind mentioned in Article 45D(2) are subject to the affirmative Westminster procedure.
- (1G) Where regulations under this Order are subject to “the affirmative Westminster procedure” the regulations may not be made unless a draft of the statutory instrument containing them has been laid before and approved by a resolution of each House of Parliament. 5
- (1H) Where regulations under this Order are subject to “the negative Westminster procedure” the statutory instrument containing the regulations is subject to annulment in pursuance of a resolution of either House of Parliament. 10
- (1I) Any provision that may be made in regulations under this Order subject to the negative Westminster procedure may be made in regulations subject to the affirmative Westminster procedure.” 15
- (5) Article 59(A2) of the Street Works (Northern Ireland) Order 1995 (S.I. 1995/3210 (N.I. 19)) (inserted by subsection (4)(a)) is repealed on the coming into operation of Article 59(1A) of that Order (as inserted by Article 28(3) of the Street Works (Amendment) (Northern Ireland) Order 2007 (S.I. 2007/287 (N.I. 1))). 20
- (6) Schedule 2 to this Act inserts Schedule 2ZA into the Street Works (Northern Ireland) Order 1995 (S.I. 1995/3210 (N.I. 19)) (monetary penalties).
- 59 Information in relation to apparatus: Northern Ireland**
- (1) The Street Works (Northern Ireland) Order 1995 (S.I. 1995/3210 (N.I. 19)) is amended in accordance with subsections (2) to (5). 25
- (2) For the italic heading before Article 39 (records of location of apparatus) substitute “Duties in relation to recording and sharing of information about apparatus”.
- (3) In Article 39 – 30
- (a) for the heading substitute “Information in relation to apparatus”;
- (b) in paragraph (1), for sub-paragraph (c) substitute –
- “(c) being informed of its location under Article 40(2)(a),”;
- (c) after paragraph (1A) (as inserted by Article 22(2) of the Street Works (Amendment) (Northern Ireland) Order 2007 (S.I. 2007/287 (N.I. 1))) insert – 35
- “(1B) An undertaker must, except in such cases as may be prescribed, record in relation to every item of apparatus belonging to the undertaker such other information as may be prescribed as soon as reasonably practicable after – 40
- (a) placing the item in the street or altering its position,

- (b) inspecting, maintaining, adjusting, repairing, altering or renewing the item,
 - (c) locating the item in the street in the course of executing any other works, or
 - (d) receiving any such information in relation to the item under Article 40(2)(a).”; 5
 - (d) omit paragraph (3);
 - (e) in paragraph (3A) (as inserted by Article 22(4) of the Street Works (Amendment) (Northern Ireland) Order 2007 (S.I. 2007/287 (N.I. 1))) –
 - (i) for “to (3)” substitute “and (2A)”; 10
 - (ii) for “paragraph (1)” substitute “this Article”;
 - (f) after paragraph (3A) insert –
 - “(3B) Except in such cases as may be prescribed, where an undertaker records information as required by paragraph (1) or (1B), or updates such information, the undertaker must, within a prescribed period, enter the recorded or updated information into NUAR. 15
 - (3C) Information must be entered into NUAR under paragraph (3B) in such form and manner as may be prescribed.”;
 - (g) after paragraph (5) insert – 20
 - “(6) In this Article “prescribed” means –
 - (a) in paragraphs (1) to (2), prescribed by regulations made by the Secretary of State or the Department for Infrastructure;
 - (b) otherwise, prescribed by regulations made by the Secretary of State. 25
 - (7) Before making regulations under this Article the Secretary of State must consult the Department for Infrastructure.
 - (8) For the meaning of “NUAR”, see Article 45A.”
- (4) For Article 40 (duty to inform undertakers of location of apparatus) substitute – 30
 - “40 Duties to report missing or incorrect information in relation to apparatus**
 - (1) Paragraph (2) applies where a relevant person executing works of any description in a street finds an item of apparatus which does not belong to the person in relation to which prescribed information – 35
 - (a) is not entered in NUAR, or
 - (b) is entered in NUAR but is incorrect.
 - (2) Except in such cases as may be prescribed, the person must –

- (a) take such steps as are reasonably practicable to inform the undertaker to whom the item belongs of the missing or incorrect information, and
- (b) if (having taken such steps) the person is unable to inform the undertaker to whom the item belongs of the missing or incorrect information, enter into NUAR, in such form and manner as may be prescribed, prescribed information in relation to the item. 5
- (3) A person who fails to comply with paragraph (2) commits an offence.
- (4) A person who commits an offence under paragraph (3) is liable on summary conviction to a fine not exceeding level 4 on the standard scale. 10
- (5) Before making regulations under this Article the Secretary of State must consult—
- (a) the Department for Infrastructure, 15
- (b) such representatives of persons likely to be affected by the regulations as the Secretary of State considers appropriate, and
- (c) such other persons as the Secretary of State considers appropriate.
- (6) For the purposes of this Article a person executing works in a street is a “relevant person” if the person has, pursuant to regulations under Article 45C, access to NUAR in relation to the street in question. 20
- (7) For the meaning of “NUAR”, see Article 45A.”
- (5) Before Article 41 (duty to maintain apparatus) insert—
- “*Other duties and liabilities of undertakers in relation to apparatus*”. 25
- (6) As a consequence of the provision made by subsection (4), omit Article 23 of the Street Works (Amendment) (Northern Ireland) Order 2007 (S.I. 2007/287 (N.I. 1)).
- (7) A power of the Secretary of State to make regulations under paragraph (1) or (2) of Article 39 of the Street Works (Northern Ireland) Order 1995 (S.I. 1995/3210 (N.I. 19)) (by virtue of subsection (3)(g)) includes power to amend or revoke any provision of the Street Works (Records) Regulations (Northern Ireland) 2004 (S.R. (N.I.) 2004 No. 276) made under the paragraph concerned. 30

60 Pre-commencement consultation

- (1) A requirement to consult under a provision inserted into the New Roads and Street Works Act 1991 by section 56 or 57 may be satisfied by consultation undertaken before the day on which this Act is passed. 35
- (2) A requirement to consult under a provision inserted into the Street Works (Northern Ireland) Order 1995 (S.I. 1995/3210 (N.I. 19)) by section 58 or 59

may be satisfied by consultation undertaken before the day on which this Act is passed.

PART 4

REGISTERS OF BIRTHS AND DEATHS

- 61 Form in which registers of births and deaths are to be kept** 5
- (1) The Births and Deaths Registration Act 1953 is amended as follows.
- (2) For section 25 (provision of registers, etc, by Registrar General) substitute—
- “25 Form in which registers are to be kept, etc**
- (1) Registers of live-births, still-births and deaths must be kept in such form as the Registrar General may reasonably require. 10
- (2) The Registrar General may, in particular, require any such register to be kept in a form that secures that any information entered in the register by a registrar—
- (a) in the case of a register of live-births or of deaths, is available to the superintendent registrar and to the Registrar General immediately after the entry has been made, and 15
- (b) in the case of a register of still-births, is available to the Registrar General immediately after the entry has been made.
- (3) In a case where a register is kept in such form as is mentioned in subsection (2), any information in the register which is available to the superintendent registrar or Registrar General is to be regarded as held by that person (as well as by the registrar) in connection with that person’s functions. 20
- (4) The Registrar General—
- (a) may provide anything which the Registrar General considers appropriate for the registers mentioned in subsection (1) to be kept in the form required under that subsection, and 25
- (b) must maintain anything provided under paragraph (a).
- (5) The Registrar General must also provide the forms required for the purposes of this Act for making certified copies of entries in registers.” 30
- (3) Omit the following provisions—
- (a) section 26 (quarterly returns to be made by registrar to superintendent registrar);
- (b) section 27 (quarterly returns by superintendent registrar to Registrar General); 35
- (c) section 28 (custody of registers, etc).

62 Provision of equipment and facilities by local authorities

In the Registration Service Act 1953, after section 11 insert—

“11A Provision of equipment and facilities by local authorities

- (1) At each register office provided for the superintendent registrar of a district, the council which employs the superintendent registrar shall, subject to the provisions of the local scheme, provide and maintain such equipment or facilities as the Registrar General reasonably considers to be necessary for the performance of the superintendent registrar’s functions. 5
- (2) At each office and each station for a sub-district of a registrar, the council which employs the registrar shall, subject to the provisions of the local scheme, provide and maintain such equipment or facilities as the Registrar General reasonably considers to be necessary for the performance of the registrar’s functions.” 10

63 Requirements to sign register

- (1) The Births and Deaths Registration Act 1953 is amended as follows.
- (2) After section 38A insert—

“38B Requirements to sign register

- (1) Where any register of births or register of deaths is required to be kept under this Act otherwise than in hard copy form, the Minister may by regulations provide that—
 - (a) a person’s duty under this Act to sign the register at any time is to have effect as a duty to comply with specified requirements at that time, and
 - (b) a person who complies with those requirements is to be treated for the purposes of this Act as having signed the register at that time and, in the case of a duty to sign the register in the presence of the registrar, to have done so in the presence of the registrar, 20

and accordingly, in such a case, the entry in the register is to be taken for the purposes of this Act to have been signed by the person. 30
- (2) The provision that may be made by regulations under this section includes, among other things—
 - (a) provision requiring a person to sign something other than the register; 35
 - (b) provision requiring a person to provide specified evidence of identity in such form and manner as may be specified.
- (3) In this section “specified” means specified in regulations under this section.”

- (3) In section 39A (regulations made by the Minister: further provisions), after subsection (5) insert—

“(6) A statutory instrument that contains (whether alone or with other provision) regulations made by the Minister under section 38B may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.”

5

64 Treatment of existing registers and records

- (1) The repeal of section 28 of the Births and Deaths Registration Act 1953 by section 61 above does not affect—

(a) the requirement under section 28(2) of that Act for every superintendent registrar (“S”) to keep with the records of S’s office any registers of live-births or of deaths which are in S’s custody immediately before the coming into force of that repeal, or

10

(b) the requirement under section 28(4) of that Act for the Registrar General to keep in the General Register Office—

15

(i) any certified copies or information sent or provided under section 27 of that Act (quarterly returns by superintendent registrar to Registrar General), or

(ii) any registers of still-births that were forwarded to the Registrar General before the coming into force of that repeal.

20

- (2) Any register of live-births or of deaths which, immediately before the coming into force of this section, is in the custody of a registrar and is unfilled is, as soon as is reasonably practicable after the coming into force of this section, to be delivered to the superintendent registrar (“S”) to be kept by S with the records of S’s office.

25

- (3) Any register of still-births which, immediately before the coming into force of this section, is in the custody of a registrar and is unfilled is, as soon as is reasonably practicable after the coming into force of this section, to be forwarded to the Registrar General to be kept in the General Register Office in such order and manner as the Registrar General thinks fit.

30

- (4) The Registrar General may dispose of—

(a) any certified copies held by the Registrar General of entries in any register of still-births forwarded to the Registrar General under section 28(3) of the Births and Deaths Registration Act 1953 or subsection (3) above, or

35

(b) any information contained in those entries which is held by the Registrar General in electronic form by virtue of section 27 of that Act.

- (5) Where, at any time during the period mentioned in subsection (6), a copy has been kept otherwise than in hard copy form of any register of births or register of deaths kept for a sub-district under the Births and Deaths Registration Act 1953—

40

-
- (a) that copy is to be treated, on and after the day on which section 61 of this Act comes into force, as the register kept for the sub-district for the purposes of that Act,
- (b) on and after that day, the register is to be treated for the purposes of section 25(3) of that Act as having been kept in the form in which the copy was kept, 5
- (c) where before that day a person signed any entry in the register, the entry is to continue, on and after that day, to be regarded for the purposes of that Act as having been signed by the person, and
- (d) the Registrar General may dispose of— 10
- (i) any certified copies held by the Registrar General of entries in the register, or
- (ii) any information contained in those entries which is held by the Registrar General in electronic form by virtue of section 27 of that Act. 15
- (6) The period referred to in subsection (5) is the period—
- (a) beginning with 1 July 2009, and
- (b) ending immediately before the day on which section 61 comes into force.
- (7) Expressions used in this section and in the Births and Deaths Registration Act 1953 have the same meaning in this section as in that Act. 20

65 Minor and consequential amendments

Schedule 3 contains minor and consequential amendments.

PART 5

DATA PROTECTION AND PRIVACY 25

CHAPTER 1

DATA PROTECTION

Terms used in this Chapter

66 The 2018 Act and the UK GDPR

- In this Chapter— 30
- “the 2018 Act” means the Data Protection Act 2018;
- “the UK GDPR” means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data. 35

Definitions in the UK GDPR and the 2018 Act

67 Meaning of research and statistical purposes

- (1) In Article 4 of the UK GDPR (definitions) –
- (a) the existing text becomes paragraph 1, and
 - (b) after that paragraph insert – 5
 - “2. References in this Regulation to the processing of personal data for the purposes of scientific research (including references to processing for “scientific research purposes”) are references to processing for the purposes of any research that can reasonably be described as scientific, whether publicly or privately funded and whether carried out as a commercial or non-commercial activity. 10
 - 3. Such references –
 - (a) include processing for the purposes of technological development or demonstration, fundamental research or applied research, so far as those activities can reasonably be described as scientific, but 15
 - (b) only include processing for the purposes of a study in the area of public health that can reasonably be described as scientific where the study is conducted in the public interest. 20
 - 4. References in this Regulation to the processing of personal data for the purposes of historical research (including references to processing for “historical research purposes”) include processing for the purposes of genealogical research. 25
 - 5. References in this Regulation to the processing of personal data for statistical purposes are references to processing for statistical surveys or for the production of statistical results where –
 - (a) the information that results from the processing is aggregate data that is not personal data, and 30
 - (b) the controller does not use the personal data processed, or the information that results from the processing, in support of measures or decisions with respect to a particular data subject to whom the personal data relates.”
- (2) In consequence of the amendment made by subsection (1)(a), in section 6 of the 2018 Act (meaning of “controller”), for “4(7)” substitute “4(1)(7)”. 35

68 Consent to processing for the purposes of scientific research

- (1) Article 4 of the UK GDPR (definitions) is amended as follows.

- (2) In point (11) of paragraph 1 (definition of “consent”), at the end insert “(and see paragraphs 6 and 7 of this Article)”.
- (3) After paragraph 5 (inserted by section 67 of this Act) insert –
- “6. A data subject’s consent is to be treated as falling within the definition of “consent” in point (11) of paragraph 1 if – 5
- (a) it does not fall within that definition because (and only because) the consent is given to the processing of personal data for the purposes of an area of scientific research,
- (b) at the time the consent is sought, it is not possible to identify fully the purposes for which personal data is to be processed, 10
- (c) seeking consent in relation to the area of scientific research is consistent with generally recognised ethical standards relevant to the area of research, and
- (d) so far as the intended purposes of the processing allow, the data subject is given the opportunity to consent only to processing for part of the research. 15
7. References in this Regulation to consent given for a specific purpose (however expressed) include consent described in paragraph 6.”

69 Consent to law enforcement processing

- (1) The 2018 Act is amended as follows. 20
- (2) In section 33 (definitions), after subsection (1) insert –
- “(1A) “Consent” of the data subject to the processing of personal data means a freely given, specific, informed and unambiguous indication of the data subject’s wishes by which the data subject, by a statement or by a clear affirmative action, signifies agreement to the processing of the personal data (and see section 40A).” 25
- (3) In section 34(2) (overview of Chapter 2 of Part 3), after paragraph (a) (but before the “and” at the end of that paragraph) insert –
- “(aa) section 40A makes provision about processing carried out in reliance on the consent of the data subject,”. 30
- (4) After section 40 insert –
- “40A Conditions for consent**
- (1) This section is about processing of personal data that is carried out in reliance on the consent of the data subject.
- (2) The controller must be able to demonstrate that the data subject consented to the processing. 35

- (3) If the data subject’s consent is given in writing as part of a document which also concerns other matters, the request for consent must be made –
 - (a) in a manner which clearly distinguishes the request from the other matters, 5
 - (b) in an intelligible and easily accessible form, and
 - (c) in clear and plain language.
- (4) Any part of a document described in subsection (3) which constitutes an infringement of this Part is not binding.
- (5) The data subject may withdraw the consent at any time (but the withdrawal of consent does not affect the lawfulness of processing in reliance on the consent before its withdrawal). 10
- (6) Processing may only be carried out in reliance on consent if –
 - (a) before the consent is given, the controller or processor informs the data subject of the right to withdraw it, and 15
 - (b) it is as easy for the data subject to withdraw the consent as to give it.
- (7) When assessing whether consent is freely given, account must be taken of, among other things, whether the provision of a service is conditional on consent to the processing of personal data that is not necessary for the provision of that service.” 20
- (5) In section 206 (index of defined expressions), in the Table, in the entry for “consent” –
 - (a) after “consent” insert “(to processing of personal data)”,
 - (b) for “Part” substitute “Parts 3 and”, and 25
 - (c) for “section” substitute “sections 33, 40A and”.

Data protection principles

70 Lawfulness of processing

- (1) The UK GDPR is amended in accordance with subsections (2) to (5).
- (2) In Article 6(1) (lawful processing) – 30
 - (a) in point (e) –
 - (i) after “task” insert “of the controller”, and
 - (ii) after “or” insert “a task carried out”,
 - (b) after that point insert –
 - “(ea) processing is necessary for the purposes of a recognised legitimate interest;”, and 35
 - (c) in the words after point (f), for “Point (f)” substitute “Points (ea) and (f)”.

-
- (3) In Article 6(3) (basis for processing etc), in the last subparagraph, in the first sentence –
- (a) after “task” insert “of the controller”, and
 - (b) after “interest or” insert “a task carried out”.
- (4) In Article 6, at the end insert – 5
- “5. For the purposes of paragraph 1(ea), processing is necessary for the purposes of a recognised legitimate interest only if it meets a condition in Annex 1.
6. The Secretary of State may by regulations amend Annex 1 by – 10
- (a) adding or varying provisions, or
 - (b) omitting provisions added by regulations made under this paragraph.
7. The Secretary of State may only make regulations under paragraph 6 where – 15
- (a) the requirement in paragraph 8 is satisfied, and
 - (b) if the regulations add a case to Annex 1, the requirement in paragraph 9 is also satisfied.
8. The requirement in this paragraph is that the Secretary of State considers it appropriate to make the regulations having regard to, among other things – 20
- (a) the interests and fundamental rights and freedoms of data subjects which require protection of personal data, and
 - (b) where relevant, the fact that children may be less aware of the risks and consequences associated with processing of personal data and of their rights in relation to such processing. 25
9. The requirement in this paragraph is that the Secretary of State considers that processing in the case to be added to Annex 1 is necessary to safeguard an objective listed in Article 23(1)(c) to (j).
10. Regulations under paragraph 6 are subject to the affirmative resolution procedure. 30
11. For the purposes of paragraph 1(f), examples of types of processing that may be processing that is necessary for the purposes of a legitimate interest include –
- (a) processing that is necessary for the purposes of direct marketing,
 - (b) intra-group transmission of personal data (whether relating to clients, employees or other individuals) where that is necessary for internal administrative purposes, and 35
 - (c) processing that is necessary for the purposes of ensuring the security of network and information systems.

12. In paragraph 11 –

“intra-group transmission” means transmission between members of a group of undertakings or between members of a group of institutions affiliated to a central body;

“security of network and information systems” has the same meaning as in the Network and Information Systems Regulations 2018 (S.I. 2018/506) (see regulation 1(3)(g)).” 5

(5) In Article 21(1) (right to object), after “point (e)” insert “, (ea)”.

(6) Schedule 4 to this Act inserts Annex 1 to the UK GDPR.

(7) In section 8 of the 2018 Act (lawfulness of processing: public interest etc), omit “the controller’s”. 10

(8) In the provisions listed in subsection (9) –

(a) for “gateway” substitute “gateways”, and

(b) for “were omitted” substitute “disapplied only the gateway in point (ea) (recognised legitimate interests)”. 15

(9) The provisions are –

(a) section 40(8) of the Freedom of Information Act 2000 (personal data which is exempt information);

(b) section 38(5A) of the Freedom of Information (Scotland) Act 2002 (asp 13) (personal data which is exempt information); 20

(c) regulation 13(6) of the Environmental Information Regulations 2004 (S.I. 2004/3391) (restriction on disclosure of personal data);

(d) regulation 11(7) of the Environmental Information (Scotland) Regulations 2004 (S.S.I. 2004/520) (restriction on disclosure of personal data); 25

(e) regulation 45(1E) of the Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005 (S.I. 2005/2042) (personal data which is sensitive information);

(f) regulation 39(1E) of the Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005 (S.S.I. 2005/494) (personal data which is sensitive information); 30

(g) regulation 9(9) of the INSPIRE Regulations 2009 (S.I. 2009/3157) (limitation of public access to personal data included in a spatial data set);

(h) regulation 10(8) of the INSPIRE (Scotland) Regulations 2009 (S.S.I. 2009/440) (limitation of public access to personal data included in a spatial data set). 35

71 The purpose limitation

(1) The UK GDPR is amended in accordance with subsections (2) to (5).

(2) In Article 5(1)(b) (purpose limitation) – 40

- (a) after “collected” insert “(whether from the data subject or otherwise)”,
 - (b) after “further processed” insert “by or on behalf of a controller”, and
 - (c) for the words from “those purposes;” to “initial purposes” substitute “the purposes for which the controller collected the data”.
- (3) In Article 5, at the end insert – 5
- “3. For the avoidance of doubt, processing is not lawful by virtue only of being processing in a manner that is compatible with the purposes for which the personal data was collected.”
- (4) In Article 6 (lawfulness of processing), omit paragraph 4.
- (5) After Article 8 insert – 10

“Article 8A

Purpose limitation: further processing

1. This Article is about the determination, for the purposes of Article 5(1)(b) (purpose limitation), of whether processing of personal data by or on behalf of a controller for a purpose (a “new purpose”) other than the purpose for which the controller collected the data (“the original purpose”) is processing in a manner compatible with the original purpose. 15
2. In making the determination, a person must take into account, among other things – 20
 - (a) any link between the original purpose and the new purpose;
 - (b) the context in which the personal data was collected, including the relationship between the data subject and the controller;
 - (c) the nature of the processing, including whether it is processing described in Article 9(1) (processing of special categories of personal data) or Article 10(1) (processing of personal data relating to criminal convictions etc); 25
 - (d) the possible consequences of the intended processing for data subjects;
 - (e) the existence of appropriate safeguards (for example, encryption or pseudonymisation). 30
3. Processing of personal data for a new purpose is to be treated as processing in a manner compatible with the original purpose where – 35
 - (a) the data subject consents to the processing of personal data for the new purpose and the new purpose is specified, explicit and legitimate,
 - (b) the processing is carried out in accordance with Article 84B –
 - (i) for the purposes of scientific research or historical research,
 - (ii) for the purposes of archiving in the public interest, or

- (iii) for statistical purposes,
 - (c) the processing is carried out for the purposes of ensuring that processing of personal data complies with Article 5(1) or demonstrating that it does so,
 - (d) the processing meets a condition in Annex 2, or 5
 - (e) the processing is necessary to safeguard an objective listed in Article 23(1)(c) to (j) and is authorised by an enactment or rule of law.
 - 4. Where the controller collected the personal data based on Article 6(1)(a) (data subject’s consent), processing for a new purpose is only processing in a manner compatible with the original purpose if – 10
 - (a) it falls within paragraph 3(a) or (c), or
 - (b) it falls within paragraph 3(d) or (e) and the controller cannot reasonably be expected to obtain the data subject’s consent.
 - 5. The Secretary of State may by regulations amend Annex 2 by – 15
 - (a) adding or varying provisions, or
 - (b) omitting provisions added by regulations made under this paragraph.
 - 6. The Secretary of State may only make regulations under paragraph 5 adding a case to Annex 2 where the Secretary of State considers that processing in that case is necessary to safeguard an objective listed in Article 23(1)(c) to (j). 20
 - 7. Regulations under paragraph 5 may make provision identifying processing by any means, including by reference to the controller, the data subject, the personal data or the provision of Article 6(1) relied on for the purposes of the processing. 25
 - 8. Regulations under paragraph 5 are subject to the affirmative resolution procedure.”
- (6) Schedule 5 to this Act inserts Annex 2 to the UK GDPR.
- (7) The 2018 Act is amended in accordance with subsections (8) to (10). 30
- (8) In section 36(1) (the second data protection principle) –
 - (a) in paragraph (a), for “on any occasion” substitute “(whether from the data subject or otherwise)”, and
 - (b) in paragraph (b) –
 - (i) after “processed” insert “by or on behalf of a controller”, and 35
 - (ii) for “it was collected” substitute “the controller collected it”.
- (9) In section 87(1) (the second data protection principle) –
 - (a) in paragraph (a), for “on any occasion” substitute “(whether from the data subject or otherwise)”, and

- (b) in paragraph (b)–
 - (i) after “processed” insert “by or on behalf of a controller”, and
 - (ii) for “it was collected” substitute “the controller collected it”.
- (10) In paragraph 1 of Schedule 2 (exemptions etc from the UK GDPR: provisions to be adapted or restricted), omit sub-paragraph (b)(ii). 5

72 Processing in reliance on relevant international law

- (1) The UK GDPR is amended in accordance with subsections (2) to (5).
- (2) In Article 6(3) (lawfulness of processing: basis in domestic law)–
 - (a) in the first subparagraph, omit “and (e)”,
 - (b) after that subparagraph insert– 10

“The basis for the processing referred to in point (e) of paragraph 1 must be laid down by domestic law or relevant international law (see section 9A of the 2018 Act).”, and
 - (c) in the last subparagraph, in the last sentence, after “domestic law” insert “or relevant international law”. 15
- (3) In Article 8A(3)(e) (purpose limitation: further processing necessary to safeguard an objective listed in Article 23(1)) (inserted by section 71 of this Act), at the end insert “or by relevant international law (see section 9A of the 2018 Act)”.
- (4) In Article 9 (processing of special categories of personal data)– 20
 - (a) in paragraph 2(g) (substantial public interest), after “domestic law” insert “, or relevant international law;”, and
 - (b) in paragraph 5, before point (a) insert–
 - “(za) section 9A makes provision about when the requirement in paragraph 2(g) of this Article for a basis in relevant international law is met;”. 25
- (5) In Article 10 (processing of personal data relating to criminal convictions and offences)–
 - (a) in paragraph 1, after “domestic law” insert “, or relevant international law;”, and 30
 - (b) in paragraph 2, before point (a) insert–
 - “(za) section 9A makes provision about when the requirement in paragraph 1 of this Article for authorisation by relevant international law is met;”.
- (6) The 2018 Act is amended in accordance with subsections (7) and (8). 35

- (7) Before section 10 (and the italic heading before that section) insert –

“Relevant international law

9A Processing in reliance on relevant international law

- (1) Processing of personal data meets the requirement in Article 6(3), 8A(3)(e), 9(2)(g) or 10(1) of the UK GDPR for a basis in, or authorisation by, relevant international law only if it meets a condition in Schedule A1. 5
- (2) A condition in Schedule A1 may be relied on for the purposes of any of those provisions, unless that Schedule provides otherwise.
- (3) The Secretary of State may by regulations amend Schedule A1 by adding, varying or omitting – 10
- (a) conditions,
 - (b) provision about the purposes for which a condition may be relied on, and
 - (c) safeguards in connection with processing carried out in reliance on a condition in the Schedule. 15
- (4) Regulations under this section may only add a condition relating entirely or partly to a treaty ratified by the United Kingdom.
- (5) Regulations under this section are subject to the affirmative resolution procedure. 20
- (6) In this section, “treaty” and “ratified” have the same meaning as in Part 2 of the Constitutional Reform and Governance Act 2010 (see section 25 of that Act).”
- (8) Before Schedule 1 insert –

“SCHEDULE A1

Section 9A 25

PROCESSING IN RELIANCE ON RELEVANT INTERNATIONAL LAW

This condition is met where the processing is necessary for the purposes of responding to a request made in accordance with the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America on Access to Electronic Data for the Purpose of Countering Serious Crime, signed on 3 October 2019.” 30

Processing of special categories of personal data

73 Elected representatives responding to requests

In paragraph 23 of Schedule 1 to the 2018 Act (processing of special categories of personal data: elected representatives responding to requests), in 35

sub-paragraph (4), for “fourth day after” substitute “period of 30 days beginning with the day after”.

74 Processing of special categories of personal data

- (1) In Chapter 2 of the UK GDPR, after Article 11 insert—

“Article 11A

5

Further provision about processing of special categories of personal data

1. The Secretary of State may by regulations—
 - (a) make provision so that an additional description of processing of personal data is subject to the prohibition in Article 9(1),
 - (b) make provision so that added processing is not subject to that prohibition, 10
 - (c) make provision so that an exception in Article 9(2) may or may not be relied on in connection with added processing, and
 - (d) make provision varying such an exception as it applies in connection with added processing. 15
 2. In paragraph 1, “added processing” means a description of processing which is subject to the prohibition in Article 9(1) by virtue of provision made under paragraph 1(a).
 3. Regulations made under this Article (in reliance on Article 91A(4)(b)) may amend section 5, 205 or 206 of the 2018 Act (interpretation). 20
 4. Regulations under this Article are subject to the affirmative resolution procedure.”
- (2) The 2018 Act is amended in accordance with subsections (3) to (9).
- (3) In section 33 (definitions of expressions used in Part 3), after subsection (6) insert— 25
- “(6A) “Sensitive processing” has the meaning given in section 35(8).”
- (4) In section 35 (the first data protection principle)—
- (a) in subsection (6)(b) (power to omit conditions added to Schedule 8 by regulations), after “by”, in the first place it occurs, insert “varying or”, and 30
 - (b) in subsection (8) (definition of “sensitive processing”), for “section” substitute “Part”.
- (5) After section 42 insert—
- “42A Further provision about sensitive processing**
- (1) The Secretary of State may by regulations— 35

- (a) make provision so that an additional description of processing of personal data is sensitive processing for the purposes of this Part,
 - (b) make provision so that added processing is not sensitive processing for the purposes of this Part, 5
 - (c) make provision so that a protected condition in Schedule 8 may or may not be relied on in connection with added processing, and
 - (d) make provision varying such a condition as it relates to added processing. 10
- (2) In subsection (1) –
 - “added processing” means a description of processing which is sensitive processing by virtue of provision made under subsection (1)(a);
 - “protected condition in Schedule 8” means a condition in that Schedule other than one that was added to the Schedule by regulations under section 35(6). 15
- (3) Regulations under this section may amend this Part and sections 205 and 206.
- (4) Regulations under this section are subject to the affirmative resolution procedure.” 20
- (6) In section 84 (definitions of expressions used in Part 4), after subsection (6) insert –
 - “(6A) “Sensitive processing” has the meaning given in section 86(7).”
- (7) In section 86 (the first data protection principle) – 25
 - (a) in subsection (3)(b) (power to omit conditions added to Schedule 10 by regulations), after “by”, in the first place it occurs, insert “varying or”, and
 - (b) in subsection (7) (definition of “sensitive processing”), for “section” substitute “Part”. 30
- (8) After section 91 insert –
 - “91A Further provision about sensitive processing**
 - (1) The Secretary of State may by regulations –
 - (a) make provision so that an additional description of processing of personal data is sensitive processing for the purposes of this Part, 35
 - (b) make provision so that added processing is not sensitive processing for the purposes of this Part,
 - (c) make provision so that a protected condition in Schedule 10 may or may not be relied on in connection with added processing, and 40

-
- (d) make provision varying such a condition as it relates to added processing.
- (2) In subsection (1)–
“added processing” means a description of processing which is sensitive processing by virtue of provision made under subsection (1)(a);
“protected condition in Schedule 10” means a condition in that Schedule other than one that was added to the Schedule by regulations under section 86(3).
- (3) Regulations under this section may amend this Part and sections 205 and 206.
- (4) Regulations under this section are subject to the affirmative resolution procedure.”
- (9) In section 206 (index of defined expressions), in the Table, at the appropriate place insert–
“sensitive processing (in Parts 3 and 4) | sections 35 and 86”.
- (10) The Investigatory Powers Act 2016 is amended in accordance with subsections (11) to (13).
- (11) In section 202(4) (restrictions on use of class BPD warrants: definitions), omit the definition of “sensitive personal data” and insert–
““sensitive personal data” means personal data whose retention, or (as appropriate) retention and examination, would be sensitive processing;
“sensitive processing” means–
(a) processing of personal data relating to a living individual that is processing of a kind described in section 86(7)(a) to (e) of the Data Protection Act 2018, or
(b) processing of personal data relating to a deceased individual that would be that kind of processing if the personal data related to a living individual.”
- (12) After that section insert–
“202A Further provision about sensitive processing
(1) The Secretary of State may by regulations–
(a) make provision so that a description of Part 4 sensitive processing, or of processing that would be such processing if the information processed related to a living individual, is sensitive processing for the purposes of section 202, and
(b) make provision so that added processing is not sensitive processing for the purposes of that section.
- (2) In this section–

“added processing” means a description of processing that is sensitive processing for the purposes of section 202 by virtue of provision made under subsection (1)(a);

“Part 4 sensitive processing” means processing of personal data that, at the time the regulations are made, is sensitive processing for the purposes of Part 4 of the Data Protection Act 2018 by virtue of regulations made under section 91A of that Act.

(3) Regulations under this section may amend section 202.”

(13) In section 267(3) (regulations subject to the affirmative procedure), after paragraph (e) insert—

“(ea) section 202A.”.

Data subject’s rights

75 Fees and reasons for responses to data subjects’ requests about law enforcement processing

(1) The 2018 Act is amended as follows.

(2) In section 53 (manifestly unfounded or excessive requests by the data subject under Part 3)—

(a) after subsection (4) insert—

“(4A) The Secretary of State may by regulations—

(a) require controllers of a description specified in the regulations to produce and publish guidance about the fees that they charge in accordance with subsection (1)(a), and

(b) specify what the guidance must include.”.

(b) in subsection (5), for “subsection (4)” substitute “this section”, and

(c) after subsection (5) insert—

“(6) If, in reliance on subsection (1)(b), the controller does not take action on the request, the controller must inform the data subject of—

(a) the reasons for not doing so, and

(b) the data subject’s right to lodge a complaint with the Commissioner.

(7) The controller must comply with subsection (6)—

(a) without undue delay, and

(b) in any event, before the end of the applicable time period (as to which see section 54).”

(3) In section 54(1) (meaning of “applicable time period”), for “and 48(2)(b)” substitute “, 48(2)(b) and 53(7)”.

76 Time limits for responding to data subjects' requests

- (1) The UK GDPR is amended in accordance with subsections (2) and (3).
- (2) In Article 12 (transparent information, communication and modalities for the exercise of rights of the data subject) –
 - (a) in paragraph 3 – 5
 - (i) for “within one month of receipt of the request” substitute “before the end of the applicable time period (see Article 12A)”, and
 - (ii) omit the second and third sentences,
 - (b) in paragraph 4, for “without delay and at the latest within one month of receipt of the request” substitute “without undue delay, and in any event before the end of the applicable time period (see Article 12A)”, and 10
 - (c) in paragraph 6 – 15
 - (i) after “may” insert “ – 15
 - (a)”, and
 - (ii) at the end insert “, and 15
 - (b) delay dealing with the request until the identity is confirmed.” 15
 - (3) After Article 12 insert – 20

“Article 12A

Meaning of “applicable time period”

1. In Article 12, “the applicable time period” means the period of one month beginning with the relevant time, subject to paragraph 3.
2. “The relevant time” means the latest of the following – 25
 - (a) when the controller receives the request in question;
 - (b) when the controller receives the information (if any) requested in connection with a request under Article 12(6);
 - (c) when the fee (if any) charged in connection with the request under Article 12(5) is paid. 30
3. The controller may, by giving notice to the data subject, extend the applicable time period by two further months where that is necessary by reason of –
 - (a) the complexity of requests made by the data subject, or
 - (b) the number of such requests. 35
4. A notice under paragraph 3 must –
 - (a) be given before the end of the period of one month beginning with the relevant time, and

- (b) state the reasons for the delay.
- 5. Where the controller reasonably requires further information in order to identify the information or processing activities to which a request under Article 15 relates –
 - (a) the controller may ask the data subject to provide the further information, and 5
 - (b) the period beginning with the day on which the controller makes the request and ending with the day on which the controller receives the information does not count towards –
 - (i) the applicable time period, or 10
 - (ii) the period described in paragraph 4(a).
- 6. An example of a case in which a controller may reasonably require further information is where the controller processes a large amount of information concerning the data subject.”
- (4) The 2018 Act is amended in accordance with subsections (5) to (7). 15
- (5) In section 45(5) (right of access by the data subject), after “delay” insert “and in any event before the end of the applicable time period (as to which see section 54)”.
- (6) In section 54 (meaning of “applicable time period” for responding to data subjects’ requests) – 20
 - (a) in subsection (1), after “45(3)(b)” insert “and (5)”,
 - (b) in subsection (2) –
 - (i) for “1 month, or such longer period as may be specified in regulations,” substitute “one month”, and
 - (ii) at the end insert “, subject to subsection (3A)”, 25
 - (c) after subsection (3) insert –
 - “(3A) The controller may, by giving notice to the data subject, extend the applicable time period by two further months where that is necessary by reason of –
 - (a) the complexity of requests made by the data subject, or 30
 - (b) the number of such requests.
 - (3B) A notice under subsection (3A) must –
 - (a) be given before the end of the period of one month beginning with the relevant time, and
 - (b) state the reasons for the delay. 35
 - (3C) Where the controller reasonably requires further information in order to identify the information or processing activities to which a request under section 45(1) relates –
 - (a) the controller may ask the data subject to provide the further information, and 40

- (b) the period beginning with the day on which the controller makes the request and ending with the day on which the controller receives the information does not count towards –
- (i) the applicable time period, or 5
 - (ii) the period described in subsection (3B)(a).
- (3D) An example of a case in which a controller may reasonably require further information is where the controller processes a large amount of information concerning the data subject.”, and 10
- (d) omit subsections (4) to (6).
- (7) In section 94 (right of access under Part 4) –
- (a) in subsection (14), for the definition of “the applicable time period” substitute –
 - ““the applicable time period” means the period of one month beginning with the relevant time, subject to subsection (14A);”, 15
 - and
 - (b) after subsection (14) insert –
 - “(14A) The controller may, by giving notice to the data subject, extend the applicable time period by two further months where that is necessary by reason of – 20
 - (a) the complexity of requests made by the data subject, or
 - (b) the number of such requests.
 - (14B) A notice under subsection (14A) must –
 - (a) be given before the end of the period of one month beginning with the relevant time, and 25
 - (b) state the reasons for the delay.”

77 Information to be provided to data subjects

- (1) In Article 13 of the UK GDPR (information to be provided where personal data is collected from the data subject) – 30
- (a) in paragraph 4, for “shall not apply where and insofar as” substitute “do not apply to the extent that”, and
 - (b) at the end insert –
 - “5. Paragraph 3 does not apply to the extent that –
 - (a) the controller intends to further process the personal data – 35
 - (i) for (and only for) the purposes of scientific or historical research, the purposes of archiving in the public interest or statistical purposes, and
 - (ii) in accordance with Article 84B, and 40

- (b) providing the information is impossible or would involve a disproportionate effort.
 - 6. For the purposes of paragraph 5(b), whether providing the information would involve a disproportionate effort depends on, among other things, the number of data subjects, the age of the personal data and any appropriate safeguards applied to the processing. 5
 - 7. A controller relying on paragraph 5 must take appropriate measures to protect the data subject’s rights, freedoms and legitimate interests, including by making the information available publicly.” 10
- (2) In Article 14 of the UK GDPR (information to be provided where personal data has not been obtained from the data subject) –
 - (a) in paragraph 5 –
 - (i) for “shall not apply where and insofar as” substitute “do not apply to the extent that”, 15
 - (ii) omit point (b),
 - (iii) omit the “or” at the end of point (c),
 - (iv) in point (d), omit “where”, and
 - (v) after that point insert – 20
 - “(e) providing the information is impossible or would involve a disproportionate effort, or
 - (f) the obligation referred to in paragraph 1 is likely to render impossible or seriously impair the achievement of the objectives of the processing for which the personal data are intended.”, and 25
 - (b) at the end insert –
 - “6. For the purposes of paragraph 5(e), whether providing the information would involve a disproportionate effort depends on, among other things, the number of data subjects, the age of the personal data and any appropriate safeguards applied to the processing. 30
 - 7. A controller relying on paragraph 5(e) or (f) must take appropriate measures to protect the data subject’s rights, freedoms and legitimate interests, including by making the information available publicly.” 35

78 Searches in response to data subjects’ requests

- (1) In Article 15 of the UK GDPR (right of access by the data subject) –

-
- (a) after paragraph 1 insert—
- “1A. Under paragraph 1, the data subject is only entitled to such confirmation, personal data and other information as the controller is able to provide based on a reasonable and proportionate search for the personal data and other information described in that paragraph.”, and
- (b) in paragraph 3, after “processing” insert “to which the data subject is entitled under paragraph 1”.
- (2) The 2018 Act is amended in accordance with subsections (3) and (4).
- (3) In section 45 (law enforcement processing: right of access by the data subject), after subsection (2) insert—
- “(2A) Under subsection (1), the data subject is only entitled to such confirmation, personal data and other information as the controller is able to provide based on a reasonable and proportionate search for the personal data and other information described in that subsection.”
- (4) In section 94 (intelligence services processing: right of access by the data subject), after subsection (2) insert—
- “(2A) Under subsection (1), the data subject is only entitled to such confirmation, personal data and other information as the controller is able to provide based on a reasonable and proportionate search for the personal data and other information described in that subsection.”
- (5) The amendments made by this section are to be treated as having come into force on 1 January 2024.
- 79 Data subjects’ rights to information: legal professional privilege exemption**
- (1) The 2018 Act is amended as follows.
- (2) In section 43 (overview and scope of Chapter 3 of Part 3: rights of the data subject in connection with law enforcement processing)—
- (a) in subsection (1)(a), for “section 44” substitute “sections 44 and 45A”, and
- (b) in subsection (1)(b), for “section 45” substitute “sections 45 and 45A”.
- (3) For the italic heading before section 44 substitute—
- “Data subject’s rights to information”.*
- (4) In the heading of section 44, omit “Information:”.
- (5) Omit the italic heading before section 45.

(6) After that section insert—

“45A Exemption from sections 44 and 45: legal professional privilege

- (1) Sections 44(2) and 45(1) do not require the controller to give the data subject—
- (a) information in respect of which a claim to legal professional privilege or, in Scotland, confidentiality of communications could be maintained in legal proceedings, or
 - (b) information in respect of which a duty of confidentiality is owed by a professional legal adviser to a client of the adviser.
- (2) A controller relying on the exemption in subsection (1) must inform the data subject in writing without undue delay of—
- (a) the decision to rely on the exemption,
 - (b) the reason for the decision,
 - (c) the data subject’s right to make a request to the Commissioner under section 51,
 - (d) the data subject’s right to lodge a complaint with the Commissioner under section 165, and
 - (e) the data subject’s right to apply to a court under section 167.
- (3) Subsection (2)(a) and (b) do not apply to the extent that complying with them would—
- (a) undermine a claim described in subsection (1)(a), or
 - (b) conflict with a duty described in subsection (1)(b).
- (4) The controller must—
- (a) record the reason for a decision to rely on the exemption in subsection (1), and
 - (b) if requested to do so by the Commissioner, make the record available to the Commissioner.
- (5) The reference in subsection (1) to sections 44(2) and 45(1) includes sections 35 to 40 so far as their provisions correspond to the rights and obligations provided for in sections 44(2) and 45(1).”
- (7) In section 51 (exercise of rights through the Commissioner)—
- (a) in subsection (1), after paragraph (b) (but before the “or” at the end of that paragraph) insert—
 - “(ba) relies on the exemption from sections 44(2) and 45(1) in section 45A (legal professional privilege),”
 - (b) in subsection (2), after paragraph (a) insert—
 - “(aa) where subsection (1)(ba) applies, request the Commissioner to check that the controller was entitled to rely on the exemption;”

- (c) in subsection (4), after paragraph (a) insert—
- “(aa) where subsection (1)(ba) applies, whether the Commissioner is satisfied that the controller was entitled to rely on the exemption;”, and
- (d) in subsection (6), after “(a)” insert “, (aa)”.

5

Automated decision-making

80 Automated decision-making

- (1) For Article 22 of the UK GDPR (automated individual decision-making, including profiling) substitute—

“Section 4A

10

Automated individual decision-making

Article 22A

Automated processing and significant decisions

1. For the purposes of Articles 22B and 22C—
 - (a) a decision is based solely on automated processing if there is no meaningful human involvement in the taking of the decision, and
 - (b) a decision is a significant decision, in relation to a data subject, if—
 - (i) it produces a legal effect for the data subject, or
 - (ii) it has a similarly significant effect for the data subject.
2. When considering whether there is meaningful human involvement in the taking of a decision, a person must consider, among other things, the extent to which the decision is reached by means of profiling.

Article 22B

25

Restrictions on automated decision-making

1. A significant decision based entirely or partly on processing described in Article 9(1) (processing of special categories of personal data) may not be taken based solely on automated processing, unless one of the following conditions is met.
2. The first condition is that the decision is based entirely on processing of personal data to which the data subject has given explicit consent.
3. The second condition is that—
 - (a) the decision is—
 - (i) necessary for entering into, or performing, a contract between the data subject and a controller, or

35

- (ii) required or authorised by law, and
 - (b) point (g) of Article 9(2) applies.
4. A significant decision may not be taken based solely on automated processing if the processing of personal data carried out by, or on behalf of, the decision-maker for the purposes of the decision is carried out entirely or partly in reliance on Article 6(1)(ea). 5

Article 22C

Safeguards for automated decision-making

1. Where a significant decision taken by or on behalf of a controller in relation to a data subject is – 10
- (a) based entirely or partly on personal data, and
 - (b) based solely on automated processing,
- the controller must ensure that safeguards for the data subject’s rights, freedoms and legitimate interests are in place which comply with paragraph 2 and any regulations under Article 22D(3). 15
2. The safeguards must consist of or include measures which –
- (a) provide the data subject with information about decisions described in paragraph 1 taken in relation to the data subject;
 - (b) enable the data subject to make representations about such decisions; 20
 - (c) enable the data subject to obtain human intervention on the part of the controller in relation to such decisions;
 - (d) enable the data subject to contest such decisions.

Article 22D

Further provision about automated decision-making 25

1. The Secretary of State may by regulations provide that, for the purposes of Article 22A(1)(a), there is, or is not, to be taken to be meaningful human involvement in the taking of a decision in cases described in the regulations.
2. The Secretary of State may by regulations provide that, for the purposes of Article 22A(1)(b)(ii), a description of decision is, or is not, to be taken to have a similarly significant effect for the data subject. 30
3. The Secretary of State may by regulations make the following types of provision about the safeguards required under Article 22C(1) –
- (a) provision requiring the safeguards to include measures in addition to those described in Article 22C(2), 35
 - (b) provision imposing requirements which supplement what Article 22C(2) requires the safeguards to consist of or include (including,

- for example, provision about how and when things described in Article 22C(2) must be done or be capable of being done), and
- (c) provision about measures which are not to be taken to satisfy one or more of points (a) to (d) of Article 22C(2).
4. Regulations under paragraph 3 may not amend Article 22C. 5
5. Regulations under this Article are subject to the affirmative resolution procedure.”
- (2) The 2018 Act is amended in accordance with subsections (3) to (5).
- (3) For sections 49 and 50 (law enforcement processing: automated individual decision making) substitute— 10
- “50A Automated processing and significant decisions**
- (1) For the purposes of sections 50B and 50C—
- (a) a decision is based solely on automated processing if there is no meaningful human involvement in the taking of the decision, and 15
- (b) a decision is a significant decision, in relation to a data subject, if—
- (i) it produces an adverse legal effect for the data subject, or
- (ii) it has a similarly significant adverse effect for the data subject. 20
- (2) When considering whether there is meaningful human involvement in the taking of a decision, a person must consider, among other things, the extent to which the decision is reached by means of profiling.
- 50B Restrictions on automated decision-making based on sensitive processing** 25
- (1) A significant decision based entirely or partly on sensitive processing may not be taken based solely on automated processing, unless one of the following conditions is met.
- (2) The first condition is that the decision is based entirely on processing of personal data to which the data subject has given explicit consent. 30
- (3) The second condition is that the decision is required or authorised by law.
- 50C Safeguards for automated decision-making**
- (1) Subject to subsection (3), where a significant decision taken by or on behalf of a controller in relation to a data subject is— 35
- (a) based entirely or partly on personal data, and
- (b) based solely on automated processing,

the controller must ensure that safeguards for the data subject's rights, freedoms and legitimate interests are in place which comply with subsection (2) and any regulations under section 50D(4).

- (2) The safeguards must consist of or include measures which –
- (a) provide the data subject with information about decisions described in subsection (1) taken in relation to the data subject; 5
 - (b) enable the data subject to make representations about such decisions;
 - (c) enable the data subject to obtain human intervention on the part of the controller in relation to such decisions; 10
 - (d) enable the data subject to contest such decisions.
- (3) Subsections (1) and (2) do not apply in relation to a significant decision if –
- (a) exemption from those provisions is required for a reason listed in subsection (4), 15
 - (b) the controller reconsiders the decision as soon as reasonably practicable, and
 - (c) there is meaningful human involvement in the reconsideration of the decision.
- (4) Those reasons are – 20
- (a) to avoid obstructing an official or legal inquiry, investigation or procedure;
 - (b) to avoid prejudicing the prevention, detection, investigation or prosecution of criminal offences or the execution of criminal penalties; 25
 - (c) to protect public security;
 - (d) to safeguard national security;
 - (e) to protect the rights and freedoms of others.
- (5) When considering whether there is meaningful human involvement in the reconsideration of a decision, a person must consider, among other things, the extent to which the conclusion reached on reconsideration is reached by means of profiling. 30

50D Further provision about automated decision-making

- (1) The Secretary of State may by regulations provide that, for the purposes of sections 50A(1)(a) and 50C(3)(c), there is, or is not, to be taken to be meaningful human involvement in the taking or reconsideration of a decision in cases described in the regulations. 35
- (2) The Secretary of State may by regulations provide that, for the purposes of section 50A(1)(b)(ii), a description of decision is, or is not, to be taken to have a similarly significant adverse effect for the data subject. 40

- (3) Regulations under subsection (1) or (2) may amend section 50A.
- (4) The Secretary of State may by regulations make the following types of provision about the safeguards required under section 50C(1) –
- (a) provision requiring the safeguards to include measures in addition to those described in section 50C(2), 5
 - (b) provision imposing requirements which supplement what section 50C(2) requires the safeguards to consist of or include (including, for example, provision about how and when things described in section 50C(2) must be done or be capable of being done), and 10
 - (c) provision about measures which are not to be taken to satisfy one or more of paragraphs (a) to (d) of section 50C(2).
- (6) Regulations under this section are subject to the affirmative resolution procedure.”
- (4) In section 96 (intelligence services processing: right not to be subject to automated decision-making) – 15
- (a) in subsection (1), for “solely on” substitute “on entirely”,
 - (b) in subsection (3), after “section” insert “and section 97”, and
 - (c) at the end insert –
- “(4) For the purposes of this section and section 97, a decision is based on entirely automated processing if the decision-making process does not include an opportunity for a human being to accept, reject or influence the decision.” 20
- (5) In section 97 (intelligence services processing: right to intervene in automated decision-making) – 25
- (a) in subsection (1)(a), for “solely on” substitute “on entirely”,
 - (b) in subsection (4)(b), for “solely on” substitute “on entirely”, and
 - (c) omit subsection (6).
- (6) Schedule 6 to this Act contains minor and consequential amendments.

Logging of law enforcement processing 30

81 Logging of law enforcement processing

In section 62 of the 2018 Act (logging of law enforcement processing) –

- (a) in subsection (2)(a), omit “justification for, and”, and
- (b) in subsection (3)(a), omit “justification for, and”.

Codes of conduct 35

82 General processing and codes of conduct

In Article 41 of the UK GDPR (monitoring of approved codes of conduct) –

- (a) in paragraph 4, omit the words from “, including suspension” to the end, and
- (b) after that paragraph insert—
 - “4A. If the action taken by a body under paragraph 4 consists of suspending or excluding a controller or processor from the code, the body must inform the Commissioner, giving reasons for taking that action.”

5

83 Law enforcement processing and codes of conduct

- (1) The 2018 Act is amended as follows.
- (2) In section 55(1) (overview and scope of provisions about controllers and processors), at the end insert—
 - “(e) makes provision about codes of conduct (see section 71A).”
- (3) In section 56 (general obligations of the controller), at the end insert—
 - “(4) Adherence to a code of conduct approved under section 71A may be used by a controller as a means of demonstrating compliance with the requirements of this Part.”
- (4) In section 59 (processors), after subsection (7) insert—
 - “(7A) Adherence to a code of conduct approved under section 71A may be used by a processor as a means of demonstrating sufficient guarantees as described in subsection (2).”
- (5) In section 66 (security of processing), at the end insert—
 - “(3) Adherence to a code of conduct approved under section 71A may be used by a controller or processor as a means of demonstrating compliance with subsection (1).”
- (6) After section 71 insert—
 - “Codes of conduct

71A Codes of conduct

- (1) The Commissioner must encourage expert public bodies to produce codes of conduct intended to contribute to compliance with this Part.
- (2) Under subsection (1), the Commissioner must, among other things, encourage the production of codes which take account of the specific features of the various processing sectors.
- (3) For the purposes of this section—
 - (a) “public body” means a body or other person whose functions are, or include, functions of a public nature, and

35

- (b) a public body is “expert” if, in the Commissioner’s opinion, the body has the knowledge and experience needed to produce a code of conduct described in subsection (1).
- (4) A code of conduct described in subsection (1) may, for example, make provision with regard to— 5
- (a) lawful and fair processing;
 - (b) the collection of personal data;
 - (c) the information provided to the public and to data subjects;
 - (d) the exercise of the rights of data subjects;
 - (e) the measures and procedures referred to in sections 56, 57 and 62; 10
 - (f) the notification of personal data breaches to the Commissioner and the communication of personal data breaches to data subjects;
 - (g) the transfer of personal data to third countries or international organisations; 15
 - (h) out-of-court proceedings and other dispute resolution procedures for resolving disputes between controllers and data subjects with regard to processing.
- (5) The Commissioner must encourage expert public bodies to submit codes of conduct described in subsection (1) to the Commissioner in draft. 20
- (6) Where an expert public body does so, the Commissioner must— 25
- (a) provide the body with an opinion on whether the code correctly reflects the requirements of this Part,
 - (b) decide whether to approve the code, and
 - (c) if the code is approved, register and publish the code.
- (7) Subsections (5) and (6) apply in relation to amendments of a code of conduct that is for the time being approved under this section as they apply in relation to a code.” 30

International transfers of personal data

84 Transfers of personal data to third countries and international organisations

- (1) Schedule 7 amends Chapter 5 of the UK GDPR (general processing and transfers of personal data to third countries and international organisations).
- (2) Schedule 8 amends Chapter 5 of Part 3 of the 2018 Act (law enforcement processing and transfers of personal data to third countries and international organisations). 35
- (3) In Schedule 9—
 - (a) Part 1 contains minor and consequential amendments, and
 - (b) Part 2 contains transitional provision. 40

Safeguards for processing for research etc purposes

85 Safeguards for processing for research etc purposes

- (1) The UK GDPR is amended in accordance with subsections (2) to (4).
- (2) After Chapter 8 insert –

“CHAPTER 8A

5

Safeguards for processing for research, archiving or statistical purposes

Article 84A

Research, archives and statistics

1. This Chapter makes provision about the processing of personal data –
 - (a) for the purposes of scientific research or historical research, 10
 - (b) for the purposes of archiving in the public interest, or
 - (c) for statistical purposes.
2. Those purposes are referred to in this Chapter as “RAS purposes”.

Article 84B

Additional requirements when processing for RAS purposes

15

1. Personal data may only be processed for RAS purposes if –
 - (a) the processing consists of the collection of the personal data (whether from the data subject or otherwise),
 - (b) the processing is carried out in order to convert the personal data into information which can be processed in a manner which does not permit the identification of a data subject, or 20
 - (c) without the processing, the RAS purposes cannot be fulfilled.
2. Processing of personal data for RAS purposes must be carried out subject to appropriate safeguards for the rights and freedoms of the data subject. 25

Article 84C

Appropriate safeguards

1. This Article makes provision about when the requirement under Article 84B(2) for processing of personal data to be carried out subject to appropriate safeguards is satisfied. 30
2. The requirement is not satisfied if the processing is likely to cause substantial damage or substantial distress to a data subject to whom the personal data relates.
3. The requirement is not satisfied if the processing is carried out for the purposes of measures or decisions with respect to a particular data 35

subject to whom the personal data relates, except where the purposes for which the processing is carried out include the purposes of approved medical research.

4. The requirement is only satisfied if the safeguards include technical and organisational measures for the purpose of ensuring respect for the principle of data minimisation (see Article 5(1)(c)), such as, for example, pseudonymisation. 5

5. In this Article –
 - “approved medical research” means medical research carried out by a person who has approval to carry out that research from –
 - (a) a research ethics committee recognised or established by the Health Research Authority under Chapter 2 of Part 3 of the Care Act 2014, or
 - (b) a body appointed by any of the following for the purpose of assessing the ethics of research involving individuals –
 - (i) the Secretary of State, the Scottish Ministers, the Welsh Ministers or a Northern Ireland department;
 - (ii) a relevant NHS body;
 - (iii) United Kingdom Research and Innovation or a body that is a Research Council for the purposes of the Science and Technology Act 1965;
 - (iv) an institution that is a research institution for the purposes of Chapter 4A of Part 7 of the Income Tax (Earnings and Pensions) Act 2003 (see section 457 of that Act);

 - “relevant NHS body” means –
 - (a) an NHS trust or NHS foundation trust in England,
 - (b) an NHS trust or Local Health Board in Wales,
 - (c) a Health Board or Special Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978,
 - (d) the Common Services Agency for the Scottish Health Service, or
 - (e) any of the health and social care bodies in Northern Ireland falling within paragraphs (b) to (e) of section 1(5) of the Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1 (N.I.)).

Article 84D

Appropriate safeguards: further provision

1. The Secretary of State may by regulations make further provision about when the requirement for appropriate safeguards under Article 84B(2) is, or is not, satisfied. 5
 2. Regulations under this Article may not amend or revoke Article 84C(2), (3) or (4) (but may change the meaning of “approved medical research” for the purposes of Article 84C).
 3. Regulations under this Article are subject to the affirmative resolution procedure.” 10
- (3) In the heading of Chapter 9, after “relating to” insert “other”.
- (4) Omit Article 89 (safeguards and derogations relating to processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes).
- (5) The 2018 Act is amended in accordance with subsections (6) and (7). 15
- (6) Omit section 19 (processing for archiving, research and statistical purposes: safeguards) and the italic heading before it.
- (7) In section 41(1) (safeguards: archiving), for “necessary” substitute “carried out”.
- 86 Section 85: consequential provision** 20
- (1) In the UK GDPR –
 - (a) in Article 5(1)(e) (storage limitation), for “Article 89(1)” to “data subject” substitute “Article 84B”,
 - (b) in Article 9(2)(j) (processing of special categories of personal data), for “in accordance with Article 89(1) (as supplemented by section 19 of the 2018 Act)” substitute “, is carried out in accordance with Article 84B and is”, 25
 - (c) in Article 17(3)(d) (right to erasure), for “Article 89(1)” substitute “Article 84B”, and
 - (d) in Article 21(6) (right to object), omit “pursuant to Article 89(1)”. 30
 - (2) In the 2018 Act –
 - (a) in section 24(4) (manual unstructured data held by FOI public authorities), after paragraph (b) insert –

“(ba) Chapter 8A (safeguards for processing for research, archiving or statistical purposes);”, 35
 - (b) in paragraph 4(b) of Schedule 1 (special categories of personal data and criminal convictions etc data: research etc), for “Article 89(1) of the UK GDPR (as supplemented by section 19)” substitute “Article 84B of the UK GDPR”, and

- (c) in Schedule 2 (exemptions etc from the UK GDPR) –
- (i) in paragraph 27(3)(a) (research and statistics), for “Article 89(1) of the UK GDPR (as supplemented by section 19)” substitute “Article 84B of the UK GDPR”, and
 - (ii) in paragraph 28(3) (archiving), for “Article 89(1) of the UK GDPR (as supplemented by section 19)” substitute “Article 84B of the UK GDPR”. 5
- (3) In section 279(2) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13) (information for research), for “Article 89(1) of the UK GDPR (archiving in the public interest, scientific or historical research and statistics)” substitute “Article 84A of the UK GDPR (research, archives and statistics)”. 10

National security

87 National security exemption

- (1) The 2018 Act is amended in accordance with subsections (2) to (10).
- (2) In section 26(2)(f) (national security and defence exemption), before sub-paragraph (i) insert – 15
- “(zi) Article 77 (right to lodge a complaint with the Commissioner);”.
- (3) In section 44 (controller’s general duties to provide information to data subject) – 20
- (a) in subsection (4), omit paragraph (d) (grounds for restricting information provided: national security),
 - (b) in subsection (5), after “restricted” insert “under subsection (4)”, and
 - (c) in subsection (7)(a), after “subsection (2)” insert “in reliance on subsection (4)”. 25
- (4) In section 45 (right of access by the data subject) –
- (a) in subsection (4), omit paragraph (d) (grounds for restricting information provided: national security),
 - (b) in subsection (5), after “restricted” insert “under subsection (4)”, and
 - (c) in subsection (7)(a), after “subsection (1)” insert “in reliance on subsection (4)”. 30
- (5) In section 48 (requests by data subject for rectification or erasure of personal data) –
- (a) in subsection (3), omit paragraph (d) (grounds for restricting information provided: national security), 35
 - (b) in subsection (4) –
 - (i) for “(1)” substitute “(1)(b)(i)”, and
 - (ii) after “restricted” insert “under subsection (3)”, and
 - (c) in subsection (6)(a), after “subsection (1)(b)(i)” insert “in reliance on subsection (3)”. 40

- (6) In section 68(7) (communication of a personal data breach to the data subject: grounds for restricting information provided), omit paragraph (d) (national security).
- (7) In Chapter 6 of Part 3 (law enforcement processing: supplementary), before section 79 insert –

5

“78A National security exemption

- (1) A provision mentioned in subsection (2) does not apply to personal data processed for law enforcement purposes if exemption from the provision is required for the purposes of safeguarding national security.

- (2) The provisions are –

10

- (a) Chapter 2 of this Part (principles), except for the provisions listed in subsection (3);
- (b) Chapter 3 of this Part (rights of the data subject);
- (c) in Chapter 4 of this Part –

- (i) section 67 (notification of personal data breach to the Commissioner);

15

- (ii) section 68 (communication of personal data breach to the data subject);

- (d) Chapter 5 of this Part (transfers of personal data to third countries etc), except for the provisions listed in subsection (4);

20

- (e) in Part 5 –

- (i) section 119 (inspection in accordance with international obligations);

- (ii) in Schedule 13 (other general functions of the Commissioner), paragraphs 1(1)(a) and (g) and 2;

25

- (f) in Part 6 –

- (i) sections 142 to 154 and Schedule 15 (Commissioner’s notices and powers of entry and inspection);

- (ii) sections 170 to 173 (offences relating to personal data);

- (g) in Part 7, section 187 (representation of data subjects).

30

- (3) The provisions of Chapter 2 of this Part (principles) which are excepted from the list in subsection (2) are –

- (a) section 35(1) (the first data protection principle) so far as it requires processing of personal data to be lawful;

- (b) section 35(2) to (5) (lawfulness of processing and restrictions on sensitive processing);

35

- (c) section 42 (safeguards: sensitive processing);

- (d) Schedule 8 (conditions for sensitive processing).

- (4) The provisions of Chapter 5 of this Part (transfers of personal data to third countries etc) which are excepted from the list in subsection (2) are –

40

- (a) the following provisions of section 73 –

-
- (i) subsection (1)(a) (conditions for transfer), so far as it relates to the condition in subsection (2) of that section, and subsection (2) (transfer must be necessary for a law enforcement purpose);
 - (ii) subsections (1)(b), (5) and (6) (conditions for transfer of personal data originally made available by a member State);
 - (b) section 78 (subsequent transfers).”
 - (8) In section 79 (national security: certificate) –
 - (a) omit subsections (1) to (3),
 - (b) after subsection (3) insert –
 - “(3A) Subject to subsection (5), a certificate signed by a Minister of the Crown certifying that exemption from all or any of the provisions listed in section 78A(2) is, or at any time was, required in relation to any personal data for the purposes of safeguarding national security is conclusive evidence of that fact.”,
 - (c) in subsection (4), for “subsection (1)” substitute “subsection (3A)–
 - (a) may identify the personal data to which it applies by means of a general description, and
 - (b)”,
 - (d) in subsection (5), for “subsection (1)” substitute “subsection (3A)”,
 - (e) in subsection (7) –
 - (i) for “a restriction falls within a general description in a certificate issued under subsection (1)” substitute “a certificate under subsection (3A) which identifies the personal data to which it applies by means of a general description applies to any personal data”, and
 - (ii) for “the restriction does not fall within that description” substitute “the certificate does not apply to the personal data in question”,
 - (f) in subsection (8) –
 - (i) for “the restriction” substitute “the certificate”, and
 - (ii) for “to fall within the general description” substitute “so to apply”,
 - (g) in subsection (10), for “subsection (1)” substitute “subsection (3A)”,
 - (h) in subsection (11), for “subsection (1)” substitute “subsection (3A)”,
 - (i) in subsection (12), for “subsection (1)” substitute “subsection (3A)”, and
 - (j) omit subsection (13).
 - (9) In section 110(2) (intelligence services processing: national security) –
 - (a) in paragraph (a), after “Chapter 2” insert “of this Part”,
 - (b) in paragraph (b), after “Chapter 3” insert “of this Part”, and

- (c) in paragraph (c), after “Chapter 4” insert “of this Part”.
- (10) In section 186(3) (data subject’s rights etc: exceptions), after paragraph (c) insert –
- “(ca) in Part 3 of this Act, section 78A, and”.
- (11) In the provisions listed in subsection (12), for “subsection (4) of that section” substitute “section 45(4) or 78A of that Act”. 5
- (12) The provisions are –
- (a) section 40(4A)(b) and (5B)(d) of the Freedom of Information Act 2000 (personal data which is exempt information);
 - (b) section 38(3A)(b) of the Freedom of Information (Scotland) Act 2002 (asp 13) (personal data which is exempt information); 10
 - (c) regulation 13(3A)(b) and (5B)(d) of the Environmental Information Regulations 2004 (S.I. 2004/3391) (restriction on disclosure of personal data);
 - (d) regulation 11(4A)(b) of the Environmental Information (Scotland) Regulations 2004 (S.S.I. 2004/520) (restriction on disclosure of personal data); 15
 - (e) regulation 45(1C)(b) of the Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005 (S.I. 2005/2042) (personal data which is sensitive information); 20
 - (f) regulation 39(1C)(b) of the Civil Contingencies Act 2004 (Contingency Planning) (Scotland) Regulations 2005 (S.S.I. 2005/494) (personal data which is sensitive information).

Intelligence services

- 88 Joint processing by intelligence services and competent authorities** 25
- (1) Part 4 of the 2018 Act (intelligence services processing) is amended as follows.
- (2) In section 82 (processing to which Part 4 applies) –
- (a) before subsection (1) insert –
- “(A1) This Part –
- (a) applies to processing of personal data by an intelligence service, and 30
 - (b) applies to processing of personal data by a qualifying competent authority where the processing is the subject of a designation notice that is for the time being in force (see sections 82A to 82E).”, 35
- (b) in subsection (1) –
- (i) after “applies” insert “only”,
 - (ii) in paragraph (a), for “the processing by an intelligence service” substitute “processing”, and

-
- (iii) in paragraph (b), for “the processing by an intelligence service” substitute “processing”,
 - (c) after subsection (2) insert –
 - “(2A) In this Part –
 - “competent authority” has the same meaning as in Part 3; 5
 - “qualifying competent authority” means a competent authority specified or described in regulations made by the Secretary of State.”, and
 - (d) after subsection (3) insert – 10
 - “(4) Regulations under this section are subject to the affirmative resolution procedure.”
- (3) After section 82 insert –
- “82A Designation of processing by a qualifying competent authority**
- (1) For the purposes of this Part, the Secretary of State may give a notice designating processing of personal data by a qualifying competent authority (a “designation notice”) where – 15
 - (a) an application for designation of the processing is made in accordance with this section, and
 - (b) the Secretary of State considers that designation of the processing is required for the purposes of safeguarding national security. 20
 - (2) The Secretary of State may only designate processing by a qualifying competent authority that is carried out by the authority as a joint controller with at least one intelligence service. 25
 - (3) The Secretary of State may not designate processing by a qualifying competent authority that consists of the transfer of personal data to –
 - (a) a country or territory outside the United Kingdom, or
 - (b) an international organisation.
 - (4) A designation notice must – 30
 - (a) specify or describe the processing and qualifying competent authority that are designated, and
 - (b) be given to the applicants for the designation (and see also section 82D).
 - (5) An application for designation of processing of personal data by a qualifying competent authority must be made jointly by – 35
 - (a) the qualifying competent authority, and
 - (b) the intelligence service with which the processing is to be carried out.

- (6) An application may be made in respect of more than one qualifying competent authority and in respect of processing with more than one intelligence service.
 - (7) The application must—
 - (a) describe the processing, including the intended purposes and means of processing, and 5
 - (b) explain why the applicants consider that designation is required for the purposes of safeguarding national security.
 - (8) Before giving a designation notice, the Secretary of State must consult the Commissioner. 10
 - (9) In this section, “joint controller”, in relation to processing of personal data, means a controller whose responsibilities for compliance with this Part in relation to the processing are determined in an arrangement under section 104.
- 82B Duration of designation notice** 15
- (1) A designation notice must state when it comes into force.
 - (2) A designation notice ceases to be in force at the earliest of the following times—
 - (a) at the end of the period of 5 years beginning when the notice comes into force; 20
 - (b) (if relevant) at the end of a shorter period specified in the notice;
 - (c) when the notice is withdrawn under section 82C.
 - (3) The Secretary of State may give a further designation notice in respect of processing that is, or has been, the subject of a previous designation notice. 25
- 82C Review and withdrawal of designation notice**
- (1) Subsections (2) to (4) apply where processing is the subject of a designation notice for the time being in force.
 - (2) A person who applied for the designation of the processing must notify the Secretary of State without undue delay if the person considers that the designation is no longer required for the purposes of safeguarding national security. 30
 - (3) A person who applied for the designation of the processing must, on a request from the Secretary of State, provide— 35
 - (a) a description of the processing that is being, or is intended to be, carried out in reliance on the notice, and

- (b) an explanation of why the person considers that designation of the processing continues to be required for the purposes of safeguarding national security.
- (4) The Secretary of State must at least annually –
 - (a) review each designation notice that is for the time being in force, and 5
 - (b) consider whether designation of the processing which is the subject of the notice continues to be required for the purposes of safeguarding national security.
- (5) The Secretary of State – 10
 - (a) may withdraw a designation notice by giving a further notice (a “withdrawal notice”) to the persons who applied for the designation, and
 - (b) must give a withdrawal notice if the Secretary of State considers that designation of some or all of the processing to which the notice applies is no longer required for the purposes of safeguarding national security (whether as a result of a review required under subsection (4) or otherwise). 15
- (6) A withdrawal notice must – 20
 - (a) withdraw the designation notice completely, and
 - (b) state when it comes into force.
- (7) In determining when a withdrawal notice required under subsection (5)(b) comes into force, the Secretary of State must consider – 25
 - (a) the desirability of the processing ceasing to be designated as soon as possible, and
 - (b) where relevant, the time needed to effect an orderly transition to new arrangements for the processing of personal data.

82D Records of designation notices

- (1) Where the Secretary of State gives a designation notice – 30
 - (a) the Secretary of State must send a copy of the notice to the Commissioner, and
 - (b) the Commissioner must publish a record of the notice.
- (2) The record must contain – 35
 - (a) the Secretary of State’s name,
 - (b) the date on which the notice was given,
 - (c) the date on which the notice ceases to have effect (if not previously withdrawn), and
 - (d) subject to subsection (3), the rest of the text of the notice.
- (3) The Commissioner must not publish the text, or a part of the text, of the notice if – 40

- (a) the Secretary of State has determined that publishing the text or that part of the text—
 - (i) would be against the interests of national security,
 - (ii) would be contrary to the public interest, or
 - (iii) might jeopardise the safety of any person, and
 - (b) the Secretary of State has notified the Commissioner of that determination.
- (4) The Commissioner must keep the record of the notice available to the public while the notice is in force.
- (5) Where the Secretary of State gives a withdrawal notice, the Secretary of State must send a copy of the notice to the Commissioner.

82E Appeal against designation notice

- (1) A person directly affected by a designation notice may appeal to the Tribunal against the notice.
- (2) If, on an appeal under this section, the Tribunal finds that, applying the principles applied by a court on an application for judicial review, the Secretary of State did not have reasonable grounds for giving the notice, the Tribunal may—
 - (a) allow the appeal, and
 - (b) quash the notice.”

89 Joint processing: consequential amendments

- (1) The 2018 Act is amended as follows.
- (2) In section 1(5) (overview: Part 4), at the end insert “(and certain processing carried out by competent authorities jointly with the intelligence services)”.
- (3) In section 29 (processing to which Part 3 applies), after subsection (1) insert—
“(1A) This Part does not apply to processing to which Part 4 applies by virtue of a designation notice (see section 82A).”
- (4) In section 83 (meaning of “controller” and “processor” in Part 4)—
 - (a) before subsection (1) insert—
“(A1) For the purposes of this Part—
 - (a) an intelligence service is the “controller” in relation to the processing of personal data if it satisfies subsection (1) alone or jointly with others, and
 - (b) a qualifying competent authority is the “controller” in relation to the processing of personal data that is the subject of a designation notice that is for the time being in force if the authority satisfies subsection (1) jointly with others.”,

- (b) in subsection (1), for the words before paragraph (a) substitute “This subsection is satisfied by a person who –”, and
- (c) in subsection (2), for “intelligence service on which” substitute “person on whom”.
- (5) In section 84 (other definitions) – 5
- (a) after subsection (2) insert –
- “(2A) “Designation notice” has the meaning given in section 82A.”,
and
- (b) before subsection (7) insert –
- “(6B) “Withdrawal notice” has the meaning given in section 82C.” 10
- (6) In section 104(1) (joint controllers), for “intelligence services” substitute “controllers”.
- (7) In section 202(1)(a)(i) (proceedings in the First-tier Tribunal: contempt) after “79,” insert “82E,”.
- (8) In section 203(1) (Tribunal Procedure Rules), after “79,” insert “82E,”. 15
- (9) In section 206 (index of defined expressions), in the Table –
- (a) in the entry for “competent authority” –
- (i) for “Part 3” substitute “Parts 3 and 4”, and
- (ii) for “section 30” substitute “sections 30 and 82”, and
- (b) at the appropriate places insert – 20
- | | |
|---|--------------|
| “designation notice (in Part 4) | section 84”; |
| “qualifying competent authority (in Part 4) | section 82”; |
| “withdrawal notice (in Part 4) | section 84”. |

Information Commissioner’s role 25

90 Duties of the Commissioner in carrying out functions

- (1) The 2018 Act is amended as follows.
- (2) Omit section 2(2) (duty of Commissioner when carrying out functions).
- (3) After section 120 insert –

“Duties in carrying out functions 30

120A Principal objective

It is the principal objective of the Commissioner, in carrying out functions under the data protection legislation –

- (a) to secure an appropriate level of protection for personal data, having regard to the interests of data subjects, controllers and others and matters of general public interest, and
- (b) to promote public trust and confidence in the processing of personal data.

5

120B Duties in relation to functions under the data protection legislation

In carrying out functions under the data protection legislation, the Commissioner must have regard to such of the following as appear to the Commissioner to be relevant in the circumstances –

- (a) the desirability of promoting innovation;
- (b) the desirability of promoting competition;
- (c) the importance of the prevention, investigation, detection and prosecution of criminal offences;
- (d) the need to safeguard public security and national security;
- (e) the fact that children may be less aware of the risks and consequences associated with processing of personal data and of their rights in relation to such processing.

10

15

120C Strategy

- (1) The Commissioner must prepare a strategy for carrying out the Commissioner’s functions under the data protection legislation in accordance with the Commissioner’s duties under –
 - (a) sections 120A and 120B,
 - (b) section 108 of the Deregulation Act 2015 (exercise of regulatory functions: economic growth), and
 - (c) section 21 of the Legislative and Regulatory Reform Act 2006 (exercise of regulatory functions: principles).
- (2) The Commissioner must –
 - (a) review the strategy from time to time, and
 - (b) revise the strategy as appropriate.
- (3) The Commissioner must publish the strategy and any revised strategy.

20

25

30

120D Duty to consult other regulators

- (1) The Commissioner must, at such times as the Commissioner considers appropriate, consult the persons mentioned in subsection (2) about how the manner in which the Commissioner exercises functions under the data protection legislation may affect economic growth, innovation and competition.
- (2) The persons are –
 - (a) such persons exercising regulatory functions as the Commissioner considers appropriate;

35

- (b) such other persons as the Commissioner considers appropriate.
- (3) In this section, “regulatory function” has the meaning given by section 111 of the Deregulation Act 2015.”
- (4) In section 139 (reporting to Parliament), after subsection (1) insert—
- “(1A) In connection with the Commissioner’s functions under the data protection legislation, the report must contain (among other things)— 5
- (a) a review of what the Commissioner has done during the reporting period to comply with the duties under—
- (i) sections 120A and 120B,
- (ii) section 108 of the Deregulation Act 2015, and 10
- (iii) section 21 of the Legislative and Regulatory Reform Act 2006,
- including a review of the operation of the strategy prepared and published under section 120C;
- (b) a review of what the Commissioner has done during the reporting period to comply with the duty under section 120D. 15
- (1B) In subsection (1A), “the reporting period” means the period to which the report relates.”
- (5) The Commissioner must prepare and publish a strategy in accordance with section 120C of the 2018 Act before the end of the period of 18 months beginning with the day on which this section comes into force. 20

91 Codes of practice for the processing of personal data

- (1) The 2018 Act is amended in accordance with subsections (2) to (6).
- (2) After section 124 insert—
- “124A Other codes of practice” 25**
- (1) The Commissioner must prepare appropriate codes of practice giving guidance as to good practice in the processing of personal data if required to do so by regulations made by the Secretary of State.
- (2) Regulations under this section—
- (a) must describe the personal data or processing to which the code of practice is to relate, and 30
- (b) may describe the persons or classes of person to whom it is to relate.
- (3) Where a code under this section is in force, the Commissioner may prepare amendments of the code or a replacement code. 35
- (4) Before preparing a code or amendments under this section, the Commissioner must consult the Secretary of State and such of the following as the Commissioner considers appropriate—
- (a) trade associations;

- (b) data subjects;
 - (c) persons who appear to the Commissioner to represent the interests of data subjects.
- (5) A code under this section may include transitional provision or savings.
- (6) Regulations under this section are subject to the negative resolution procedure. 5
- (7) In this section –
 - “good practice in the processing of personal data” means such practice in the processing of personal data as appears to the Commissioner to be desirable having regard to the interests of data subjects and others, including compliance with the requirements of the data protection legislation; 10
 - “trade association” includes a body representing controllers or processors.”
- (3) In section 125 (approval of codes prepared under sections 121 to 124) – 15
 - (a) in the heading, for “124” substitute “124A”,
 - (b) in subsection (1), for “or 124” substitute “, 124 or 124A”,
 - (c) in subsection (3), for “or 124” substitute “, 124 or 124A”,
 - (d) for subsection (5) substitute –
 - “(5) If the Commissioner is prevented by subsection (3) from issuing a code that is not a replacement code, the Commissioner must prepare another version of the code.”, and 20
 - (e) in subsection (9), for “or 124” substitute “, 124 or 124A”.
- (4) In section 126 (publication and review of codes issued under section 125(4)), in subsection (4), for “or 124(2)” substitute “, 124A(2) or 124A(3)”. 25
- (5) Omit section 128 (other codes of practice).
- (6) In section 129 (consensual audits), in subsection (3), for “128” substitute “124A”.
- (7) In section 19AC of the Registration Service Act 1953 (code of practice), in subsection (11), for “128” substitute “124A”.
- (8) In the Statistics and Registration Service Act 2007 – 30
 - (a) in section 45 (information held by HMRC), in subsection (4A), for “128” substitute “124A”,
 - (b) in section 45A (information held by other public authorities), in subsection (8), for “128” substitute “124A”,
 - (c) in section 45E (further provisions about powers in sections 45B, 45C and 45D), in subsection (16), for “128” substitute “124A”, and 35
 - (d) in section 53A (disclosure by the Board to devolved administrations), in subsection (9), for “128” substitute “124A”.
- (9) In the Digital Economy Act 2017 –

- (a) in section 43 (code of practice), in subsection (13), for “128” substitute “124A”,
- (b) in section 52 (code of practice), in subsection (13), for “128” substitute “124A”,
- (c) in section 60 (code of practice), in subsection (13), for “128” substitute “124A”, and 5
- (d) in section 70 (code of practice), in subsection (15), for “128” substitute “124A”.

92 Codes of practice: panels and impact assessments

In the 2018 Act, after section 124A (inserted by section 91 of this Act) insert— 10

“124B Panels to consider codes of practice

- (1) This section applies where a code is prepared under section 121, 122, 123, 124 or 124A, subject to subsection (11).
- (2) The Commissioner must establish a panel of individuals to consider the code. 15
- (3) The panel must consist of—
 - (a) individuals the Commissioner considers have expertise in the subject matter of the code, and
 - (b) individuals the Commissioner considers—
 - (i) are likely to be affected by the code, or 20
 - (ii) represent persons likely to be affected by the code.
- (4) Before the panel begins to consider the code, the Commissioner must—
 - (a) publish the code in draft, and
 - (b) publish a statement that—
 - (i) states that a panel has been established to consider the code, 25
 - (ii) identifies the members of the panel,
 - (iii) explains the process by which they were selected, and
 - (iv) explains the reasons for their selection.
- (5) Where at any time it appears to the Commissioner that a member of the panel is not willing or able to serve as a member of the panel, the Commissioner may select another individual to be a member of the panel. 30
- (6) Where the Commissioner selects an individual to be a member of the panel under subsection (5), the Commissioner must publish a statement that— 35
 - (a) identifies the member of the panel,
 - (b) explains the process by which the member was selected, and
 - (c) explains the reasons for the member’s selection.

- (7) The Commissioner must make arrangements—
- (a) for the members of the panel to consider the code with one another (whether in person or otherwise), and
 - (b) for the panel to prepare and submit to the Commissioner a report on the code within such reasonable period as is determined by the Commissioner. 5
- (8) If the panel submits to the Commissioner a report on the code within the period determined by the Commissioner, the Commissioner must as soon as reasonably practicable—
- (a) make any alterations to the code that the Commissioner considers appropriate in the light of the report, and 10
 - (b) publish—
 - (i) the code in draft,
 - (ii) the report or a summary of it, and
 - (iii) in a case where a recommendation in the report to alter the code has not been accepted by the Commissioner, an explanation of why it has not been accepted. 15
- (9) The Commissioner may pay remuneration and expenses to the members of the panel.
- (10) This section applies in relation to amendments prepared under section 121, 122, 123, 124 or 124A as it applies in relation to codes prepared under those sections, subject to subsection (11). 20
- (11) The Secretary of State may by regulations provide that this section does not apply, or applies with modifications, in the case of a code or amendments of a code that— 25
- (a) is prepared under section 124A, and
 - (b) is specified in the regulations.
- (12) Regulations under this section are subject to the negative resolution procedure.

124C Impact assessments for codes of practice 30

- (1) Where a code is prepared under section 121, 122, 123, 124 or 124A, the Commissioner must carry out and publish an assessment of—
- (a) who would be likely to be affected by the code, and
 - (b) the effect the code would be likely to have on them.
- (2) This section applies in relation to amendments prepared under section 121, 122, 123, 124 or 124A as it applies in relation to codes prepared under those sections.” 35

93 Manifestly unfounded or excessive requests to the Commissioner

- (1) The 2018 Act is amended in accordance with subsections (2) and (3).

- (2) In section 135 (manifestly unfounded or excessive requests made to the Commissioner) –
- (a) before subsection (1) insert –
- “(A1) This section makes provision about cases in which a request made to the Commissioner, to which the Commissioner is required or authorised to respond under the data protection legislation, is manifestly unfounded or excessive.”, 5
- (b) in subsection (1) omit the words from the beginning to “excessive”,
- (c) after subsection (1) insert –
- “(1A) In subsection (1) – 10
- (a) the reference in paragraph (a) to charging a reasonable fee is, in a case in which section 134 is relevant, a reference to doing so under that section, and
- (b) paragraph (b) is not to be read as implying anything about whether the Commissioner may refuse to act on requests that are neither manifestly unfounded nor excessive.”, 15
- (d) in subsection (3), for “(1)” substitute “(A1)”,
- (e) omit subsection (4), and
- (f) after that subsection insert – 20
- “(5) Article 57(3) of the UK GDPR (performance of Information Commissioner’s tasks generally to be free of charge for data subject) has effect subject to this section.”
- (3) In section 136(1) (guidance about fees), omit paragraph (b) and the “or” before it. 25
- (4) In Article 57 of the UK GDPR (Information Commissioner’s tasks), omit paragraph 4.

94 Analysis of performance

In the 2018 Act, after section 139 insert –

“139A Analysis of performance 30

- (1) The Commissioner must prepare and publish an analysis of the Commissioner’s performance using key performance indicators.
- (2) The analysis must be prepared and published at least annually.

- (3) In this section, “key performance indicators” means factors by reference to which the Commissioner’s performance can be measured most effectively.

Documents and notices”.

95 Notices from the Commissioner

5

- (1) The 2018 Act is amended in accordance with subsections (2) and (3).
(2) Omit section 141 (notices from the Commissioner).
(3) After that section insert—

“141A Notices from the Commissioner

- (1) This section applies in relation to a notice authorised or required by this Act to be given to a person by the Commissioner. 10
- (2) The notice may be given to the person by—
(a) delivering it by hand to a relevant individual,
(b) leaving it at the person’s proper address,
(c) sending it by post to the person at that address, or 15
(d) sending it by email to the person’s email address.
- (3) A “relevant individual” means—
(a) in the case of a notice to an individual, that individual;
(b) in the case of a notice to a body corporate (other than a 20
partnership), an officer of that body;
(c) in the case of a notice to a partnership, a partner in the partnership or a person who has the control or management of the partnership business;
(d) in the case of a notice to an unincorporated body (other than 25
a partnership), a member of its governing body.
- (4) For the purposes of subsection (2)(b) and (c), and section 7 of the Interpretation Act 1978 (services of documents by post) in its application to those provisions, a person’s proper address is—
(a) in a case where the person has specified an address as one at 30
which the person, or someone acting on the person’s behalf, will accept service of notices or other documents, that address;
(b) in any other case, the address determined in accordance with subsection (5).
- (5) The address is—
(a) in a case where the person is a body corporate with a registered 35
office in the United Kingdom, that office;
(b) in a case where paragraph (a) does not apply and the person is a body corporate, partnership or unincorporated body with a principal office in the United Kingdom, that office;

- (c) in any other case, an address in the United Kingdom at which the Commissioner believes, on reasonable grounds, that the notice will come to the attention of the person.
- (6) A person’s email address is –
- (a) an email address published for the time being by that person as an address for contacting that person, or 5
- (b) if there is no such published address, an email address by means of which the Commissioner believes, on reasonable grounds, that the notice will come to the attention of that person. 10
- (7) A notice sent by email is treated as given 48 hours after it was sent, unless the contrary is proved.
- (8) In this section, “officer”, in relation to a body corporate, means a director, manager, secretary or other similar officer of the body.
- (9) This section does not limit other lawful means of giving a notice.” 15
- (4) In Schedule 2 to the Electronic Identification and Trust Services for Electronic Transactions Regulations 2016 (S.I. 2016/696) (Commissioner’s enforcement powers), in paragraph 1(b), for “141” substitute “141A”.

Enforcement

- 96 Power of the Commissioner to require documents** 20
- (1) The 2018 Act is amended as follows.
- (2) In section 142 (information notices) –
- (a) in subsection (1) –
- (i) in paragraph (a), after “information” insert “or documents”, and 25
- (ii) in paragraph (b), after “information” insert “or documents”,
- (b) in subsection (2)(b), after “information” insert “or documents”,
- (c) in subsection (3) –
- (i) in paragraph (a), after “information”, in both places it occurs, insert “or documents”, 30
- (ii) in paragraph (b), after “information” insert “or documents”,
- (iii) in paragraph (c), after “information” insert “or documents”, and
- (iv) in paragraph (d), after “information” insert “or documents”,
- (d) in subsection (5), after “information”, in the second place it occurs, insert “or documents”, 35
- (e) in subsection (6), after “information”, in the second place it occurs, insert “or documents”, and
- (f) in subsection (7) –

- (i) in paragraph (a), for “is” substitute “or documents are”, and
 - (ii) in the words after paragraph (b), after “information” insert “or documents”.
- (3) In section 143 (information notices: restrictions) –
 - (a) in subsection (1)(b)(ii), for “is” substitute “or documents are”, 5
 - (b) in subsection (2), after “information”, in the second place it occurs, insert “or documents”,
 - (c) in subsection (3), for “in respect” substitute “or documents to the extent that requiring the person to do so would result in the disclosure”,
 - (d) in subsection (4), for “in respect” substitute “or documents to the extent that requiring the person to do so would result in the disclosure”, and 10
 - (e) in subsection (6), after “information”, in the second place it occurs, insert “or documents”.
- (4) In section 145 (information orders) –
 - (a) in subsection (2) – 15
 - (i) in paragraph (a), after “information”, in the first place it occurs, insert “or documents”, and
 - (ii) in paragraph (b), after “information” insert “or documents”, and
 - (b) in subsection (3) – 20
 - (i) in paragraph (a), after “information” insert “or documents”,
 - (ii) in paragraph (b), after “information” insert “or documents”, and
 - (iii) in paragraph (c), after “information” insert “or documents”.
- (5) In section 148(1) (destroying or falsifying information and documents etc), in paragraph (a), after “information”, in the second place it occurs, insert “or a document”. 25
- (6) In section 160 (guidance about regulatory action), in subsection (3)(a), for “is” substitute “or documents are”.
- (7) In Schedule 17 (review of processing of personal data for the purposes of journalism), in paragraph 2(2) (information notices) – 30
 - (a) in paragraph (a), for “is” substitute “or documents are”, and
 - (b) in the words after paragraph (b), after “information” insert “or documents”.
- 97 Power of the Commissioner to require a report 35**
 - (1) The 2018 Act is amended as follows.
 - (2) In section 146 (assessment notices) –
 - (a) in subsection (2), after paragraph (i), insert –
 - “(j) make arrangements for an approved person to prepare a report on a specified matter; 40

-
- (k) provide to the Commissioner a report prepared in pursuance of such arrangements.”,
- (b) after subsection (3) insert—
- “(3A) An assessment notice that requires a controller or processor to make arrangements for an approved person to prepare a report may require the arrangements to include specified terms as to—
- (a) the preparation of the report;
- (b) the contents of the report;
- (c) the form in which the report is to be provided;
- (d) the date by which the report is to be completed.”,
- (c) after subsection (11) insert—
- “(11A) Where the Commissioner gives an assessment notice that requires the controller or processor to make arrangements for an approved person to prepare a report, the controller or processor is liable for the payment of the approved person’s remuneration and expenses under the arrangements.”, and
- (d) in subsection (12), before the definition of “domestic premises” insert—
- ““approved person”, in relation to a report, means a person approved to prepare the report in accordance with section 146A;”.
- (3) After section 146 insert—
- “146A Assessment notices: approval of person to prepare report etc**
- (1) This section applies where an assessment notice requires a controller or processor to make arrangements for an approved person to prepare a report.
- (2) The controller or processor must, within such period as is specified in the assessment notice, nominate to the Commissioner a person to prepare the report.
- (3) If the Commissioner is satisfied that the nominated person is a suitable person to prepare the report, the Commissioner must by written notice to the controller or processor approve the nominated person to prepare the report.
- (4) If the Commissioner is not satisfied that the nominated person is a suitable person to prepare the report, the Commissioner must by written notice to the controller or processor—
- (a) inform the controller or processor that the Commissioner has decided not to approve the nominated person to prepare the report,
- (b) inform the controller or processor of the reasons for that decision, and

- (c) approve a person who the Commissioner is satisfied is a suitable person to prepare the report to do so.
 - (5) If the controller or processor does not nominate a person within the period specified in the assessment notice, the Commissioner must by written notice to the controller or processor approve a person who the Commissioner is satisfied is a suitable person to prepare the report to do so. 5
 - (6) It is the duty of the controller or processor to give the person approved to prepare the report all such assistance as the person may reasonably require to prepare the report.” 10
 - (4) In section 155 (penalty notices), in subsection (1) –
 - (a) omit the “or” at the end of paragraph (a), and
 - (b) at the end of paragraph (b) insert “, or
 - (c) has failed to comply with a duty imposed on the person by section 146A(6).” 15
 - (5) In section 160 (guidance about regulatory action), in subsection (4), after paragraph (a) insert –
 - “(aa) provision specifying factors to be considered in determining whether to give an assessment notice to a person that imposes a requirement of a sort mentioned in section 146(2)(j); 20
 - (ab) provision about the factors the Commissioner may take into account when determining the suitability of a person to prepare a report of a sort mentioned in section 146(2)(j);”.
- 98 Assessment notices: removal of OFSTED restriction**
- In section 147 of the 2018 Act (assessment notices: restrictions), in subsection (6), omit paragraph (b) and the “or” before it. 25
- 99 Interview notices**
- (1) The 2018 Act is amended as follows.
 - (2) After section 148 insert –
 - “*Interview notices* 30
- 148A Interview notices**
- (1) This section applies where the Commissioner suspects that a controller or processor –
 - (a) has failed or is failing as described in section 149(2), or
 - (b) has committed or is committing an offence under this Act. 35

-
- (2) For the purpose of investigating the suspected failure or offence, the Commissioner may, by written notice (an “interview notice”), require an individual within subsection (3) to –
- (a) attend at a place specified in the notice, and
 - (b) answer questions with respect to any matter relevant to the investigation. 5
- (3) An individual is within this subsection if the individual –
- (a) is the controller or processor,
 - (b) is or was at any time employed by, or otherwise working for, the controller or processor, or 10
 - (c) is or was at any time concerned in the management or control of the controller or processor.
- (4) An interview notice must specify the time at which the individual must attend at the specified place and answer questions (but see the restrictions in subsections (6) and (7)). 15
- (5) An interview notice must –
- (a) indicate the nature of the suspected failure or offence that is the subject of the investigation,
 - (b) provide information about the consequences of failure to comply with the notice, and 20
 - (c) provide information about the rights under sections 162 and 164 (appeals etc).
- (6) An interview notice may not require an individual to attend at the specified place and answer questions before the end of the period within which an appeal can be brought against the notice. 25
- (7) If an appeal is brought against an interview notice, the individual to whom the notice is given need not attend at the specified place and answer questions pending the determination or withdrawal of the appeal.
- (8) If an interview notice – 30
- (a) states that, in the Commissioner’s opinion, it is necessary for the individual to attend at the specified place and answer questions urgently, and
 - (b) gives the Commissioner’s reasons for reaching that opinion, subsections (6) and (7) do not apply but the notice must not require the individual to attend at the specified place and answer questions before the end of the period of 24 hours beginning when the notice is given. 35
- (9) The Commissioner may cancel or vary an interview notice by written notice to the individual to whom it was given. 40

148B Interview notices: restrictions

- (1) An interview notice does not require an individual to answer questions to the extent that requiring the person to do so would involve an infringement of the privileges of either House of Parliament.
- (2) An interview notice does not require an individual to answer questions in respect of a communication which is made—
 - (a) between a professional legal adviser and the adviser’s client, and
 - (b) in connection with the giving of legal advice to the client with respect to obligations, liabilities or rights under the data protection legislation.
- (3) An interview notice does not require an individual to answer questions in respect of a communication which is made—
 - (a) between a professional legal adviser and the adviser’s client or between such an adviser or client and another person,
 - (b) in connection with or in contemplation of proceedings under or arising out of the data protection legislation, and
 - (c) for the purposes of such proceedings.
- (4) In subsections (2) and (3), references to the client of a professional legal adviser include references to a person acting on behalf of the client.
- (5) An interview notice does not require an individual to answer questions if doing so would, by revealing evidence of the commission of an offence, expose the individual to proceedings for that offence.
- (6) The reference to an offence in subsection (5) does not include an offence under—
 - (a) this Act;
 - (b) section 5 of the Perjury Act 1911 (false statements made otherwise than on oath);
 - (c) section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (false statements made otherwise than on oath);
 - (d) Article 10 of the Perjury (Northern Ireland) Order 1979 (S.I. 1979/1714 (N.I. 19)) (false statutory declarations and other false unsworn statements).
- (7) A statement made by an individual in response to an interview notice may not be used in evidence against that individual on a prosecution for an offence under this Act (other than an offence under section 148C) unless in the proceedings—
 - (a) in giving evidence the individual provides information inconsistent with the statement, and
 - (b) evidence relating to the statement is adduced, or a question relating to it is asked, by that individual or on that individual’s behalf.

- (8) The Commissioner may not give an interview notice with respect to the processing of personal data for the special purposes.
- (9) The Commissioner may not give an interview notice to an individual for the purpose of investigating a suspected failure or offence if the controller or processor suspected of the failure or offence is a body specified in section 23(3) of the Freedom of Information Act 2000 (bodies dealing with security matters). 5

148C False statements made in response to interview notices

It is an offence for an individual, in response to an interview notice –

- (a) to make a statement which the individual knows to be false in a material respect, or 10
- (b) recklessly to make a statement which is false in a material respect.”
- (3) In section 149 (enforcement notices), in subsection (9)(b) –
- (a) after “an assessment notice” insert “, an interview notice”, and 15
- (b) after “147” insert “, 148A, 148B”.
- (4) In section 155 (penalty notices), in subsection (1)(b), after “assessment notice” insert “, an interview notice”.
- (5) In section 157 (maximum amount of penalty), in subsection (4), after “assessment notice” insert “, an interview notice”. 20
- (6) In section 160 (guidance about regulatory action) –
- (a) in subsection (1), after paragraph (b) insert –
- “(ba) interview notices,” and
- (b) after subsection (5) insert –
- “(5A) In relation to interview notices, the guidance must include – 25
- (a) provision specifying factors to be considered in determining whether to give an interview notice to an individual;
- (b) provision about the circumstances in which the Commissioner would consider it appropriate to give an interview notice to an individual in reliance on section 148A(8) (urgent cases); 30
- (c) provision about the circumstances in which the Commissioner would consider it appropriate to vary the place or time specified in an interview notice at the request of the individual to whom the notice is given; 35
- (d) provision about the nature of interviews carried out in accordance with an interview notice;
- (e) provision about how the Commissioner will determine how to proceed if an individual does not comply with an interview notice.” 40

- (7) In section 162 (rights of appeal), in subsection (1), after paragraph (b) insert –
“(ba) an interview notice;”.
- (8) In section 164 (applications in respect of urgent notices) –
(a) in subsection (1), after “assessment notice” insert “, an interview notice”,
and 5
(b) in subsection (5), after paragraph (b) (but before the “and” at the end
of that paragraph) insert –
“(ba) in relation to an interview notice, a statement under
section 148A(8)(a),”.
- (9) In section 181 (interpretation of Part 6), at the appropriate place, insert – 10
““interview notice” has the meaning given in section 148A;”.
- (10) In section 196 (penalties for offences), in subsection (2), after “148,” insert
“148C,”.
- (11) In section 206 (index of defined expressions), at the appropriate place, insert –
“interview notice (in Part 6) | section 181”. 15
- (12) In Schedule 17 (review of processing of personal data for the purposes of
journalism) –
(a) after paragraph 3 insert –
“*Interview notices*
3A (1) Sub-paragraph (2) applies where the Commissioner gives an 20
interview notice to an individual during a relevant period.
(2) If the interview notice –
(a) states that, in the Commissioner’s opinion, it is
necessary for the individual to comply with a
requirement in the notice for the purposes of the 25
relevant review, and
(b) gives the Commissioner’s reasons for reaching that
opinion,
subsections (6) and (7) of section 148A do not apply but the
notice must not require the individual to comply with the 30
requirement before the end of the period of 24 hours
beginning when the notice is given.
(3) During a relevant period, section 148B has effect as if for
subsection (8) there were substituted –
“(8) The Commissioner may not give an individual an 35
interview notice with respect to the processing of
personal data for the special purposes unless a

determination under section 174 with respect to the data or the processing has taken effect.””, and

- (b) in paragraph 4 (applications in respect of urgent notices) –
 - (i) for “or assessment notice” substitute “, assessment notice or interview notice”, 5
 - (ii) for “or 3(2)(a)” substitute “, 3(2)(a) or 3A(2)(a)”, and
 - (iii) for “or 146(8)(a)” substitute “, 146(8)(a) or 148A(8)(a)”.

100 Penalty notices

- (1) The 2018 Act is amended as follows.
- (2) In paragraph 2 of Schedule 16 (notice of intent to impose penalty), omit sub-paragraphs (2) and (3). 10
- (3) In paragraph 4 of that Schedule (giving a penalty notice) –
 - (a) before sub-paragraph (1) insert –
 - “(A1) This paragraph applies where the Commissioner gives a notice of intent to a person. 15
 - (A2) Within the period of 6 months beginning when the notice is given, or as soon as reasonably practicable thereafter, the Commission must give to the person –
 - (a) a penalty notice, or
 - (b) written notice that the Commissioner has decided not to give a penalty notice to the person.”, 20
 - (b) in sub-paragraph (1) –
 - (i) at the beginning, insert “But”, and
 - (ii) after “penalty notice” insert “to the person”, and
 - (c) in sub-paragraph (2), for “a person” substitute “the person”. 25
- (4) In section 160 (guidance about regulatory action), in subsection (7), after paragraph (d) insert –
 - “(e) provision about the circumstances in which the Commissioner would consider it necessary to comply with the duty in paragraph 4(A2) of Schedule 16 after the period of 6 months mentioned in that paragraph.” 30

101 Annual report on regulatory action

- (1) The 2018 Act is amended as follows.
- (2) In section 139 (reporting to Parliament), before subsection (3) insert –
 - “(2A) The report under this section may include the annual report under section 161A.” 35
- (3) In the italic heading before section 160, at the end insert “and report”.

(4) After section 161 insert –

“161A Annual report on regulatory action

- (1) The Commissioner must produce and publish an annual report containing the information described in subsections (2) to (5).
- (2) The report must include the following information about UK GDPR investigations –
 - (a) the number of investigations begun, continued or completed by the Commissioner during the reporting period,
 - (b) the different types of act and omission that were the subject matter of the investigations, 10
 - (c) the enforcement powers exercised by the Commissioner in the reporting period in connection with the investigations,
 - (d) the duration of investigations that ended in the reporting period, and
 - (e) the different types of outcome in investigations that ended in that period. 15
- (3) The report must include information about the enforcement powers exercised by the Commissioner in the reporting period in connection with –
 - (a) processing of personal data by a competent authority for any of the law enforcement purposes, and 20
 - (b) processing of personal data to which Part 4 applies.
- (4) The information included in the report in accordance with subsections (2) and (3) must include information about –
 - (a) the number of penalty notices given in the reporting period that were given more than 6 months after the notice of intent was given under paragraph 2 of Schedule 16, and 25
 - (b) the reasons why that happened.
- (5) The report must include a review of how the Commissioner had regard to the guidance published under section 160 when exercising the Commissioner’s enforcement powers as described in subsections (2)(c) and (3). 30
- (6) In this section –
 - “enforcement powers” means the powers under –
 - (a) Article 58(1)(c) and (d) and (2)(a) and (b) of the UK GDPR, 35
 - (b) sections 142 to 159 of this Act,
 - (c) paragraph 2(a), (b) and (c) of Schedule 13 to this Act,
 - (d) Schedules 15 and 16 to this Act;
 - “the law enforcement purposes” has the meaning given in section 31 of this Act; 40

“the reporting period” means the period to which the report relates;

“UK GDPR investigation” means an investigation required under Article 57(1)(h) of the UK GDPR (investigations on the application of the UK GDPR).”

5

102 Complaints by data subjects

- (1) The 2018 Act is amended in accordance with subsections (2) and (3).
- (2) Before section 165 (but after the italic heading before it) insert—

“164A Complaints by data subjects to controllers

- (1) A data subject may make a complaint to the controller if the data subject considers that, in connection with personal data relating to the data subject, there is an infringement of the UK GDPR or Part 3 of this Act. 10
- (2) A controller must facilitate the making of complaints under this section by taking steps such as providing a complaint form which can be completed electronically and by other means. 15
- (3) If a controller receives a complaint under this section, the controller must acknowledge receipt of the complaint within the period of 30 days beginning when the complaint is received.
- (4) If a controller receives a complaint under this section, the controller must without undue delay— 20
 - (a) take appropriate steps to respond to the complaint, and
 - (b) inform the complainant of the outcome of the complaint.
- (5) The reference in subsection (4)(a) to taking appropriate steps to respond to the complaint includes— 25
 - (a) making enquiries into the subject matter of the complaint, to the extent appropriate, and
 - (b) informing the complainant about progress on the complaint.

164B Controllers to notify the Commissioner of the number of complaints

- (1) The Secretary of State may by regulations require a controller to notify the Commissioner of the number of complaints made to the controller under section 164A in periods specified or described in the regulations. 30
- (2) Regulations under this section may provide that a controller is required to make a notification to the Commissioner in respect of a period only in circumstances specified in the regulations. 35
- (3) Regulations under this section may include—
 - (a) provision about a matter listed in subsection (4), or

- (b) provision conferring power on the Commissioner to determine those matters.
 - (4) The matters are—
 - (a) the form and manner in which a notification must be made,
 - (b) the time at which, or period within which, a notification must be made, and
 - (c) how the number of complaints made to a controller during a period is to be calculated.
 - (5) Regulations under this section are subject to the negative resolution procedure.”
 - (3) In section 165 (complaints by data subjects to the Commissioner)—
 - (a) omit subsection (1), and
 - (b) in subsection (2), after “infringement of” insert “the UK GDPR or”.
 - (4) The UK GDPR is amended in accordance with subsections (5) and (6).
 - (5) In Article 57 (Information Commissioner’s tasks)—
 - (a) in paragraph 1, omit point (f), and
 - (b) omit paragraph 2.
 - (6) Omit Article 77 (right to lodge a complaint with the Commissioner).
 - (7) Schedule 10 to this Act contains minor and consequential amendments.
- 103 Court procedure in connection with subject access requests**
- (1) The 2018 Act is amended as follows.
 - (2) For the italic heading before section 180 substitute—

“Jurisdiction and court procedure”.
 - (3) After section 180 insert—

“180A Procedure in connection with subject access requests

 - (1) This section applies where a court is required to determine whether a data subject is entitled to information by virtue of a right under—
 - (a) Article 15 of the UK GDPR (right of access by the data subject);
 - (b) Article 20 of the UK GDPR (right to data portability);
 - (c) section 45 of this Act (law enforcement processing: right of access by the data subject);
 - (d) section 94 of this Act (intelligence services processing: right of access by the data subject).
 - (2) The court may require the controller to make available for inspection by the court so much of the information as is available to the controller.

-
- (3) But, unless and until the question in subsection (1) has been determined in the data subject’s favour, the court may not require the information to be disclosed to the data subject or the data subject’s representatives, whether by discovery (or, in Scotland, recovery) or otherwise.
- (4) Where the question in subsection (1) relates to a right under a provision listed in subsection (1)(a), (c) or (d), this section does not confer power on the court to require the controller to carry out a search for information that is more extensive than the reasonable and proportionate search required by that provision.” 5
- 104 Consequential amendments to the EITSET Regulations** 10
- (1) Schedule 2 to the Electronic Identification and Trust Services for Electronic Transactions Regulations 2016 (S.I. 2016/696) (Commissioner’s enforcement powers) is amended as follows.
- (2) In paragraph 1 (provisions of the 2018 Act applied for enforcement purposes)–
- (a) after paragraph (g) insert – 15
- “(ga) section 146A (assessment notices: approval of person to prepare report etc);”, and
- (b) after paragraph (i) insert –
- “(ia) section 148A (interview notices);
- (ib) section 148B (interview notices: restrictions); 20
- (ic) section 148C (false statements made in response to interview notices);”.
- (3) In paragraph 4(2) (modification of section 143 (information notices: restrictions))–
- (a) in paragraph (b), for “or 148” substitute “, 148 or 148C”, and 25
- (b) in paragraph (c), after “148” insert “or 148C”.
- (4) In paragraph 6 (modification of section 146 (assessment notices)), in sub-paragraph (2)–
- (a) for paragraph (b) substitute–
- “(b) subsection (2) has effect as if – 30
- (i) for “controller or processor” there were substituted “trust service provider”;
- (ii) paragraphs (h) and (i) were omitted;”,
- (b) in paragraph (c), for “subsections (7), (8), (9) and (10)” substitute “subsections (3A), (7), (8), (9), (10) and (11A)”, and 35
- (c) in paragraph (d), for “or 148” substitute “, 148 or 148C”.

- (5) After paragraph 6 insert –
“Modification of section 146A (assessment notices: approval of person to prepare report etc)
- 6A Section 146A has effect as if for “controller or processor” (in each place) there were substituted “trust service provider”. 5
- (6) After paragraph 7 insert –
“Modification of section 148A (interview notices)
- 7A Section 148A has effect as if –
- (a) in subsection (1) –
- (i) for “controller or processor” there were substituted “trust service provider”; 10
- (ii) in paragraph (a), for “as described in section 149(2)” there were substituted “to comply with the eIDAS requirements”;
- (iii) in paragraph (b), for “this Act” there were substituted “section 144, 148 or 148C or paragraph 15 of Schedule 15”; 15
- (b) in subsection (3), for “controller or processor” (in each place) there were substituted “trust service provider”.
- Modification of section 148B (interview notices: restrictions)* 20
- 7B (1) Section 148B has effect as if subsections (8) and (9) were omitted.
- (2) In that section –
- (a) subsections (2)(b) and (3)(b) have effect as if for “the data protection legislation” there were substituted “the eIDAS Regulation or the EITSET Regulations”; 25
- (b) subsection (6)(a) has effect as if for “this Act” there were substituted “section 144, 148 or 148C or paragraph 15 of Schedule 15”;
- (c) subsection (7) has effect as if for “this Act (other than an offence under section 148C)” there were substituted “section 144 or 148 or paragraph 15 of Schedule 15”. 30
- (7) In paragraph 12 (modification of Schedule 15 (powers of entry and inspection)), in sub-paragraph (2), in the substituted paragraph (a), for “or 148” substitute “, 148 or 148C”.
- (8) In paragraph 13 (modification of section 155 (penalty notices)), in sub-paragraph (3)(c), for “for “data subjects”” there were substituted “for the words from “data subjects” to the end”. 35
- (9) Omit paragraph 21 (modification of section 182 (regulations and consultation)) and the heading before it.

- (10) In paragraph 22 (modification of section 196 (penalties for offences)), in sub-paragraph (2)(b) –
- (a) after “148”, in the first place it occurs, insert “, 148C”, and
 - (b) for “or 148” substitute “, 148 or 148C”.

Protection of prohibitions, restrictions and data subject’s rights

5

105 Protection of prohibitions, restrictions and data subject’s rights

- (1) The 2018 Act is amended in accordance with subsections (2) to (5).
- (2) After section 183 insert –

“Prohibitions and restrictions etc on processing

183A Protection of prohibitions and restrictions etc on processing: relevant enactments

10

- (1) A relevant enactment or rule of law which imposes a duty, or confers a power, to process personal data does not override a requirement under the main data protection legislation relating to the processing of personal data.

15

- (2) Subsection (1) does not apply –
 - (a) to a relevant enactment forming part of the main data protection legislation, or
 - (b) to the extent that an enactment makes express provision to the contrary referring to this section or to the main data protection legislation (or a provision of that legislation).

20

- (3) Subsection (1) does not prevent a duty or power to process personal data from being taken into account for the purpose of determining whether it is possible to rely on an exception to a requirement under the main data protection legislation that is available where there is such a duty or power.

25

- (4) In this section –

“the main data protection legislation” means the data protection legislation other than provision of or made under –

(a) Chapter 6 or 8 of the UK GDPR, or

30

(b) Parts 5 to 7 of this Act;

“relevant enactment” means an enactment so far as passed or made on or after the day on which section 105(2) of the Data (Use and Access) Act 2024 comes into force;

“requirement” includes a prohibition or restriction.

35

- (5) The reference in subsection (1) to an enactment or rule of law which imposes a duty, or confers a power, to process personal data is a reference to an enactment or rule of law which, directly or indirectly,

requires or authorises the processing of personal data, including (for example) –

- (a) by authorising one person to require another person to process personal data, or
 - (b) by removing restrictions on processing personal data,
- and the references in subsection (3) to a duty or power are to be read accordingly.”

5

(3) Before section 184 (and the italic heading before it) insert –

“183B Protection of prohibitions and restrictions etc on processing: other enactments

10

(1) This section is about the relationship between –

- (a) a pre-commencement enactment which imposes a duty, or confers a power, to process personal data, and
- (b) a provision of the main data protection legislation containing a requirement relating to the processing of personal data.

15

(2) The relationship is not changed by section 5(A1) of the European Union (Withdrawal) Act 2018 (removal of the principle of supremacy of EU law) (or the repeal of section 5(1) to (3) of that Act).

(3) Where the provision described in subsection (1)(b) is a provision of, or made under, the UK GDPR, section 5(A2) of the European Union (Withdrawal) Act 2018 (assimilated direct legislation subject to domestic enactments) does not apply to the relationship.

20

(4) Nothing is to be implied about a relationship described in subsection (1) merely due to the fact that express provision with similar effect to section 183A(1) (or applying that provision) is made in connection with one such relationship but not another.

25

(5) In this section –

- (a) “the main data protection legislation” and “requirement” have the same meaning as in section 183A, and
- (b) “pre-commencement enactment” means an enactment so far as passed or made before the day on which section 105(2) of the Data (Use and Access) Act 2024 comes into force.

30

(6) Section 183A(5) applies for the purposes of subsection (1)(a) of this section as it applies for the purposes of section 183A(1).”

(4) In section 186 (data subject’s rights and other prohibitions and restrictions) –

35

- (a) for the heading substitute “Protection of data subject’s rights”,
- (b) in subsection (1) omit “, except as provided by or under the provisions listed in subsection (3)”,
- (c) after subsection (2) insert –

“(2A) Subsection (1) does not apply –

40

-
- (a) to an enactment contained in, or made under, a provision listed in subsection (2),
 - (b) to an enactment contained in, or made under, a provision listed in subsection (3),
 - (c) to the extent that an enactment makes express provision to the contrary referring to this section or to a provision listed in subsection (2), or 5
 - (d) to the extent that subsection (1) is disapplied by section 186A(3).”, and
 - (d) in subsection (3)– 10
 - (i) for “provisions providing exceptions” substitute “provisions referred to in subsection (2A)(b)”, and
 - (ii) omit paragraph (c) (and the “and” after it).
 - (5) After section 186 insert–
 - “186A Protection of data subject’s rights: further provision”** 15
 - (1) This section is about the relationship between–
 - (a) a pre-commencement enactment which prohibits or restricts the disclosure of information or authorises the withholding of information, and
 - (b) a provision of the UK GDPR or this Act listed in section 186(2). 20
 - (2) The relationship is not changed by section 5(A1) of the European Union (Withdrawal) Act 2018 (removal of the principle of supremacy of EU law) (or the repeal of section 5(1) to (3) of that Act).
 - (3) Subsection (1) of section 186 does not apply to the relationship so far as there is a contrary intention, whether express or implied (taking account of, among other things, subsection (2) of this section). 25
 - (4) Nothing is to be implied about a relationship described in subsection (1) merely due to the fact that express provision stating that section 186(1) applies (or with similar effect) is made in connection with one such relationship but not another. 30
 - (5) In this section, “pre-commencement enactment” means an enactment so far as passed or made before the day on which section 105(4) of the Data (Use and Access) Act 2024 comes into force, other than an enactment contained in, or made under, a provision listed in section 186(2) or (3).” 35
 - (6) In section 5 of the European Union (Withdrawal) Act 2018 (exceptions to savings and incorporation), in subsection (A3)(a)–
 - (a) for “section” substitute “sections 183A and”,
 - (b) for “(data subject’s rights and other prohibitions and restrictions)” substitute “(protection of prohibitions, restrictions and data subject’s rights)”, and 40
 - (c) at the end insert “(and see also section 183B(3) of that Act)”.

- (7) Subsections (3), (5) and (6)(c) are to be treated as having come into force on 1 January 2024.

Miscellaneous

106 Regulations under the UK GDPR

- (1) In the UK GDPR, after Chapter 9 insert – 5

“CHAPTER 9A

Regulations

Article 91A

Regulations made by Secretary of State

1. This Article makes provision about regulations made by the Secretary of State under this Regulation (“UK GDPR regulations”). 10
2. Before making UK GDPR regulations, the Secretary of State must consult –
 - (a) the Commissioner, and
 - (b) such other persons as the Secretary of State considers appropriate. 15
3. Paragraph 2 does not apply to regulations made under Article 49 or 49A where the Secretary of State has made an urgency statement in respect of them.
4. UK GDPR regulations may –
 - (a) make different provision for different purposes; 20
 - (b) include consequential, supplementary, incidental, transitional, transitory or saving provision.
5. UK GDPR regulations are to be made by statutory instrument.
6. For the purposes of this Regulation, where regulations are subject to “the negative resolution procedure”, the statutory instrument containing the regulations is subject to annulment in pursuance of a resolution of either House of Parliament. 25
7. For the purposes of this Regulation, where regulations are subject to “the affirmative resolution procedure”, the regulations may not be made unless a draft of the statutory instrument containing them has been laid before Parliament and approved by a resolution of each House of Parliament. 30

-
8. For the purposes of this Regulation, where regulations are subject to “the made affirmative resolution procedure” –
- (a) the statutory instrument containing the regulations must be laid before Parliament after being made, together with the urgency statement in respect of them, and 5
 - (b) the regulations cease to have effect at the end of the period of 120 days beginning with the day on which the instrument is made, unless within that period the instrument is approved by a resolution of each House of Parliament.
9. In calculating the period of 120 days, no account is to be taken of any whole days that fall within a period during which – 10
- (a) Parliament is dissolved or prorogued, or
 - (b) both Houses of Parliament are adjourned for more than 4 days.
10. Where regulations cease to have effect as a result of paragraph 8, that does not – 15
- (a) affect anything previously done under the regulations, or
 - (b) prevent the making of new regulations.
11. Any provision that may be included in UK GDPR regulations subject to the negative resolution procedure may be made by regulations made under this Regulation or another enactment that are subject to the affirmative resolution procedure or the made affirmative resolution procedure. 20
12. A requirement under this Article to consult may be satisfied by consultation before, as well as by consultation after, the provision conferring the power to make regulations comes into force. 25
13. In this Article, “urgency statement”, in relation to regulations, means a reasoned statement that the Secretary of State considers it desirable for the regulations to come into force without delay.”
- (2) In section 3(9) of the 2018 Act (definition of “data protection legislation”), in paragraph (d), after “Act” insert “or the UK GDPR”. 30

107 Further minor provision about data protection

Schedule 11 contains further minor provision about data protection.

CHAPTER 2

PRIVACY AND ELECTRONIC COMMUNICATIONS

108 The PEC Regulations 35

In this Chapter, “the PEC Regulations” means the Privacy and Electronic Communications (EC Directive) Regulations 2003 (S.I. 2003/2426).

109 Interpretation of the PEC Regulations

- (1) Regulation 2 of the PEC Regulations (interpretation) is amended as follows.
- (2) In paragraph (1) –
 - (a) in the definition of “call”, at the end insert “, and a reference to making a call includes a reference to attempting to establish such a connection”, 5
 - (b) in the definition of “communication” –
 - (i) for “exchanged or conveyed between” substitute “transmitted to”, and
 - (ii) for “conveyed”, in the second place it occurs, substitute “transmitted”, and 10
 - (c) at the appropriate place insert –

““direct marketing” means the communication (by whatever means) of advertising or marketing material which is directed to particular individuals;”.
- (3) After paragraph (1) insert – 15

“(1A) In the application of these Regulations in relation to –
 - (a) information that is sent but not received,
 - (b) a communication that is transmitted but not received,
 - (c) an electronic mail that is sent but not received, or
 - (d) an unsuccessful attempt to make a call, 20a reference to the recipient of the information, communication, electronic mail or call is to be read as a reference to the intended recipient.”
- (4) In paragraph (4) omit “, without prejudice to paragraph (3),”.
- (5) After that paragraph insert –

“(5) References in these Regulations to a period expressed in hours, days, 25 weeks, months or years are to be interpreted in accordance with Article 3 of the Periods of Time Regulation, except that Article 3(4) of that Regulation does not apply to the interpretation of a reference to a period in regulation 16A.

(6) In paragraph (5), “the Periods of Time Regulation” means Regulation 30 (EEC, Euratom) No. 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits.”

110 Duty to notify the Commissioner of personal data breach: time periods

- (1) In regulation 5A of the PEC Regulations (personal data breach) –
 - (a) in paragraph (2), after “delay” insert “and, where feasible, not later 35 than 72 hours after having become aware of it”, and

- (b) after paragraph (3) insert –
- “(3A) Where notification under paragraph (2) is not made within 72 hours, it must be accompanied by reasons for the delay.”
- (2) In regulation 5C of the PEC Regulations (personal data breach: fixed monetary penalty) – 5
- (a) in paragraph (4)(f), for “from the service of the notice of intent” substitute “beginning when the notice of intent is served”, and
- (b) in paragraph (5), for “21 days of receipt of the notice of intent” substitute “the period of 21 days beginning when the notice of intent is received”. 10
- (3) In Article 2 of Commission Regulation (EU) No 611/2013 of 24 June 2013 on the measures applicable to the notification of personal data breaches under Directive 2002/58/EC of the European Parliament and of the Council on privacy and electronic communications (notification to the Information Commissioner) – 15
- (a) in paragraph 2 –
- (i) in the first subparagraph, for the words from “no” to “feasible” substitute “without undue delay and, where feasible, not later than 72 hours after having becoming aware of it”,
- (ii) in the second subparagraph, after “shall” insert “, subject to paragraph 3,”, and 20
- (iii) after the third subparagraph insert –
- “This paragraph is to be interpreted in accordance with Article 3 of Regulation (EEC, Euratom) No. 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits.”, and 25
- (b) for paragraph 3 substitute –
- “3. To the extent that the information set out in Annex 1 is not available to be included in the notification, it may be provided in phases without undue further delay.” 30

111 Storing information in the terminal equipment of a subscriber or user

- (1) The PEC Regulations are amended as follows.
- (2) For regulation 6 (storing information, or gaining access to information stored, in the terminal equipment of a subscriber or user) substitute –

“Storing information in the terminal equipment of a subscriber or user 35

6. –(1) Subject to Schedule A1, a person must not store information, or gain access to information stored, in the terminal equipment of a subscriber or user.

- (2) In paragraph (1) and Schedule A1 –

- (a) a reference (however expressed) to storing information, or gaining access to information stored, in the terminal equipment of a subscriber or user includes a reference to instigating the storage or access, and
- (b) except as otherwise provided, a reference (however expressed) to gaining access to information stored in the terminal equipment of a subscriber or user includes a reference to collecting or monitoring information automatically emitted by the terminal equipment.” 5

(3) After regulation 6 insert –

“Power to provide exceptions to regulation 6(1)

6A. –(1) The Secretary of State may by regulations made by statutory instrument – 10

(a) amend these Regulations –

- (i) by adding an exception to the prohibition in regulation 6(1), or
- (ii) by omitting or varying an exception to that prohibition, and

(b) make consequential, supplementary, incidental, transitional, transitory or saving provision, including provision amending these Regulations. 15

(2) Regulations under paragraph (1) may make different provision for different purposes.

(3) Before making regulations under paragraph (1), the Secretary of State must consult – 20

- (a) the Information Commissioner, and
- (b) such other persons as the Secretary of State considers appropriate.

(4) A statutory instrument containing regulations under paragraph (1) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.” 25

(4) Schedule 12 to this Act inserts Schedule A1 to the PEC Regulations.

(5) A requirement to consult under regulation 6A of the PEC Regulations (inserted by subsection (3) of this section) may be satisfied by consultation undertaken before the day on which this Act is passed.

112 Emergency alerts: interpretation of time periods 30

In regulation 16A of the PEC Regulations (emergency alerts), in paragraph (6), for the words from “7 days” to “paragraph (3)(b)” substitute “the period of 7 days beginning with the day on which the time period specified by the relevant public authority pursuant to paragraph (3)(b) expires”.

113 Commissioner’s enforcement powers 35

(1) The PEC Regulations are amended in accordance with subsections (2) to (8).

-
- (2) In regulation 5 (security of public electronic communications services), omit paragraph (6).
- (3) Omit regulation 5B (personal data breach: audit).
- (4) In regulation 5C (personal data breach: fixed monetary penalty) –
- (a) in paragraph (10) – 5
 - (i) omit “and Northern Ireland”, and
 - (ii) in paragraph (a), for “a county court” substitute “the county court”, and
 - (b) after paragraph (11) insert – 10

“(12) 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.

(13) The Secretary of State may by regulations made by statutory instrument amend this regulation so as to substitute a different amount for the amount for the time being specified in paragraph (2) or (5). 15

(14) Regulations under paragraph (13) may make transitional provision.

(15) Before making regulations under paragraph (13), the Secretary of State must consult – 20

 - (a) the Information Commissioner, and
 - (b) such other persons as the Secretary of State considers appropriate.

(16) A statutory instrument containing regulations under this regulation may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.” 25
- (5) For regulation 31 substitute –
- “Information Commissioner’s enforcement powers 30**
- 31.** –(1) Schedule 1 provides for certain provisions of Parts 5 to 7 of the Data Protection Act 2018 to apply with modifications for the purposes of enforcing these Regulations.
- (2) In regulations 32 and 33, “enforcement functions” means the functions of the Information Commissioner under those provisions, as applied by that Schedule.” 35
- (6) Omit regulation 31A (third party information notices).
- (7) Omit regulation 31B (appeals against third party information notices).
- (8) For Schedule 1 substitute the Schedule set out in Schedule 13 to this Act.

- (9) In paragraph 58(1) of Schedule 20 to the Data Protection Act 2018 (transitional provision relating to the PEC Regulations) for “regulations 2, 31 and 31B of, and Schedule 1 to,” substitute “regulation 2 of”.
- (10) A requirement to consult under regulation 5C(15) of the PEC Regulations (inserted by subsection (4)(b) of this section) may be satisfied by consultation undertaken before the day on which this Act is passed. 5

114 Codes of conduct

- (1) The PEC Regulations are amended as follows.
- (2) After regulation 32 insert –

“Codes of conduct 10

32A. – (1) The Commissioner must encourage representative bodies to produce codes of conduct intended to contribute to compliance with these Regulations.

(2) Under paragraph (1), the Commissioner must encourage representative bodies to produce codes which take account of, among other things, the specific features of different sectors. 15

(3) A code of conduct described in paragraph (1) may, for example, make provision with regard to –

- (a) rights and obligations under these Regulations;
- (b) out-of-court proceedings and other dispute resolution procedures for resolving disputes arising in connection with these Regulations. 20

(4) The Commissioner must encourage representative bodies to submit codes of conduct described in paragraph (1) to the Commissioner in draft.

(5) Where a representative body does so, the Commissioner must –

- (a) provide the representative body with an opinion on whether the code correctly reflects the requirements of these Regulations, 25
- (b) decide whether to approve the code, and
- (c) if the code is approved, register and publish the code.

(6) The Commissioner may only approve a code if, among other things –

- (a) the code contains a mechanism for monitoring whether persons who undertake to apply the code comply with its provisions, and 30
- (b) in relation to persons other than public bodies, the mechanism involves monitoring by a body which is accredited for that purpose by the Commissioner under regulation 32B.

(7) In relation to amendments of a code of conduct that is for the time being approved under this regulation – 35

- (a) paragraphs (4) and (5) apply as they apply in relation to a code, and
- (b) the requirements in paragraph (6) must be satisfied by the code as amended.

(8) A code of conduct described in paragraph (1) may be contained in the same document as a code of conduct described in Article 40 of the UK GDPR (and a provision contained in such a document may be a provision of both codes).

(9) In this regulation –

5

“public body” has the meaning given in section 7 of the Data Protection Act 2018 (for the purposes of the UK GDPR);

“representative body” means an association or other body representing categories of –

(a) communications providers, or

10

(b) other persons engaged in activities regulated by these Regulations;

“the UK GDPR” has the meaning given in section 3(10) of the Data Protection Act 2018.

Accreditation of bodies monitoring compliance with codes of conduct

15

32B.—(1) The Commissioner may, in accordance with this regulation, accredit a body for the purpose of monitoring whether persons other than public bodies comply with a code of conduct described in regulation 32A(1).

(2) The Commissioner may accredit a body only where the Commissioner is satisfied that the body has –

20

(a) demonstrated its independence,

(b) demonstrated that it has an appropriate level of expertise in relation to the subject matter of the code,

(c) established procedures which allow it –

(i) to assess a person’s eligibility to apply the code,

25

(ii) to monitor compliance with the code, and

(iii) to review the operation of the code periodically,

(d) established procedures and structures to handle complaints about infringements of the code or about the manner in which the code has been, or is being, implemented by a person,

30

(e) made arrangements to publish information about the procedures and structures described in sub-paragraph (d), and

(f) demonstrated that it does not have a conflict of interest.

(3) The Commissioner must prepare and publish guidance about how the Commissioner proposes to take decisions about accreditation under this regulation.

35

(4) A body accredited under this regulation in relation to a code must take appropriate action where a person infringes the code.

(5) If the action taken by a body under paragraph (4) consists of suspending or excluding a person from the code, the body must inform the Commissioner, giving reasons for taking that action.

40

(6) The Commissioner must revoke the accreditation of a body under this regulation if the Commissioner considers that the body –

- (a) no longer meets the requirements for accreditation, or
- (b) has failed, or is failing, to comply with paragraph (4) or (5).

(7) In this regulation, “public body” has the same meaning as in regulation 32A. 5

Effect of codes of conduct

32C. Adherence to a code of conduct approved under regulation 32A may be used by a person as a means of demonstrating compliance with these Regulations.” 10

(3) In regulation 33 (technical advice to the Commissioner) –

- (a) omit “, in connection with his enforcement functions,” and
- (b) at the end insert “where the request is made in connection with –

- (a) the Commissioner’s enforcement functions, or
- (b) the Commissioner’s functions under regulation 32A or 32B (codes of conduct).” 15

(4) In Schedule 1 (Information Commissioner’s enforcement powers) (inserted by Schedule 13 to this Act), in paragraph 18(b)(ii) (maximum amount of penalty), for “or 24” substitute “, 24 or 32B(4) or (5)”.

PART 6 20

THE INFORMATION COMMISSION

115 The Information Commission

(1) The Data Protection Act 2018 is amended in accordance with subsections (2) to (5).

(2) After section 114 insert – 25

“The Information Commission

114A The Information Commission

- (1) A body corporate called the Information Commission is established.
- (2) Schedule 12A makes further provision about the Commission.”

(3) In section 3 (terms relating to the processing of personal data), after subsection (8) insert – 30

“(8A) “The Commission” means the Information Commission (see section 114A).”

(4) In section 205(2) (references to periods of time) –

- (a) omit paragraph (l), and 35

- (b) after that paragraph insert—
- “(la) paragraph 22(6) of Schedule 12A;”.
- (5) In section 206 (index of defined expressions), in the Table, at the appropriate place insert—
- | | | | |
|-----------------|--|-------------|---|
| “the Commission | | section 3”. | 5 |
|-----------------|--|-------------|---|
- (6) Schedule 14 to this Act—
- (a) inserts Schedule 12A to the Data Protection Act 2018, and
- (b) makes transitional provision relating to—
- (i) the person who holds the office of Information Commissioner immediately before the day on which Schedule 14 comes into force, and
- (ii) consultation about certain appointments. 10
- 116 Abolition of the office of Information Commissioner**
- (1) The office of Information Commissioner is abolished.
- (2) Accordingly, the Data Protection Act 2018 is amended as follows. 15
- (3) In section 3 (terms relating to the processing of personal data) omit subsection (8).
- (4) Omit section 114 (the Information Commissioner) and the italic heading before that section.
- (5) In section 206 (index of defined expressions), in the Table, omit the entry for the Commissioner. 20
- (6) In section 214(1) (extent)—
- (a) omit “and” at the end of paragraph (a), and
- (b) omit paragraph (b).
- (7) Omit Schedule 12 (the Information Commissioner). 25
- 117 Transfer of functions to the Information Commission**
- (1) The functions of the Information Commissioner are transferred to the Information Commission.
- (2) So far as is appropriate in consequence of subsection (1), a reference to the Information Commissioner (however expressed) in an enactment or other document whenever passed or made (including this Act) is to be treated as a reference to the Information Commission. 30
- (3) In this section, “enactment” includes—
- (a) an enactment comprised in subordinate legislation (as defined in section 21 of the Interpretation Act 1978), 35

- (b) an enactment comprised in, or in an instrument made under, a Measure or Act of Senedd Cymru,
- (c) an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament,
- (d) an enactment comprised in, or in an instrument made under, Northern Ireland legislation, and
- (e) assimilated direct legislation.

118 Transfer of property etc to the Information Commission

- (1) The Secretary of State may make a scheme for the transfer of property, rights and liabilities from the Information Commissioner to the Information Commission. 10
- (2) The things that may be transferred under a transfer scheme include—
 - (a) property, rights and liabilities that could not otherwise be transferred;
 - (b) property acquired, and rights and liabilities arising, after the making of the scheme. 15
- (3) A transfer scheme may—
 - (a) make provision about the continuing effect of things done by the Information Commissioner in respect of anything transferred;
 - (b) make provision about the continuation of things (including legal proceedings) in the process of being done by, on behalf of or in relation to the Information Commissioner in respect of anything transferred; 20
 - (c) make provision for references to the Information Commissioner in an instrument or other document in respect of anything transferred under a transfer scheme to be treated as references to the Information Commission; 25
 - (d) make provision which is the same as or similar to the Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246);
 - (e) make other consequential, supplementary, incidental or transitional provision. 30
- (4) A transfer scheme may provide—
 - (a) for modifications by agreement;
 - (b) for modifications to have effect from the date when the original scheme came into effect.
- (5) In this section, references to rights and liabilities include rights and liabilities relating to a contract of employment. 35

PART 7

OTHER PROVISION ABOUT USE OF, OR ACCESS TO, DATA

*Information standards for health and social care***119 Information standards for health and adult social care in England**

Schedule 15 makes provision about information standards for health and adult social care in England (under Part 9 of the Health and Social Care Act 2012) and information technology. 5

*Smart meter communication services***120 Grant of smart meter communication licences**

Schedule 16 makes provision in connection with the grant of smart meter communication licences. 10

*Information to improve public service delivery***121 Disclosure of information to improve public service delivery to undertakings**

(1) Section 35 of the Digital Economy Act 2017 (disclosure of information to improve public service delivery) is amended as follows. 15

(2) In subsection (9) –

(a) in paragraph (a), for “or households” substitute “, households or undertakings”, and

(b) in paragraph (b), for “or households” substitute “, households or undertakings”. 20

(3) In subsection (10) –

(a) the words after “its purpose” become paragraph (a), and

(b) at the end of that paragraph, insert “, or

(b) the assisting of undertakings in connection with any trade, business or charitable purpose.” 25

(4) After subsection (12) insert –

“(13) In this section “undertaking” means –

(a) any person, other than a public authority, carrying on a trade or business, whether or not with a view to profit, or

(b) any body, or the trustees of a trust, established for charitable purposes only. 30

(14) In this section, in so far as it forms part of the law of Scotland or Northern Ireland, “charitable purpose” has the same meaning as it

has in the law of England and Wales (see section 2 of the Charities Act 2011).”

Retention of information by providers of internet services

- 122 Retention of information by providers of internet services in connection with death of child** 5
- (1) The Online Safety Act 2023 is amended as follows.
- (2) In section 100 (power to require information)—
- (a) omit subsection (7);
 - (b) after subsection (8) insert—
- “(8A) The power to give a notice conferred by subsection (1) does not include power to require processing of personal data that would contravene the data protection legislation (but in determining whether processing of personal data would do so, the duty imposed by the notice is to be taken into account).” 10
- (3) In section 101 (information in connection with investigation into death of child)—
- (a) before subsection (1) insert—
- “(A1) Subsection (C1) applies if a senior coroner (in England and Wales), a procurator fiscal (in Scotland) or a coroner (in Northern Ireland) (“the investigating authority”)—
- (a) notifies OFCOM that they are conducting an investigation in connection with the death of a child, and
 - (b) provides OFCOM with the details in subsection (B1).
- (B1) The details are— 20
- (a) the name of the child who has died,
 - (b) the child’s date of birth,
 - (c) any email addresses used by the child (so far as the investigating authority knows), and
 - (d) if any regulated service has been brought to the attention of the investigating authority as being of interest in connection with the child’s death, the name of the service. 30
- (C1) Where this subsection applies, OFCOM—
- (a) must give a notice to the provider of a service within subsection (E1) requiring the provider to ensure the retention of information relating to the use of the service by the child who has died, and 35
 - (b) may give a notice to any other relevant person requiring the person to ensure the retention of information 40

- relating to the use of a service within subsection (E1)
by that child.
- (D1) The references in subsection (C1) to ensuring the retention of information relating to the child’s use of a service include taking all reasonable steps, without delay, to prevent the deletion of such information by the routine operation of systems or processes. 5
- (E1) A service is within this subsection if it is –
- (a) a regulated service of a kind described in regulations made by the Secretary of State, or 10
 - (b) a regulated service notified to OFCOM by the investigating authority as described in subsection (B1)(d).
- (F1) A notice under subsection (C1) may require information described in that subsection to be retained only if it is information – 15
- (a) of a kind which OFCOM have power to require under a notice under subsection (1) (see, in particular, subsection (2)(a) to (d)), or
 - (b) which a person might need to retain to enable the person to provide information in response to a notice under subsection (1) (if such a notice were given). 20
- (G1) OFCOM must share with the investigating authority any information they receive in response to requirements mentioned in section 102(5A)(d) that are included in a notice under subsection (C1).”; 25
- (b) in subsection (3), for “power conferred by subsection (1) includes” substitute “powers conferred by this section include”;
- (c) after subsection (5) insert –
- “(5A) The powers to give a notice conferred by this section do not include power to require processing of personal data that would contravene the data protection legislation (but in determining whether processing of personal data would do so, the duty imposed by the notice is to be taken into account).” 30
- (4) In section 102 (information notices) – 35
- (a) in subsection (1), for “101(1)” substitute “101(C1) or (1)”;
 - (b) in subsection (3) –
 - (i) after “information notice” insert “under section 100(1) or 101(1)”;
 - (ii) omit the “and” at the end of paragraph (c);
 - (iii) after paragraph (c) insert – 40
 - “(ca) specify when the information must be provided (which may be on or by a specified date, within

- a specified period, or at specified intervals),
and”;
- (c) omit subsection (4);
- (d) after subsection (5) insert—
- “(5A) An information notice under section 101(C1) must— 5
- (a) specify or describe the information to be retained,
- (b) specify why OFCOM require the information to be retained,
- (c) require the information to be retained for the period of 10
one year beginning with the date of the notice,
- (d) require the person to whom the notice is given—
- (i) if the child to whom the notice relates used the 15
service in question, to notify OFCOM by a
specified date of steps taken to ensure the
retention of information;
- (ii) if the child did not use the service, or the person
does not hold any information of the kind
required, to notify OFCOM of that fact by a
specified date, and
- (e) contain information about the consequences of not 20
complying with the notice.
- (5B) If OFCOM give an information notice to a person under section
101(C1), they may, in response to information received from
the investigating authority, extend the period for which the 25
person is required to retain information by a maximum period
of six months.
- (5C) The power conferred by subsection (5B) is exercisable—
- (a) by giving the person a notice varying the notice under
section 101(C1) and stating the further period for which 30
information must be retained and the reason for the
extension;
- (b) any number of times.”;
- (e) after subsection (9) insert—
- “(9A) OFCOM must cancel an information notice under section 35
101(C1) by notice to the person to whom it was given if advised
by the investigating authority that the information in question
no longer needs to be retained.”;
- (f) in subsection (10), after the definition of “information” insert—
- ““the investigating authority” has the same meaning as in section 40
101;”.
- (5) In section 109 (offences in connection with information notices)—
- (a) in subsection (2)(b), for “all reasonable steps” substitute “all of the
steps that it was reasonable, and reasonably practicable, to take”;

- (b) after subsection (6) insert –
 - “(6A) A person who is given an information notice under section 101(C1) commits an offence if –
 - (a) the person deletes or alters, or causes or permits the deletion or alteration of, any information required by the notice to be retained, and 5
 - (b) the person’s intention was to prevent the information being available, or (as the case may be) to prevent it being available in unaltered form, for the purposes of any official investigation into the death of the child to whom the notice relates. 10
 - (6B) For the purposes of subsection (6A) information has been deleted if it is irrecoverable (however that occurred).”

- (6) In section 110 (senior managers’ liability: information offences) –
 - (a) after subsection (6) insert – 15
 - “(6A) An individual named as a senior manager of an entity commits an offence if –
 - (a) the entity commits an offence under section 109(6A) (deletion etc of information), and
 - (b) the individual has failed to take all reasonable steps to prevent that offence being committed.”; 20
 - (b) in subsection (7), for “or (6)” substitute “, (6) or (6A)”.

- (7) In section 113 (penalties for information offences), in subsection (2) –
 - (a) for “(4) or (5)” substitute “(4), (5) or (6A)”;
 - (b) for “(5) or (6)” substitute “(5), (6) or (6A)”.25

- (8) In section 114 (co-operation and disclosure of information: overseas regulators), in subsection (7), omit the definition of “the data protection legislation”.

- (9) In section 225 (Parliamentary procedure for regulations), in subsection (10), after paragraph (c) insert –
 - “(ca) regulations under section 101(E1)(a),”.30

- (10) In section 236(1) (interpretation) –
 - (a) after the definition of “country” insert –
 - ““the data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3(9) of that Act);”;
 - (b) in the definition of “information notice”, for “101(1)” substitute “101(C1) or (1)”.35

- (11) In section 237 (index of defined terms), after the entry for “CSEA content” insert –

 - “the data protection legislation section 236”.

Information for research about online safety matters

123 Information for research about online safety matters

(1) The Online Safety Act 2023 is amended as follows.

(2) After section 154 insert –

“154A Information for research about online safety matters 5

(1) The Secretary of State may by regulations require providers of regulated services to provide information for purposes related to the carrying out of independent research into online safety matters.

(2) Regulations under this section may (for example) provide for –

(a) the making of applications by persons seeking information; 10

(b) the procedure to be followed in the making and determination of applications;

(c) the grounds on which applications are to be determined;

(d) the imposition of requirements described in subsection (1) to be effected by means of notices given to providers of regulated services (“researcher access notices”); 15

(e) the contents of researcher access notices;

(f) the procedure to be followed in the giving of researcher access notices;

(g) the form in which, and the means by which, information is to be provided; 20

(h) the safeguards to be applied in respect of the handling of information;

(i) the charging of fees payable by applicants for information under the regulations and by providers of regulated services; 25

(j) the enforcement of requirements imposed by the regulations;

(k) appeals in respect of decisions taken under the regulations.

(3) Provision about enforcement under subsection (2)(j) may include provision –

(a) about investigations (including the making of reports); 30

(b) conferring powers of entry, inspection and audit;

(c) imposing monetary penalties;

(d) creating offences, but such provision may not impose a penalty for an offence that is greater than a penalty of any of the descriptions mentioned in section 113. 35

(4) Regulations under this section –

(a) may authorise or require anything that is to be done under, or for the purposes of, the regulations to be done by an appropriate person;

- (b) may confer a discretion on an appropriate person for the purposes of provision under paragraph (a);
- (c) may apply (with or without modifications) other provisions of this Act.
- (5) Regulations under this section may apply generally or only in relation to specified descriptions of – 5
- (a) regulated services;
- (b) persons carrying out independent research;
- (c) research into online safety matters or the purposes of such research; 10
- (d) information,
and provision made by virtue of section 224(1) in connection with this section may, in particular, make different provision for different descriptions of services, researchers, research or information.
- (6) Regulations under this section may not require – 15
- (a) processing of personal data that would contravene the data protection legislation (but in determining whether processing of personal data would do so, the duty imposed under the regulations to provide information is to be taken into account);
- (b) provision of information in respect of which a claim to legal professional privilege, or (in Scotland) to confidentiality of communications, could be maintained in legal proceedings. 20
- (7) Before making regulations under this section the Secretary of State must consult –
- (a) OFCOM, 25
- (b) the Information Commissioner,
- (c) persons who appear to the Secretary of State to represent providers of regulated services,
- (d) persons who appear to the Secretary of State to represent the interests of persons carrying out independent research into online safety matters, and 30
- (e) such other persons as the Secretary of State considers appropriate.
- (8) For the purposes of this section –
- (a) “independent research” is research carried out other than on behalf of a provider of a regulated service; 35
- (b) references to an “appropriate person” are references to –
- (i) OFCOM, or
- (ii) such other person as the Secretary of State considers appropriate to carry out functions under regulations made under this section (and the regulations may include provision establishing a body for this purpose).” 40

- (3) In section 162 (OFCOM’s report about researchers’ access to information), omit subsections (7) to (10).
- (4) In section 225 (Parliamentary procedure for regulations), for subsections (8) and (9) substitute –
 - “(8) A statutory instrument containing (whether alone or with other provision) the first regulations under the following provisions may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament –
 - (a) section 154A(1);
 - (b) paragraph 1(1) of Schedule 11.
 - (9) Any other statutory instrument containing regulations under a provision mentioned in subsection (8) is subject to annulment in pursuance of a resolution of either House of Parliament.”
- (5) The requirement to consult under section 154A(7) of the Online Safety Act 2023 (as inserted by subsection (2) of this section) may be satisfied by consultation undertaken before the day on which this Act is passed.

Retention of biometric data

124 Retention of biometric data and recordable offences

- (1) Part 1 of the Counter-Terrorism Act 2008 (powers to gather and share information) is amended in accordance with subsections (2) to (10).
- (2) In section 18A(3) (retention of material: general), after “recordable offence” insert “or recordable-equivalent offence”.
- (3) Section 18E (supplementary provision) is amended in accordance with subsections (4) to (10).
- (4) In subsection (1), after the definition of “recordable offence” insert –
 - ““recordable-equivalent offence” means an offence under the law of a country or territory outside England and Wales and Northern Ireland where the act constituting the offence would constitute a recordable offence if done in England and Wales or Northern Ireland (whether or not the act constituted such an offence when the person was convicted);”.
- (5) In subsection (3), in the words before paragraph (a), after “offence” insert “in England and Wales or Northern Ireland”.
- (6) After subsection (5) insert –
 - “(5A) For the purposes of section 18A, a person is to be treated as having been convicted of an offence in a country or territory outside England and Wales and Northern Ireland if, in respect of such an offence, a court exercising jurisdiction under the law of that country or territory has made a finding equivalent to –

- (a) a finding that the person is not guilty by reason of insanity,
or
- (b) a finding that the person is under a disability and did the act charged against the person in respect of the offence.”
- (7) In subsection (6)(a) – 5
- (a) after “convicted” insert “–
(i)”, and
- (b) after “offence,” insert “or
(ii) in a country or territory outside England and
Wales and Northern Ireland, of a 10
recordable-equivalent offence,”.
- (8) In subsection (6)(b) –
- (a) omit “of a recordable offence”, and
- (b) for “a recordable offence, other than a qualifying offence” substitute
“an offence, other than a qualifying offence or qualifying-equivalent 15
offence”.
- (9) In subsection (7), for “subsection (6)” substitute “this section”.
- (10) After subsection (7) insert –
- “(7A) In subsection (6), “qualifying-equivalent offence” means an offence 20
under the law of a country or territory outside England and Wales
and Northern Ireland where the act constituting the offence would
constitute a qualifying offence if done in England and Wales or
Northern Ireland (whether or not the act constituted such an offence
when the person was convicted).”
- (11) The amendments made by this section apply only in connection with the 25
retention of section 18 material that is or was obtained or acquired by a law
enforcement authority –
- (a) on or after the commencement day, or
- (b) in the period of 3 years ending immediately before the commencement 30
day.
- (12) Subsection (13) of this section applies where –
- (a) at the beginning of the commencement day, a law enforcement
authority has section 18 material which it obtained or acquired in the
period of 3 years ending immediately before the commencement day,
- (b) at a time before the commencement day (a “pre-commencement time”), 35
the law enforcement authority was required by section 18(4) of the
Counter-Terrorism Act 2008 to destroy the material, and
- (c) at the pre-commencement time, the law enforcement authority could
have retained the material under section 18A of the Counter-Terrorism
Act 2008, as it has effect taking account of the amendments made by 40
subsections (2) to (10) of this section, if those amendments had been
in force.

- (13) Where this subsection applies—
- (a) the law enforcement authority is to be treated as not having been required to destroy the material at the pre-commencement time, but
 - (b) the material may not be used in evidence against the person to whom the material relates—5
 - (i) in criminal proceedings in England and Wales, Northern Ireland or Scotland in relation to an offence where those proceedings, or other criminal proceedings in relation to the person and the offence, were instituted before the commencement day, or
 - (ii) in criminal proceedings in any other country or territory.10
- (14) In this section—
- “the commencement day” means the day on which this Act is passed;
 - “law enforcement authority” has the meaning given by section 18E(1) of the Counter-Terrorism Act 2008;
 - “section 18 material” has the meaning given by section 18(2) of that Act.15
- (15) For the purposes of this section, proceedings in relation to an offence are instituted—
- (a) in England and Wales, when they are instituted for the purposes of Part 1 of the Prosecution of Offences Act 1985 (see section 15(2) of that Act);20
 - (b) in Northern Ireland, when they are instituted for the purposes of Part 2 of the Justice (Northern Ireland) Act 2002 (see section 44(1) and (2) of that Act);
 - (c) in Scotland, when they are instituted for the purposes of Part 3 of the Proceeds of Crime Act 2002 (see section 151(1) and (2) of that Act).25

125 Retention of pseudonymised biometric data

- (1) Part 1 of the Counter-Terrorism Act 2008 (powers to gather and share information) is amended in accordance with subsections (2) to (6).
- (2) Section 18A (retention of material: general) is amended in accordance with subsections (3) to (5).30
- (3) In subsection (1), for “subsection (5)” substitute “subsections (4) to (9)”.
- (4) In subsection (4)(a), after “relates” insert “(a “pseudonymised form”)”.
- (5) After subsection (6) insert—
 - “(7) Section 18 material which is not a DNA sample may be retained indefinitely by a law enforcement authority if—35
 - (a) the authority obtains or acquires the material directly or indirectly from an overseas law enforcement authority,
 - (b) the authority obtains or acquires the material in a form which includes information which identifies the person to whom the material relates,40

- (c) as soon as reasonably practicable after obtaining or acquiring the material, the authority takes the steps necessary for it to hold the material in a pseudonymised form, and
- (d) having taken those steps, the law enforcement authority continues to hold the material in a pseudonymised form. 5
- (8) In a case where section 18 material is being retained by a law enforcement authority under subsection (7), if—
- (a) the law enforcement authority ceases to hold the material in a pseudonymised form, and
- (b) the material relates to a person who has no previous convictions or only one exempt conviction, 10
- the material may be retained by the law enforcement authority until the end of the retention period specified in subsection (9).
- (9) The retention period is the period of 3 years beginning with the date on which the law enforcement authority first ceases to hold the material in a pseudonymised form.” 15
- (6) In section 18E(1) (supplementary provision)—
- (a) in the definition of “law enforcement authority”, for paragraph (d) substitute—
- “(d) an overseas law enforcement authority;”, and 20
- (b) after that definition insert—
- ““overseas law enforcement authority” means a person formed or existing under the law of a country or territory outside the United Kingdom so far as exercising functions which—
- (a) correspond to those of a police force, or 25
- (b) otherwise involve the investigation or prosecution of offences;”.
- (7) The amendments made by this section apply only in connection with the retention of section 18 material that is or was obtained or acquired by a law enforcement authority— 30
- (a) on or after the commencement day, or
- (b) in the period of 3 years ending immediately before the commencement day.
- (8) Subsections (9) to (12) of this section apply where, at the beginning of the commencement day, a law enforcement authority has section 18 material which it obtained or acquired in the period of 3 years ending immediately before the commencement day. 35
- (9) Where the law enforcement authority holds the material in a pseudonymised form at the beginning of the commencement day, the authority is to be treated for the purposes of section 18A(7)(c) and (d) of the Counter-Terrorism Act 2008 as having— 40

- (a) taken the steps necessary for it to hold the material in a pseudonymised form as soon as reasonably practicable after obtaining or acquiring the material, and
 - (b) continued to hold the material in a pseudonymised form until the commencement day. 5
- (10) Where the law enforcement authority does not hold the material in a pseudonymised form at the beginning of the commencement day, the authority is to be treated for the purposes of section 18A(7)(c) of the Counter-Terrorism Act 2008 as taking the steps necessary for it to hold the material in a pseudonymised form as soon as reasonably practicable after obtaining or acquiring the material if it takes those steps on, or as soon as reasonably practicable after, the commencement day. 10
- (11) Subsection (12) of this section applies where, at a time before the commencement day (a “pre-commencement time”), the law enforcement authority was required by section 18(4) of the Counter-Terrorism Act 2008 to destroy the material but— 15
 - (a) at the pre-commencement time, the law enforcement authority could have retained the material under section 18A(7) to (9) of the Counter-Terrorism Act 2008 (as inserted by this section) if those provisions had been in force, or 20
 - (b) on or after the commencement day, the law enforcement authority may retain the material under those provisions by virtue of subsection (9) or (10) of this section.
- (12) Where this subsection applies— 25
 - (a) the law enforcement authority is to be treated as not having been required to destroy the material at the pre-commencement time, but
 - (b) the material may not be used in evidence against the person to whom the material relates— 30
 - (i) in criminal proceedings in England and Wales, Northern Ireland or Scotland in relation to an offence where those proceedings, or other criminal proceedings in relation to the person and the offence, were instituted before the commencement day, or
 - (ii) in criminal proceedings in any other country or territory.
- (13) In this section— 35
 - “the commencement day”, “law enforcement authority” and “section 18 material” have the meaning given in section 124(14);
 - “in a pseudonymised form” has the meaning given by section 18A(4) of the Counter-Terrorism Act 2008 (as amended by this section);
 - “instituted”, in relation to proceedings, has the meaning given in section 124(15). 40

126 Retention of biometric data from INTERPOL

- (1) Part 1 of the Counter-Terrorism Act 2008 (powers to gather and share information) is amended in accordance with subsections (2) to (4).

- (2) In section 18(4) (destruction of national security material not subject to existing statutory restrictions), after “18A” insert “, 18AA”.
- (3) After section 18A insert—

“18AA Retention of material from INTERPOL

- (1) This section applies to section 18 material which is not a DNA sample where the law enforcement authority obtained or acquired the material as part of a request for assistance, or a notification of a threat, sent to the United Kingdom via INTERPOL’s systems. 5
- (2) The law enforcement authority may retain the material until the National Central Bureau informs the authority that the request or notification has been cancelled or withdrawn. 10
- (3) If the law enforcement authority is the National Central Bureau, it may retain the material until it becomes aware that the request or notification has been cancelled or withdrawn.
- (4) In this section— 15
 “INTERPOL” means the organisation called the International Criminal Police Organization - INTERPOL;
 “the National Central Bureau” means the body appointed for the time being in accordance with INTERPOL’s constitution to serve as the United Kingdom’s National Central Bureau. 20
- (5) The reference in subsection (1) to material obtained or acquired as part of a request or notification includes material obtained or acquired as part of a communication, sent to the United Kingdom via INTERPOL’s systems, correcting, updating or otherwise supplementing the request or notification. 25

18AB Retention of material from INTERPOL: supplementary

- (1) The Secretary of State may by regulations amend section 18AA to make such changes as the Secretary of State considers appropriate in consequence of— 30
- (a) changes to the name of the organisation which, when section 18AA was enacted, was called the International Criminal Police Organization - INTERPOL (“the organisation”),
- (b) changes to arrangements made by the organisation which involve fingerprints or DNA profiles being provided to members of the organisation (whether changes to existing arrangements or changes putting in place new arrangements), 35
 or
- (c) changes to the organisation’s arrangements for liaison between the organisation and its members or between its members.
- (2) Regulations under this section are subject to affirmative resolution procedure.” 40

- (4) In section 18BA(5)(a) (retention of further fingerprints), after “18A” insert “, 18AA”.
- (5) Section 18AA of the Counter-Terrorism Act 2008 applies in relation to section 18 material obtained or acquired by a law enforcement authority before the commencement day (as well as material obtained or acquired on or after that day), except where the law enforcement authority was informed, or became aware, as described in subsection (2) or (3) of that section before the commencement day. 5
- (6) Subsection (7) of this section applies where—
- (a) at the beginning of the commencement day, a law enforcement authority has section 18 material, 10
 - (b) at a time before the commencement day (a “pre-commencement time”), the law enforcement authority was required by section 18(4) of the Counter-Terrorism Act 2008 to destroy the material, but
 - (c) at the pre-commencement time, the law enforcement authority could have retained the material under section 18AA of that Act (as inserted by this section) if it had been in force. 15
- (7) Where this subsection applies—
- (a) the law enforcement authority is to be treated as not having been required to destroy the material at the pre-commencement time, but 20
 - (b) the material may not be used in evidence against the person to whom the material relates—
 - (i) in criminal proceedings in England and Wales, Northern Ireland or Scotland in relation to an offence where those proceedings, or other criminal proceedings in relation to the person and the offence, were instituted before the commencement day, or 25
 - (ii) in criminal proceedings in any other country or territory.
- (8) In this section—
- “the commencement day”, “law enforcement authority” and “section 18 material” have the meaning given in section 124(14); 30
 - “instituted”, in relation to proceedings, has the meaning given in section 124(15).

Trust services

127 The eIDAS Regulation

In sections 128 to 132, “the eIDAS Regulation” means Regulation (EU) No. 910/2014 of the European Parliament and the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market. 35

128 Recognition of EU conformity assessment bodies

In Chapter 3 of the eIDAS Regulation (trust services), after Article 24A insert—

“Article 24B

Recognition of EU conformity assessment bodies

For the purposes of Articles 20(1), 21 and 24(1)(d), a body is to be treated as if it were a conformity assessment body in relation to a description of trust services provider (and trust service) if it is a conformity assessment body in relation to that description of provider (and service) for the purposes of the equivalent EU law.”

129 Removal of recognition of EU standards etc

- (1) The Secretary of State may by regulations—
 - (a) amend Article 24A of the eIDAS Regulation (recognition of EU standards etc for qualified trust services) so as to remove circumstances in which something is to be treated as qualified under that Regulation for the purposes of a provision or measure specified in paragraph 1 of that Article; 15
 - (b) revoke that Article;
 - (c) revoke Article 24B of the eIDAS Regulation (recognition of EU conformity assessment bodies); 20
 - (d) revoke Article 51 of the eIDAS Regulation (transitional measures for electronic signatures);
 - (e) amend a provision listed in subsection (3) so as to remove a reference to a trust service provider established in the EU;
 - (f) amend a provision listed in subsection (4) so as to remove a reference to European standards or provisions of equivalent EU law. 25
- (2) The power under subsection (1)(a) includes power to amend or remove an assumption in Article 24A(2) of the eIDAS Regulation.
- (3) The provisions mentioned in subsection (1)(e) are—
 - (a) Article 13(1) of the eIDAS Regulation; 30
 - (b) Articles 2(1)(a) and 4(1)(a) of the Implementing Decision.
- (4) The provisions mentioned in subsection (1)(f) are—
 - (a) Article 24(2)(b) of the eIDAS Regulation;
 - (b) Articles 2(2)(c)(7) and 4(2)(c)(7) of the Implementing Decision.
- (5) Regulations under this section may— 35
 - (a) include transitional provision or savings, and
 - (b) make different provision for different purposes, including for the purposes of different provisions of the eIDAS Regulation.
- (6) Regulations under this section are subject to the negative resolution procedure.

- (7) In this section, “the Implementing Decision” means Commission Implementing Decision (EU) 2015/1506 laying down specifications relating to formats of advanced electronic signatures and advanced seals to be recognised by public sector bodies pursuant to Articles 27(5) and 37(5) of the eIDAS Regulation.

130 Recognition of overseas trust products 5

- (1) The eIDAS Regulation is amended as follows.
(2) In Chapter 3 (trust services), after Article 45 insert –

“SECTION 9

Recognition of overseas trust services

Article 45A 10

Legal effects of overseas electronic signatures etc

1. The Secretary of State may by regulations provide that, for the purposes of Articles 25(2), 35(2), 41(2) and 43(2), an overseas trust product of a specified description is to be treated as qualified.
2. In this Article – 15
“overseas”, in relation to a trust product, means provided by a person established in a country or territory outside the United Kingdom;
“specified” means specified by regulations under this Article;
“trust product” means an electronic signature, an electronic seal, 20
an electronic time stamp or an electronic registered delivery service.
3. The Secretary of State may not make regulations under this Article specifying a description of overseas trust product unless satisfied that the reliability of such a product is at least equivalent to the reliability 25
of a comparable trust product that is qualified.
4. When making regulations under this Article in relation to a description of overseas trust product, the Secretary of State must have regard to (among other things) the law in the other country or territory relevant to that description of product and related trust services. 30

Article 45B

Overseas signatures and seals in public service

1. The Secretary of State may by regulations provide that an overseas electronic signature of a specified description is to be treated –
(a) for the purposes of Article 27(1), as an advanced electronic 35
signature that complies with the Implementing Decision;

- (b) for the purposes of Article 27(2), as an advanced electronic signature based on a qualified certificate for electronic signature, or a qualified signature, that complies with the Implementing Decision.
2. The Secretary of State may by regulations provide that an overseas electronic seal of a specified description is to be treated – 5
- (a) for the purposes of Article 37(1), as an advanced electronic seal that complies with the Implementing Decision;
- (b) for the purposes of Article 37(2), as an advanced electronic seal based on a qualified certificate for electronic seal, or a qualified seal, that complies with the Implementing Decision. 10
3. In this Article –
- “the Implementing Decision” means Commission Implementing Decision (EU) 2015/1506 laying down specifications relating to formats of advanced electronic signatures and advanced seals to be recognised by public sector bodies; 15
- “overseas”, in relation to an electronic signature or electronic seal, means provided by a person established in a country or territory outside the United Kingdom;
- “specified” means specified by regulations made under this Article. 20
4. The Secretary of State may not make regulations under point (a) or (b) of paragraph 1 or point (a) or (b) of paragraph 2 specifying a description of overseas electronic signature or overseas electronic seal unless satisfied that the reliability of such a signature or seal is at least equivalent to the reliability of a signature or seal described in that point. 25
5. When making regulations under this Article in relation to a description of overseas electronic signature or overseas electronic seal, the Secretary of State must have regard to (among other things) the law in the other country or territory relevant to that description of signature or seal and related trust services. 30

Article 45C

Regulations under this Section

1. Before making regulations under Article 45A or 45B, the Secretary of State must consult the supervisory body. 35
2. Regulations under Article 45A or 45B –
- (a) may describe something by (among other things) describing something that meets a condition specified in the regulations or is provided by a person who meets such a condition, and 40

- (b) may include a condition referring to (among other things) the law of the other country or territory or a standard or other document, including the law, standard or other document as amended from time to time.
3. Regulations under Article 45A or 45B may – 5
- (a) make different provision for different purposes, including for the purposes of different provisions of this Regulation, and
- (b) include transitional or transitory provision or savings.
4. Regulations under Article 45A or 45B are to be made by statutory instrument. 10
5. A statutory instrument containing regulations under Article 45A or 45B is subject to annulment in pursuance of either House of Parliament.”
- (3) In Article 3(21) (definition of “product”), at the end insert “(except in the expression “trust product”)”. 15

131 Co-operation between supervisory authority and overseas authorities

- (1) Article 18 of the eIDAS Regulation (co-operation with EU authorities) is amended as follows.
- (2) In the heading, for “EU” substitute “overseas”.
- (3) In paragraph 1, for “public authority in the EU” substitute “designated overseas authority”. 20
- (4) In paragraph 2, for “other than in accordance with the data protection legislation” substitute “if the processing would contravene the data protection legislation (but in determining whether processing would do so, take into account the power conferred by that paragraph)”. 25
- (5) After paragraph 2 insert –
- “3. In this Article –
- “designated” means designated by regulations made by the Secretary of State that are in force;
- “overseas authority” means a person, or description of person, with functions relating to the regulation or supervision of trust services outside the United Kingdom. 30
4. Before making regulations under this Article, the Secretary of State must consult the supervisory body.
5. Regulations under this Article may include transitional or transitory provision or savings. 35
6. Regulations under this Article are to be made by statutory instrument.

7. A statutory instrument containing regulations under this Article is subject to annulment in pursuance of either House of Parliament.”

132 Time periods: the eIDAS Regulation and the EITSET Regulations

- (1) In Chapter 1 of the eIDAS Regulation (general provisions), after Article 3 insert— 5
- “Article 3A*
Periods of time
- References in this Regulation to a period expressed in hours, days, months or years are to be interpreted in accordance with Article 3 of Regulation (EEC, Euratom) No. 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits.” 10
- (2) The Electronic Identification and Trust Services for Electronic Transactions Regulations 2016 (S.I. 2016/696) are amended as follows.
- (3) In regulation 2 (interpretation), at the end insert—
- “(3) References in these regulations to a period expressed in days or years are to be interpreted in accordance with Article 3 of Regulation (EEC, Euratom) No. 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits.” 15
- (4) In Schedule 1 (monetary penalties)—
- (a) in paragraph 4(f), for the words from “a period” to the end substitute “the period of 21 days beginning when the notice of intent is served”, 20
- (b) in paragraph 5, for the words from “a period” to the end substitute “the period of 21 days beginning when the notice of intent is received”, and
- (c) in paragraph 6, for the words from “a period” to the end substitute “the period of 21 days beginning when the notice of intent is served”. 25

PART 8

FINAL PROVISIONS

133 Power to make consequential amendments

- (1) The Secretary of State may by regulations make provision that is consequential on any provision made by this Act. 30
- (2) Regulations under this section—
- (a) may make different provision for different purposes;
- (b) may include transitional, transitory or saving provision;
- (c) may amend, repeal or revoke any provision made by an enactment. 35
- (3) The reference in subsection (2)(c) to provision made by an enactment is—

- (a) where the amendment, repeal or revocation is consequential on section 115, 116 or 117(1) or Schedule 14, a reference to provision made by an enactment whenever passed or made (including this Act), and
 - (b) in any other case, a reference to provision made by an enactment passed or made before the end of the Session in which this Act is passed. 5
- (4) Regulations under this section made in consequence of section 183A of the Data Protection Act 2018 (inserted by section 105 of this Act) may amend, repeal or revoke provision which refers to the data protection legislation (as defined in section 3 of the Data Protection Act 2018) as they could if the provision referred instead to the main data protection legislation (as defined in section 183A of that Act). 10
- (5) Regulations under this section that amend, repeal or revoke primary legislation are subject to the affirmative resolution procedure.
- (6) Any other regulations under this section are subject to the negative resolution procedure. 15
- (7) In this section—
 - “enactment” includes—
 - (a) an enactment comprised in subordinate legislation (as defined in section 21 of the Interpretation Act 1978), 20
 - (b) an enactment comprised in, or in an instrument made under, a Measure or Act of Senedd Cymru,
 - (c) an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament,
 - (d) an enactment comprised in, or in an instrument made under, Northern Ireland legislation, and 25
 - (e) assimilated direct legislation;
 - “primary legislation” means—
 - (a) an Act of Parliament;
 - (b) an Act of the Scottish Parliament; 30
 - (c) a Measure or Act of Senedd Cymru;
 - (d) Northern Ireland legislation.

134 Regulations

- (1) Regulations under this Act are to be made by statutory instrument.
- (2) Where regulations under this Act are subject to “the affirmative resolution procedure” the regulations may not be made unless a draft of the statutory instrument containing them has been laid before Parliament and approved by a resolution of each House of Parliament. 35
- (3) Where regulations under this Act are subject to “the negative resolution procedure” the statutory instrument containing the regulations is subject to annulment in pursuance of a resolution of either House of Parliament. 40

- (4) Any provision that may be included in regulations under this Act made by the Secretary of State or the Treasury subject to the negative resolution procedure may be made by regulations subject to the affirmative resolution procedure.

135 Extent

5

- (1) This Act extends to England and Wales, Scotland and Northern Ireland, subject to subsections (2) to (5).
- (2) In Part 3 (National Underground Asset Register)—
- (a) sections 56, 57(1) to (9) and 60(1) and Schedule 1 extend to England and Wales only, and 10
- (b) sections 58, 59 and 60(2) and Schedule 2 (National Underground Asset Register: Northern Ireland) extend to Northern Ireland only.
- (3) In Part 4 (registers of births and deaths)—
- (a) sections 61 to 64 extend to England and Wales only, and
- (b) an amendment or repeal made by Schedule 3 (minor and consequential amendments) has the same extent as the enactment amended or repealed. 15
- (4) In Part 6 (the Information Commission), paragraph 23 of Schedule 12A to the Data Protection Act 2018 (inserted by Schedule 14 to this Act) extends to England and Wales and Northern Ireland only. 20
- (5) In Part 7—
- (a) section 119 and Schedule 15 (information standards for health and adult social care) extend to England and Wales only;
- (b) paragraphs 2, 3 and 5 to 7 of Schedule 16 (grant of smart meter communication licences) extend to England and Wales and Scotland only. 25
- (6) In this section, “enactment” has the same meaning as in section 133.

136 Commencement

- (1) Except as provided by subsections (2) to (4), this Act comes into force on such day as the Secretary of State may by regulations appoint. 30
- (2) The following provisions come into force on the day on which this Act is passed—
- (a) section 78 (searches in response to data subjects’ requests);
- (b) Part 1 of Schedule 16 (grant of smart meter communication licences) and section 120 so far as relating to that Part of that Schedule; 35
- (c) section 124 (retention of biometric data and recordable offences);
- (d) section 125 (retention of pseudonymised biometric data);
- (e) section 126 (retention of biometric data from INTERPOL);
- (f) this Part;

- (g) any other provision of this Act (including provision modifying other legislation) so far as it confers power to make regulations or is otherwise necessary for enabling the exercise of such a power on or after the day on which this Act is passed.
- (3) The following provisions come into force at the end of the period of two months beginning with the day on which this Act is passed – 5
 - (a) section 69 (consent to law enforcement processing);
 - (b) section 81 (logging of law enforcement processing);
 - (c) section 95 (notices from the Information Commissioner);
 - (d) section 96 (power of the Information Commissioner to require documents). 10
- (4) Part 2 of Schedule 16 (grant of smart meter communication licences), and section 120 so far as relating to that Part of that Schedule, come into force on the day on which the first regulations under section 91A(1) of the Energy Act 2008 (inserted by Part 1 of Schedule 16) come into force. 15
- (5) Regulations under this section may make different provision for different purposes.

137 Transitional, transitory and saving provision

- (1) The Secretary of State may by regulations make transitional, transitory or saving provision in connection with the coming into force of any provision of this Act. 20
- (2) Regulations under this section may amend Schedule 21 to the Data Protection Act 2018 or Part 2 of Schedule 9 to this Act by adding, varying or repealing provision.
- (3) Regulations under this section containing provision described in subsection (2) are subject to the negative resolution procedure. 25
- (4) Regulations under this section may make different provision for different purposes.

138 Short title

This Act may be cited as the Data (Use and Access) Act 2024. 30

SCHEDULES

SCHEDULE 1

Section 56

NATIONAL UNDERGROUND ASSET REGISTER (ENGLAND AND WALES): MONETARY PENALTIES

In the New Roads and Street Works Act 1991, after Schedule 5 insert— 5

“SCHEDULE 5A Section 106F

MONETARY PENALTIES IN RELATION TO REQUIREMENTS UNDER PART 3A

Power to impose monetary penalties

- 1 (1) The Secretary of State may give a notice (a “penalty notice”) imposing a penalty on a person if satisfied on the balance of probabilities that the person— 10
 - (a) has failed to comply with a requirement imposed on the person to—
 - (i) pay a fee in accordance with regulations under section 106D(1), or 15
 - (ii) provide information in accordance with regulations under section 106E(1) or (2), or
 - (b) has, in purported compliance with a requirement imposed on the person under regulations under section 106E(1) or (2), provided information that is false or misleading in a material respect. 20
- (2) The amount of a penalty imposed by a penalty notice must be such amount as is specified in, or determined in accordance with, regulations made by the Secretary of State.
- (3) A penalty imposed by a penalty notice must be paid to the Secretary of State within such period as may be specified in the notice. 25
- (4) The Secretary of State may not give more than one penalty notice to a person in respect of the same failure or conduct.
- (5) Regulations under this paragraph are subject to the affirmative procedure.

Warning notices

- 2 (1) Where the Secretary of State proposes to give a penalty notice to a person the Secretary of State must give the person a notice (a “warning notice”) notifying the person of the Secretary of State’s proposal. 30
- (2) A warning notice must—
 - (a) state the name and address of the person to whom the Secretary of State proposes to give a penalty notice; 35

- (b) give reasons why the Secretary of State proposes to give the person a penalty notice;
 - (c) state the amount of the proposed penalty;
 - (d) specify the date before which the person may make written representations to the Secretary of State. 5
- (3) The date specified under sub-paragraph (2)(d) must be a date falling at least 28 days after the day on which the warning notice is given.

Penalty notices

- 3 (1) Within the period of six months beginning with the day on which a warning notice is given to a person the Secretary of State must give to the person – 10
- (a) a notice stating that the Secretary of State has decided not to give a penalty notice to the person, or
 - (b) a penalty notice.
- (2) But the Secretary of State may not give a penalty notice to a person before the date specified in the warning notice in accordance with paragraph 2(2)(d). 15
- (3) A penalty notice given to a person must –
- (a) state the name and address of the person;
 - (b) give details of the warning notice given to the person;
 - (c) state whether or not the Secretary of State has received written representations in accordance with that notice; 20
 - (d) give reasons for the Secretary of State’s decision to impose a penalty on the person;
 - (e) state the amount of the penalty;
 - (f) give details of how the penalty may be paid; 25
 - (g) specify the date before which the penalty must be paid;
 - (h) give details about the person’s rights of appeal;
 - (i) give details about the consequences of non-payment.
- (4) The date specified under sub-paragraph (3)(g) must be a date falling at least 28 days after the day on which the penalty notice is given. 30
- (5) The Secretary of State may cancel a penalty notice by giving a notice to that effect to the person to whom the penalty notice is given.
- (6) If a penalty notice is cancelled the Secretary of State –
- (a) may not give a further penalty notice in relation to the failure or conduct to which the notice relates, and 35
 - (b) must repay any amount that has been paid in accordance with the notice.

Enforcement

- 4 If a person does not pay the whole or any part of a penalty which the person is liable to pay under this Schedule the penalty or part of the penalty is recoverable –
- (a) if the county court so orders, as if it were payable under an order of that court; 5
 - (b) if the High Court so orders, as if it were payable under an order of that court.

Appeals

- 5 (1) A person who is given a penalty notice may appeal to the First-tier Tribunal (“the Tribunal”) against the decision to give the notice or any requirement of it. 10
- (2) An appeal may be on the ground that the decision or requirement –
- (a) is based on an error of fact,
 - (b) is wrong in law, or 15
 - (c) is unreasonable.
- (3) But an appeal against the amount of a penalty may not be made on the ground mentioned in sub-paragraph (2)(c).
- (4) An appeal under this paragraph must be made before the end of the period of 28 days beginning with the day on which the penalty notice is given. 20
- (5) On an appeal the Tribunal may –
- (a) confirm or quash the decision to give the penalty notice, or
 - (b) confirm or vary any requirement of it.
- (6) In determining an appeal the Tribunal may –
- (a) review any determination of fact on which the decision or requirement appealed against is based, and 25
 - (b) take into account evidence which was not available to the Secretary of State when giving the notice.
- (7) Where an appeal in respect of a penalty notice is made under this paragraph the notice is of no effect until the appeal is determined or withdrawn. 30
- (8) Where an appeal is or may be made to the Upper Tribunal in relation to a decision of the Tribunal under this paragraph, the Upper Tribunal may suspend the notice to which the appeal relates until the appeal is determined or withdrawn.
- (9) If the Tribunal confirms or varies a decision or requirement appealed against under this paragraph, the person to whom the penalty notice is given must comply with the notice or the notice as varied (as the case may be) – 35
- (a) within such period as may be specified by the Tribunal, or
 - (b) if the Tribunal does not specify a period, within such period as may be specified by the Secretary of State and notified to the person.” 40

SCHEDULE 2

Section 58

NATIONAL UNDERGROUND ASSET REGISTER (NORTHERN IRELAND): MONETARY
PENALTIES

In the Street Works (Northern Ireland) Order 1995 (S.I. 1995/3210 (N.I. 19)), after
Schedule 2 insert—

5

“SCHEDULE 2ZA

Article 45F

MONETARY PENALTIES IN RELATION TO REQUIREMENTS UNDER ARTICLES 45D AND 45E

Power to impose monetary penalties

- 1 (1) The Secretary of State may give a notice (a “penalty notice”) imposing a penalty on a person if satisfied on the balance of probabilities that the person—
 - (a) has failed to comply with a requirement imposed on the person to—
 - (i) pay a fee in accordance with regulations under Article 45D(1), or
 - (ii) provide information in accordance with regulations under Article 45E(1) or (2), or
 - (b) has, in purported compliance with a requirement imposed on the person under regulations under Article 45E(1) or (2), provided information that is false or misleading in a material respect.
- (2) The amount of a penalty imposed by a penalty notice must be such amount as is specified in, or determined in accordance with, regulations made by the Secretary of State.
- (3) A penalty imposed by a penalty notice must be paid to the Secretary of State within such period as may be specified in the notice.
- (4) The Secretary of State may not give more than one penalty notice to a person in respect of the same failure or conduct.

Warning notices

- 2 (1) Where the Secretary of State proposes to give a penalty notice to a person the Secretary of State must give the person a notice (a “warning notice”) notifying the person of the Secretary of State’s proposal.
- (2) A warning notice must—
 - (a) state the name and address of the person to whom the Secretary of State proposes to give a penalty notice;
 - (b) give reasons why the Secretary of State proposes to give the person a penalty notice;
 - (c) state the amount of the proposed penalty;

- (d) specify the date before which the person may make written representations to the Secretary of State.
- (3) The date specified under sub-paragraph (2)(d) must be a date falling at least 28 days after the day on which the warning notice is given.

Penalty notices

5

- 3 (1) Within the period of six months beginning with the day on which a warning notice is given to a person the Secretary of State must give to the person—
 - (a) a notice stating that the Secretary of State has decided not to give a penalty notice to the person, or
 - (b) a penalty notice. 10
- (2) But the Secretary of State may not give a penalty notice to a person before the date specified in the warning notice in accordance with paragraph 2(2)(d).
- (3) A penalty notice given to a person must—
 - (a) state the name and address of the person; 15
 - (b) give details of the warning notice given to the person;
 - (c) state whether or not the Secretary of State has received written representations in accordance with that notice;
 - (d) give reasons for the Secretary of State’s decision to impose a penalty on the person; 20
 - (e) state the amount of the penalty;
 - (f) give details of how the penalty may be paid;
 - (g) specify the date before which the penalty must be paid;
 - (h) give details about the person’s rights of appeal;
 - (i) give details about the consequences of non-payment. 25
- (4) The date specified under sub-paragraph (3)(g) must be a date falling at least 28 days after the day on which the penalty notice is given.
- (5) The Secretary of State may cancel a penalty notice by giving a notice to that effect to the person to whom the penalty notice is given.
- (6) If a penalty notice is cancelled the Secretary of State—
 - (a) may not give a further penalty notice in relation to the failure or conduct to which the notice relates, and
 - (b) must repay any amount that has been paid in accordance with the notice. 30

Enforcement

35

- 4 If a person does not pay the whole or any part of a penalty which the person is liable to pay under this Schedule the penalty or part of 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.

Appeals

5

- 5 (1) A person who is given a penalty notice may appeal to the First-tier Tribunal (“the Tribunal”) against the decision to give the notice or any requirement of it.
- (2) An appeal may be on the ground that the decision or requirement –
- (a) is based on an error of fact, 10
 - (b) is wrong in law, or
 - (c) is unreasonable.
- (3) But an appeal against the amount of a penalty may not be made on the ground mentioned in sub-paragraph (2)(c).
- (4) An appeal under this paragraph must be made before the end of the period of 28 days beginning with the day on which the penalty notice is given. 15
- (5) On an appeal the Tribunal may –
- (a) confirm or quash the decision to give the penalty notice, or
 - (b) confirm or vary any requirement of it.
- (6) In determining an appeal the Tribunal may – 20
- (a) review any determination of fact on which the decision or requirement appealed against is based, and
 - (b) take into account evidence which was not available to the Secretary of State when giving the notice.
- (7) Where an appeal in respect of a penalty notice is made under this paragraph the notice is of no effect until the appeal is determined or withdrawn. 25
- (8) Where an appeal is or may be made to the Upper Tribunal in relation to a decision of the Tribunal under this paragraph, the Upper Tribunal may suspend the notice to which the appeal relates until the appeal is determined or withdrawn. 30
- (9) If the Tribunal confirms or varies a decision or requirement appealed against under this paragraph, the person to whom the penalty notice is given must comply with the notice or the notice as varied (as the case may be) –
- (a) within such period as may be specified by the Tribunal, or
 - (b) if the Tribunal does not specify a period, within such period as may be specified by the Secretary of State and notified to the person.” 35

SCHEDULE 3

Section 65

REGISTERS OF BIRTHS AND DEATHS: MINOR AND CONSEQUENTIAL AMENDMENTS

PART 1

AMENDMENTS OF THE BIRTHS AND DEATHS REGISTRATION ACT 1953

- | | | |
|---|---|----|
| 1 | The Births and Deaths Registration Act 1953 is amended as follows. | 5 |
| 2 | (1) Section 3A (registration of births of abandoned children) is amended as follows. | |
| | (2) In subsection (5), for the words from “direct” to the end substitute “enter in the margin of the relevant register of births a reference to the re-registration of the birth or, if the relevant register of births is in hard copy form, shall direct the officer having custody of that register to do so.” | 10 |
| | (3) After that subsection insert— | |
| | “(6) In subsection (5) “the relevant register of births”, in relation to the re-registration of the birth of a child, means the register of births in which the entry relating to the child was previously made.” | 15 |
| 3 | (1) Section 13 (registration of name of child or of alteration of name) is amended as follows. | |
| | (2) In subsection (1), for “the registrar or superintendent registrar having the custody of the register” substitute “the relevant registration officer for the register”. | 20 |
| | (3) In subsection (1A), for “The registrar or superintendent registrar having custody of the register in question” substitute “The relevant registration officer”. | |
| | (4) In subsection (1B), for “the registrar or superintendent registrar” substitute “the relevant registration officer”. | 25 |
| | (5) After subsection (2) insert— | |
| | “(2A) In this section the “relevant registration officer” for a register means— | |
| | (a) the registrar of births and deaths for the sub-district for which the register is or has been kept, or | 30 |
| | (b) the superintendent registrar for the district containing that sub-district.” | |
| 4 | In Part 3 (general), the italic heading before section 25 becomes “ <i>Registers, etc</i> ”. | |
| 5 | (1) Section 29 (correction of errors in registers) is amended as follows. | 35 |
| | (2) In subsection (3), for “the officer having the custody of the register” substitute “the appropriate registration officer”. | |

- (3) In subsection (3A)(b), for “the officer having the custody of the register” substitute “the appropriate registration officer”.
- (4) In subsection (3B)(b), for “the officer having the custody of the register” substitute “the appropriate registration officer”.
- (5) In subsection (4), for “the officer having the custody of the register” substitute “the appropriate registration officer for the register”. 5
- (6) After subsection (4) insert –
- “(5) In this section the “appropriate registration officer”, in relation to a register, means –
- (a) in the case of a register of live-births or of deaths in hard copy form, the superintendent registrar having custody of the register; 10
- (b) in the case of a register of live-births or of deaths not in hard copy form –
- (i) the registrar of births and deaths for the sub-district for which the register is or has been kept, or 15
- (ii) the superintendent registrar for the district containing that sub-district;
- (c) in the case of a register of still-births, the Registrar General.”
- 6 In section 29A (alternative procedure for certain corrections), in subsection (4) – 20
- (a) for “the officer having custody of the register” substitute “the appropriate registration officer”;
- (b) at the end insert –
- ““Appropriate registration officer” has the same meaning as in section 29 of this Act.” 25
- 7 (1) Section 30 (searches of indexes kept by Registrar General) is amended as follows.
- (2) After subsection (1) insert –
- “(1ZA) The Registrar General shall cause the following indexes to be made and kept in the General Register Office – 30
- (a) an index of the entries in the registers kept under section 1 of this Act;
- (b) an index of the entries in the registers kept under section 15 of this Act.” 35
- (3) In subsection (2), after “certified copies” insert “or in the said registers (as the case may be)”.
- (4) In subsection (3) –
- (a) for “to certified copies of entries in” substitute “in relation to”;
- (b) for the words from “any such” to the end substitute “any register of still-births”. 40

- 8 In section 31 (searches of indexes kept by superintendent registrars), for subsection (1) substitute –
- “(1) The superintendent registrar for each district shall cause the following indexes to be made –
- (a) an index of the entries in the registers of live-births kept for the sub-districts within that district; 5
- (b) an index of the entries in the registers of deaths kept for the sub-districts within that district.
- (1A) The indexes must be kept with the other records of the register office for the district.” 10
- 9 For section 32 (searches in registers kept by registrars) substitute –
- “32 Obtaining copies of entries from registrars**
- (1) Any person is entitled to obtain from a registrar for a sub-district, at any time when the registrar’s office is required to be open for the transaction of public business, a copy certified by the registrar of any entry in any register of births or register of deaths kept for that sub-district. 15
- (2) But subsection (1) does not apply in relation to any register of still-births except as the registrar may, with the consent of the Registrar General, in any particular case allow.” 20
- 10 (1) Section 33 (short certificate of birth) is amended as follows.
- (2) In subsection (1), for “the Registrar General, a superintendent registrar or a registrar” substitute “the appropriate registration officer”.
- (3) After subsection (1) insert –
- “(1A) In subsection (1) the “appropriate registration officer” means – 25
- (a) in the case of a live-birth, the Registrar General, a superintendent registrar or a registrar;
- (b) in the case of a still-birth –
- (i) the Registrar General, or
- (ii) a registrar acting at the time of the registration of the still-birth or with the consent of the Registrar General.” 30
- (4) In subsection (2) –
- (a) for the words from “the records and registers” to “may be” substitute “the register in which the entry relating to the birth is made, or, in the case of the Registrar General, from the records in the Registrar General’s custody”; 35
- (b) for “any such records or registers” substitute “any register of births or in any such records”.

- 11 In section 33A (short certificate of death), in subsection (2), for the words from “the records and registers” to “may be” substitute “the register in which the entry relating to the death is made, or, in the case of the Registrar General, from the records in the Registrar General’s custody”.
- 12 In section 34 (entry in register as evidence of birth or death), in subsection (5), before “on which” insert “in or”. 5
- 13 (1) Section 34A (searches and records of information: additional provision) is amended as follows.
- (2) In subsection (1) –
- (a) after paragraph (a) insert – 10
- “(aa) to carry out, on request, a search to find out whether any of the registers kept under this Act contains a particular entry;”;
- (b) in paragraph (b), after “copies” insert “or in such a register”.
- (3) In subsection (5), at the end insert “or in a register kept under this Act”. 15
- 14 In section 35 (offences relating to registers), in paragraph (b), after “deaths” insert “kept in hard copy form”.
- 15 In section 40 (sending and providing notices, information or other documents), omit “, return”.
- 16 In section 41 (interpretation), after subsection (3) insert – 20
- “(4) For the purposes of this Act a register is in hard copy form if it consists of a paper copy or similar form capable of being read with the naked eye.”

PART 2

AMENDMENTS OF OTHER LEGISLATION

25

Registration Service Act 1953

- 17 The Registration Service Act 1953 is amended as follows.
- 18 In section 10 (district register offices), in subsection (1), omit the words from “, and shall provide” to the end.
- 19 In section 12 (provision of register boxes), omit “registrar of births and deaths and”. 30
- 20 In section 13 (local schemes of organisation), in subsection (2), after paragraph (b) insert –
- “(ba) determining the equipment or facilities to be provided at those offices and stations by the council for the non-metropolitan county or metropolitan district;”. 35

Public Records Act 1958

- 21 In Schedule 1 to the Public Records Act 1958 (definition of public records), in paragraph 2(2)(b), after “adoptions,” insert “or to any other records held by the Registrar General of information entered in any register of births or deaths kept under any such enactment.” 5

Social Security Administration Act 1992

- 22 In section 124 of the Social Security Administration Act 1992 (provisions relating to age, death and marriage), after subsection (5) insert –
- “(6) The reference in subsection (1) above to a register in the custody of a registrar or superintendent registrar includes, in relation to registers of births or deaths kept under the Births and Deaths Registration Act 1953, a reference to any such register kept for the registrar’s sub-district or (as the case may be) for a sub-district within the superintendent registrar’s district; and references in subsection (3) above to the custodian of the register are to be read accordingly.” 10 15

Education Act 1996

- 23 (1) Section 564 of the Education Act 1996 (certificates of birth and registrars’ returns) is amended as follows.
- (2) In subsection (1), for “the registrar having the custody of the register of births and deaths” substitute “the relevant registrar for the register”. 20
- (3) In subsection (3) –
- (a) for “A registrar” substitute “The relevant registrar for a register”;
- (b) for “any register of births and deaths in his custody” substitute “the register”. 25
- (4) In subsection (4) –
- (a) in the definition of “the appropriate fee”, for “the registrar having custody of the register concerned” substitute “the relevant registrar for a register”;
- (b) for the definition of “register of births and deaths” substitute – 30
- ““register” means a register of births or register of deaths kept under that Act.”;
- (c) at the end insert –
- ““the relevant registrar” for a register means –
- (a) in the case of a register in hard copy form (within the meaning of the Births and Deaths Registration Act 1953), the superintendent registrar having custody of the register; 35

- (b) in the case of a register not in hard copy form (within the meaning of that Act) –
 - (i) the registrar of births and deaths for the sub-district for which the register is or has been kept, or
 - (ii) the superintendent registrar for the district containing that sub-district.”

5

Adoption and Children Act 2002

- 24 In section 78 of the Adoption and Children Act 2002 (Adopted Children Register: searches and copies), in subsection (4) –
- (a) in paragraph (a), omit “certified copies of”;
 - (b) in paragraph (b), for “certified copies”, in the second place it occurs, substitute “registers”.

10

Gender Recognition Act 2004

- 25 The Gender Recognition Act 2004 is amended as follows.
- 26 (1) Section 10 (registration) is amended as follows.
- (2) In subsection (2), omit the “or” after paragraph (a) and after paragraph (b) insert “, or
 - (c) an entry in a register kept under section 1 of the Births and Deaths Registration Act 1953,”.
 - (3) For subsection (3) substitute –
 - “(3) “The appropriate Registrar General” means –
 - (a) in relation to a UK birth register entry of which a certified copy is kept by a Registrar General or which is in a register so kept, whichever Registrar General keeps that certified copy or that register;
 - (b) in relation to a UK birth register entry in a register kept under section 1 of the Births and Deaths Registration Act 1953, the Registrar General for England and Wales.
 - (3A) For the purposes of this section each of the following is a Registrar General –
 - (a) the Registrar General for England and Wales;
 - (b) the Registrar General for Scotland;
 - (c) the Registrar General for Northern Ireland.”
- 27 In Part 1 of Schedule 3 (registration: England and Wales), in paragraphs 5(3) and 8(2), for “or (b)” substitute “, (b) or (c)”.

15

20

25

30

35

Presumption of Death Act 2013

- 28 In Schedule 1 to the Presumption of Death Act 2013 (Register of Presumed Deaths), in paragraph 7 (interpretation)–
- (a) after “means” insert “–
(a)”;
 - (b) at the end insert “, or
(b) the index kept in the General Register Office of such entries.”

5

SCHEDULE 4

Section 70

LAWFULNESS OF PROCESSING: RECOGNISED LEGITIMATE INTERESTS

10

In the UK GDPR, at the end insert–

“ANNEX 1

LAWFULNESS OF PROCESSING: RECOGNISED LEGITIMATE INTERESTS**Disclosure for purposes of processing described in Article 6(1)(e)**

1. This condition is met where–
- (a) the processing is necessary for the purposes of making a disclosure of personal data to another person in response to a request from the other person, and
 - (b) the request states that the other person needs the personal data for the purposes of carrying out processing described in Article 6(1)(e) that has a legal basis that satisfies Article 6(3).

15

20

National security, public security and defence

2. This condition is met where the processing is necessary–
- (a) for the purposes of safeguarding national security,
 - (b) for the purposes of protecting public security, or
 - (c) for defence purposes.

25

Emergencies

3. This condition is met where the processing is necessary for the purposes of responding to an emergency.

4. In paragraph 3, “emergency” has the same meaning as in Part 2 of the Civil Contingencies Act 2004.

Crime

5. This condition is met where the processing is necessary for the purposes of—
- (a) detecting, investigating or preventing crime, or 5
 - (b) apprehending or prosecuting offenders.

Safeguarding vulnerable individuals

6. This condition is met where the processing is necessary for the purposes of safeguarding a vulnerable individual.
7. In paragraph 6— 10
- “safeguarding”, in relation to a vulnerable individual, means—
- (a) protecting a vulnerable individual from neglect or physical, mental or emotional harm, or
 - (b) protecting the physical, mental or emotional well-being of a vulnerable individual; 15
- “vulnerable individual” means an individual—
- (a) aged under 18, or
 - (b) aged 18 or over and at risk.
8. For the purposes of paragraph 7—
- (a) protection of an individual, or of the well-being of an individual, includes both protection relating to a particular individual and protection relating to a type of individual, and 20
 - (b) an individual aged 18 or over is “at risk” if the controller has reasonable cause to suspect that the individual— 25
 - (i) has needs for care and support,
 - (ii) is experiencing, or at risk of, neglect or physical, mental or emotional harm, and
 - (iii) as a result of those needs is unable to protect themselves against the neglect, harm or risk.”

SCHEDULE 5

Section 71

PURPOSE LIMITATION: PROCESSING TO BE TREATED AS COMPATIBLE WITH ORIGINAL PURPOSE

In the UK GDPR, after Annex 1 (inserted by Schedule 4 to this Act) insert—

“ANNEX 2

5

PURPOSE LIMITATION: PROCESSING TO BE TREATED AS COMPATIBLE WITH ORIGINAL PURPOSE

Disclosure for purposes of processing described in Article 6(1)(e)

1. This condition is met where—

(a) the processing—

10

(i) is necessary for the purposes of making a disclosure of personal data to another person in response to a request from the other person, and

(ii) is not carried out by a public authority in the performance of its tasks, and

15

(b) the request states that the other person needs the personal data for the purposes of carrying out processing that—

(i) is described in Article 6(1)(e),

(ii) has a legal basis that satisfies Article 6(3), and

(iii) is necessary to safeguard an objective listed in Article 23(1)(c) to (j).

20

Disclosure for the purposes of archiving in the public interest

2. This condition is met where—

(a) the processing—

(i) is necessary for the purposes of making a disclosure of personal data to another person (“R”) in response to a request from R, and

25

(ii) is carried out in accordance with Article 84B,

(b) the controller in relation to the processing collected the personal data based on Article 6(1)(a) (data subject’s consent),

(c) the request from R states that R intends to process the personal data only for the purposes of archiving in the public interest, and

30

- (d) the controller reasonably believes that R will carry out that processing in accordance with generally recognised standards relevant to R’s archiving in the public interest.

Public security

3. This condition is met where the processing is necessary for the purposes of protecting public security. 5

Emergencies

4. This condition is met where the processing is necessary for the purposes of responding to an emergency.
5. In paragraph 4, “emergency has the same meaning as in Part 2 of the Civil Contingencies Act 2004. 10

Crime

6. This condition is met where the processing is necessary for the purposes of—
- (a) detecting, investigating or preventing crime, or
- (b) apprehending or prosecuting offenders. 15

Protection of vital interests of data subjects and others

7. This condition is met where the processing is necessary for the purposes of protecting the vital interests of the data subject or another individual.

Safeguarding vulnerable individuals

8. This condition is met where the processing is necessary for the purposes of safeguarding a vulnerable individual. 20

9. In paragraph 8—

“safeguarding”, in relation to vulnerable individual, means —

- (a) protecting a vulnerable individual from neglect or physical, mental or emotional harm, or 25
- (b) protecting the physical, mental or emotional well-being of a vulnerable individual;

“vulnerable individual” means an individual—

- (a) aged under 18, or
- (b) aged 18 or over and at risk. 30

10. For the purposes of paragraph 9—

- (a) protection of an individual, or of the well-being of an individual, includes both protection relating to a particular individual and protection relating to a type of individual, and

- (b) an individual aged 18 or over is “at risk” if the controller has reasonable cause to suspect that the individual—
- (i) has needs for care and support,
 - (ii) is experiencing, or at risk of, neglect or physical, mental or emotional harm, and
 - (iii) as a result of those needs is unable to protect themselves against the neglect, harm or risk.

5

Taxation

11. This condition is met where the processing is necessary for the purposes of the assessment or collection of a tax or duty or an imposition of a similar nature.

10

Legal obligations

12. This condition is met where the processing is necessary for the purposes of complying with an obligation of the controller under an enactment, a rule of law or an order of a court or tribunal.”

SCHEDULE 6

Section 80

15

AUTOMATED DECISION-MAKING: MINOR AND CONSEQUENTIAL AMENDMENTS

The UK GDPR

- 1 The UK GDPR is amended as follows.
- 2 (1) Article 12 (transparent information, communication and modalities for the exercise of the rights of the data subject) is amended as follows.
- (2) In paragraph 1, for “under Articles 15 to 22” substitute “made under or by virtue of Articles 15 to 22D”.
- (3) In paragraph 2—
- (a) for “under Articles 15 to 22”, in the first place it occurs, substitute “arising under or by virtue of Articles 15 to 22D”, and
 - (b) for “his or her rights under Articles 15 to 22” substitute “those rights”.
- (4) In paragraph 3, for “under Articles 15 to 22” substitute “made under or by virtue of Articles 15 to 22D”.
- (5) In paragraph 5, for “under Articles 15 to 22” substitute “under or by virtue of Articles 15 to 22D”.
- (6) In paragraph 6, for “referred to in Articles 15 to 21” substitute “made under or by virtue of Articles 15 to 22D”.

20

25

30

- 3 In Article 13(2)(f) (information about automated decision-making to be provided where personal data is collected from the data subject), for “referred to in Article 22(1) and (4)” substitute “which is subject to the requirement to provide safeguards under Article 22C”.
- 4 In Article 14(2)(g) (information about automated decision-making to be provided where personal data is not obtained from the data subject), for “referred to in Article 22(1) and (4)” substitute “which is subject to the requirement to provide safeguards under Article 22C”. 5
- 5 In Article 15(1)(h) (right of access by the data subject), for “referred to in Article 22(1) and (4)” substitute “which is subject to the requirement to provide safeguards under Article 22C”. 10
- 6 In the heading of Section 4 of Chapter 3, omit “and automated decision-making”.
- 7 In Article 23(1) (restrictions), for “provided for in Articles 12 to 22”, in both places it occurs, substitute “arising under or by virtue of Articles 12 to 22D”. 15
- 8 In Article 47(2)(e) (binding corporate rules), for the words from “the right not” to “Article 22” substitute “the right to protection in accordance with, and with regulations made under, Articles 22A to 22D in connection with decisions based solely on automated processing (including decisions reached by means of profiling)”. 20
- 9 In Article 83(5) (general conditions for imposing administrative fines) –
 (a) in point (b), for “22” substitute “21”, and
 (b) after that point insert –
 “(ba) Article 22B or 22C (restrictions on, and safeguards for, automated decision-making);”. 25

The 2018 Act

- 10 The 2018 Act is amended as follows.
- 11 Omit section 14 (automated decision-making authorised by law: safeguards).
- 12 In section 43(1)(d) (overview and scope of provisions in Part 3 about rights of the data subject), for “sections 49 and 50” substitute “sections 50A to 50D”. 30
- 13 (1) Section 52 (form of provision of information etc) is amended as follows.
 (2) In subsection (1), after “by” insert “or under”.
 (3) In subsection (3), for “by the data subject under section 45, 46, 47 or 50” substitute “made by the data subject under or by virtue of any of sections 45, 46, 47, 50C or 50D”. 35
 (4) In subsection (4), for “under section 45, 46 or 47” substitute “under or by virtue of any of sections 45, 46, 47, 50C or 50D”.

- (5) In subsection (5), after “by” insert “or under”.
- (6) In subsection (6), for “under sections 45 to 50” substitute “arising under or by virtue of sections 45 to 50D”.
- 14 (1) Section 53 (manifestly unfounded or excessive requests by the data subject) is amended as follows. 5
- (2) In subsection (1), for “from a data subject under section 45, 46, 47 or 50” substitute “made by a data subject under or by virtue of any of sections 45, 46, 47, 50C or 50D”.
- (3) In subsection (3), for “under section 45, 46, 47 or 50” substitute “described in subsection (1)”. 10
- 15 In section 149(2)(b) (enforcement notices) –
- (a) after “provision of” insert “or made under”, and
- (b) for “22” substitute “22D”.
- 16 In section 157(2)(a) (maximum amount of penalty), for “49,” substitute “50B, 50C,”. 15

SCHEDULE 7

Section 84

TRANSFERS OF PERSONAL DATA TO THIRD COUNTRIES ETC: GENERAL PROCESSING

Introduction

- 1 Chapter 5 of the UK GDPR (transfers of personal data to third countries or international organisations) is amended as follows. 20

General principles for transfers

- 2 (1) Omit Article 44 (transfers of personal data to third countries etc: general principles for transfers).
- (2) After that Article insert –

“Article 44A 25

General principles for transfers

1. A controller or processor may transfer personal data to a third country or an international organisation only if –
- (a) the condition in paragraph 2 is met, and
- (b) the transfer is carried out in compliance with the other provisions of this Regulation. 30

2. The condition is met if the transfer –
 - (a) is approved by regulations under Article 45A that are in force at the time of the transfer,
 - (b) is made subject to appropriate safeguards (see Article 46), or
 - (c) is made in reliance on a derogation for specific situations (see Article 49). 5
3. A transfer may not be made in reliance on paragraph 2(b) or (c) if, or to the extent that, it would breach a restriction in regulations under Article 49A.”

Transfers approved by regulations 10

- 3 Omit Article 45 (transfers on the basis of an adequacy decision).
- 4 After that Article insert –

“Article 45A

Transfers approved by regulations

1. For the purposes of Article 44A, the Secretary of State may by regulations approve transfers of personal data to – 15
 - (a) a third country, or
 - (b) an international organisation.
2. The Secretary of State may only make regulations under this Article approving transfers to a third country or international organisation if the Secretary of State considers that the data protection test is met in relation to the transfers (see Article 45B). 20
3. In making regulations under this Article, the Secretary of State may have regard to any matter which the Secretary of State considers relevant, including the desirability of facilitating transfers of personal data to and from the United Kingdom. 25
4. Regulations under this Article may, among other things –
 - (a) make provision in relation to a third country or international organisation specified in the regulations or a description of country or organisation; 30
 - (b) approve all transfers of personal data to a third country or international organisation or only transfers specified or described in the regulations;
 - (c) identify a transfer of personal data by any means, including by reference to – 35
 - (i) a sector or geographic area within a third country,
 - (ii) the controller or processor,

- (iii) the recipient of the personal data,
- (iv) the personal data transferred,
- (v) the means by which the transfer is made, or
- (vi) relevant legislation, schemes, lists or other arrangements or documents, as they have effect from time to time; 5
- (d) confer a discretion on a person.
- 5. Regulations under this Article are subject to the negative resolution procedure.

Article 45B

The data protection test 10

- 1. For the purposes of Article 45A, the data protection test is met in relation to transfers of personal data to a third country or international organisation if the standard of the protection provided for data subjects with regard to general processing of personal data in the country or by the organisation is not materially lower than the standard of the protection provided for data subjects by or under – 15
 - (a) this Regulation,
 - (b) Part 2 of the 2018 Act, and
 - (c) Parts 5 to 7 of that Act, so far as relevant to general processing. 20
- 2. In considering whether the data protection test is met in relation to transfers of personal data to a third country or international organisation, the Secretary of State must consider, among other things – 25
 - (a) respect for the rule of law and for human rights in the country or by the organisation,
 - (b) the existence, and powers, of an authority responsible for enforcing the protection of data subjects with regard to the processing of personal data in the country or by the organisation, 30
 - (c) arrangements for judicial or non-judicial redress for data subjects in connection with such processing,
 - (d) rules about the transfer of personal data from the country or by the organisation to other countries or international organisations, 35
 - (e) relevant international obligations of the country or organisation, and

- (f) the constitution, traditions and culture of the country or organisation.
3. In paragraphs 1 and 2—
- (a) the references to the protection provided for data subjects are to that protection taken as a whole, 5
- (b) the references to general processing are to processing to which this Regulation applies or equivalent types of processing in the third country or by the international organisation (as appropriate), and
- (c) the references to processing of personal data in the third country or by the international organisation are references only to the processing of personal data transferred to the country or organisation by means of processing to which this Regulation applies as described in Article 3. 10
4. When the data protection test is applied only to certain transfers to a third country or international organisation that are specified or described, or to be specified or described, in regulations (in accordance with Article 45A(4)(b))— 15
- (a) the references in paragraphs 1 to 3 to personal data are to be read as references only to personal data likely to be the subject of such transfers, and 20
- (b) the reference in paragraph 2(d) to transfer to other countries or international organisations is to be read as including transfer within the third country or international organisation.” 25

Transfers approved by regulations: monitoring

- 5 After Article 45B (inserted by paragraph 4) insert—

“Article 45C

Transfers approved by regulations: monitoring

1. The Secretary of State must, on an ongoing basis, monitor developments in third countries and international organisations that could affect decisions to make regulations under Article 45A or to amend or revoke such regulations. 30
2. Where the Secretary of State becomes aware that the data protection test is no longer met in relation to transfers approved, or of a description approved, in regulations under Article 45A, the Secretary of State must, to the extent necessary, amend or revoke the regulations. 35
3. Where regulations under Article 45A are amended or revoked in accordance with paragraph 2, the Secretary of State must enter 40

into consultations with the third country or international organisation concerned with a view to improving the protection provided to data subjects with regard to the processing of personal data in the country or by the organisation.

4. The Secretary of State must publish— 5
- (a) a list of the third countries and international organisations, and the descriptions of such countries and organisations, which are for the time being approved by regulations under Article 45A as places or persons to which personal data may be transferred, and 10
- (b) a list of the third countries and international organisations, and the descriptions of such countries and organisations, which have been but are no longer approved by such regulations.
5. In the case of regulations under Article 45A which approve only certain transfers to a third country or international organisation specified or described in the regulations (in accordance with Article 45A(4)(b)), the lists published under paragraph 4 must specify or describe the relevant transfers.” 15

Transfers subject to appropriate safeguards 20

- 6 (1) Article 46 (transfers subject to appropriate safeguards) is amended as follows.
- (2) Omit paragraph 1.
- (3) After that paragraph insert—
- “1A. A transfer of personal data to a third country or an international organisation by a controller or processor is made subject to appropriate safeguards only— 25
- (a) in a case in which—
- (i) safeguards are provided in connection with the transfer as described in paragraph 2 or 3 or regulations made under Article 47A(4), and 30
- (ii) the controller or processor, acting reasonably and proportionately, considers that the data protection test is met in relation to the transfer or that type of transfer (see paragraph 6), or 35
- (b) in a case in which—
- (i) safeguards are provided in accordance with paragraph 2(a) by an instrument that is intended to be relied on in connection with the transfer or that type of transfer, and

- (ii) each public body that is a party to the instrument, acting reasonably and proportionately, considers that the data protection test is met in relation to the transfers, or types of transfer, intended to be made in reliance on the instrument (see paragraph 6).” 5
- (4) In paragraph 2—
- (a) in the words before point (a)—
- (i) omit “appropriate”, and
- (ii) for “paragraph 1” substitute “paragraph 1A(a)”,
- (b) in point (a), for “public authorities or bodies” substitute “a public body and another relevant person or persons”, 10
- (c) in point (b), after “rules” insert “approved”,
- (d) in point (c), for “section 17C of the 2018 Act” substitute “Article 47A(1)”,
- (e) in point (e), for “appropriate safeguards” substitute “safeguards provided by the code”, and 15
- (f) in point (f), for “appropriate safeguards” substitute “safeguards provided by the mechanism”.
- (5) In paragraph 3, in the words before point (a)—
- (a) omit “appropriate”, 20
- (b) for “paragraph 1” substitute “paragraph 1A(a)”,
- (c) omit “, in particular,”, and
- (d) in point (b), for “public authorities or bodies” substitute “a public body and another relevant person or persons”.
- (6) At the end insert— 25
- “6. For the purposes of this Article, the data protection test is met in relation to a transfer, or a type of transfer, of personal data if, after the transfer, the standard of the protection provided for the data subject with regard to that personal data by the safeguards required under paragraph 1A, and (where relevant) by other means, would not be materially lower than the standard of the protection provided for the data subject with regard to the personal data by or under—
- (a) this Regulation,
- (b) Part 2 of the 2018 Act, and
- (c) Parts 5 to 7 of that Act, so far as relevant to processing to which this Regulation applies. 30 35
7. For the purposes of paragraph 1A(a)(ii) and (b)(ii), what is reasonable and proportionate is to be determined by reference to all the circumstances, or likely circumstances, of the transfer or type of transfer, including the nature and volume of the personal data transferred. 40

8. In this Article—
- (a) references to the protection provided for the data subject are to that protection taken as a whole;
- (b) “relevant person” means a public body or another person exercising functions of a public nature.” 5
- 7 In the heading of Article 47 (binding corporate rules) at the beginning insert “Transfers subject to appropriate safeguards:”.
- 8 After Article 47 insert—
- “Article 47A*
- Transfers subject to appropriate safeguards: further provision** 10
1. The Secretary of State may by regulations specify standard data protection clauses which the Secretary of State considers are capable of securing that the data protection test set out in Article 46 is met in relation to transfers of personal data generally or in relation to a type of transfer specified in the regulations. 15
2. The Secretary of State must keep under review the standard data protection clauses specified in regulations under paragraph 1 that are for the time being in force.
3. Regulations under paragraph 1 are subject to the negative resolution procedure. 20
4. The Secretary of State may by regulations make provision about further safeguards that may be relied on for the purposes of Article 46(1A)(a).
5. The Secretary of State may only make regulations under paragraph 4 if the Secretary of State considers that the further safeguards are capable of securing that the data protection test set out in Article 46 is met in relation to transfers of personal data generally or in relation to a type of transfer specified in the regulations. 25
6. Regulations under paragraph 4 may, among other things—
- (a) make provision by adopting safeguards prepared or published by another person; 30
- (b) make provision about ways of providing safeguards which require authorisation from the Commissioner.
7. Regulations under paragraph 4 which amend Article 46 may do so only in the following ways— 35
- (a) by adding ways of providing safeguards, or
- (b) by varying or omitting ways of providing safeguards which were added by regulations under this Article.

8. Regulations under paragraph 4 are subject to the affirmative resolution procedure.”

Derogations for specific situations

- 9 (1) Article 49 (derogations for specific situations) is amended as follows.
- (2) In paragraph 1, in the first subparagraph – 5
- (a) for “adequacy regulations under section 17A of the 2018 Act, or of appropriate safeguards pursuant to Article 46, including binding corporate rules” substitute “approval by regulations under Article 45A and of compliance with Article 46 (appropriate safeguards)”, 10
and
- (b) in point (a), for “an adequacy decision” substitute “approval by regulations under Article 45A”.
- (3) In paragraph 1, in the second subparagraph, for “a provision in Article 45” substitute “Article 45A”.
- (4) In paragraph 4, for “section 18(1) of the 2018 Act” substitute “paragraph 4A”. 15
- (5) After paragraph 4 insert –
- “4A The Secretary of State may by regulations specify for the purposes of point (d) of paragraph 1 –
- (a) circumstances in which a transfer of personal data to a 20
third country or international organisation is to be taken to be necessary for important reasons of public interest, and
- (b) circumstances in which a transfer of personal data to a 25
third country or international organisation which is not required by an enactment is not to be taken to be necessary for important reasons of public interest.”
- (6) Omit paragraph 5A.
- (7) After paragraph 6 insert –
- “7. Regulations under this Article – 30
- (a) are subject to the made affirmative resolution procedure where the Secretary of State has made an urgency statement in respect of them;
- (b) otherwise, are subject to the affirmative resolution procedure.
8. For the purposes of this Article, an urgency statement is a reasoned 35
statement that the Secretary of State considers it desirable for the regulations to come into force without delay.”

Public interest restrictions

10 After Article 49 insert—

*“Article 49A***Restriction in the public interest**

1. The Secretary of State may by regulations restrict the transfer of a category of personal data to a third country or international organisation where—
 - (a) the transfer is not approved by regulations under Article 45A for the time being in force, and
 - (b) the Secretary of State considers the restriction to be necessary for important reasons of public interest.
2. Regulations under this Article—
 - (a) are subject to the made affirmative resolution procedure where the Secretary of State has made an urgency statement in respect of them;
 - (b) otherwise, are subject to the affirmative resolution procedure.
3. For the purposes of this Article, an urgency statement is a reasoned statement that the Secretary of State considers it desirable for the regulations to come into force without delay.”

SCHEDULE 8

Section 84

20

TRANSFERS OF PERSONAL DATA TO THIRD COUNTRIES ETC: LAW ENFORCEMENT
PROCESSING

Introduction

- 1 Chapter 5 of Part 3 of the 2018 Act (transfers of personal data to third countries etc) is amended as follows. 25

Overview and interpretation

- 2 Section 72 (overview and interpretation), in subsection (1)(b)—
- (a) for “the special conditions that apply” substitute “additional conditions that apply in certain cases”, and
 - (b) after “organisation” insert “(see section 73(4)(b))”.
- 30

General principles for transfer

- 3 (1) Section 73 (general principles for transfers) is amended as follows.

- (2) Before subsection (1) insert—
- “(A1) This section applies in relation to a transfer of personal data to a third country or international organisation for a law enforcement purpose.”
- (3) In subsection (1)— 5
- (a) for the words before paragraph (a) substitute “The controller in relation to the transfer must secure that the transfer takes place only if—”,
- (b) omit the “and” at the end of paragraph (a), and
- (c) after paragraph (b) insert “, and—” 10
- (c) the transfer is carried out in accordance with the other provisions of this Part.”
- (4) For subsection (3) substitute—
- “(3) Condition 2 is that the transfer—
- (a) is approved by regulations under section 74AA that are in force at the time of the transfer, 15
- (b) is made subject to appropriate safeguards (see section 75), or
- (c) is based on special circumstances (see section 76).”
- (5) In subsection (4)— 20
- (a) after paragraph (a) (but before the “or” at the end of that paragraph) insert—
- “(aa) the intended recipient is a person in a third country who—
- (i) is not a person described in paragraph (a), but 25
- (ii) is a processor whose processing, on behalf of the controller, of the personal data transferred is governed by, or authorised in accordance with, a contract with the controller that complies with section 59,” and 30
- (b) in paragraph (b)(i), for “other than a relevant authority” substitute “who is not a person described in paragraph (a) or (aa)”.
- (6) In subsection (5)(a), for the words from “either” to “State” substitute “to the public security, national security or essential interests of a third country or the United Kingdom”. 35

Transfers approved by regulations

- 4 (1) Omit section 74A (transfers based on adequacy regulations).

(2) After that section insert—

“74AA Transfers approved by regulations

- (1) For the purposes of section 73, the Secretary of State may by regulations approve transfers of personal data to—
- (a) a third country, or 5
 - (b) an international organisation.
- (2) The Secretary of State may only make regulations under this section approving transfers to a third country or international organisation if the Secretary of State considers that the data protection test is met in relation to the transfers (see section 74AB). 10
- (3) In making regulations under this section, the Secretary of State may have regard to any matter which the Secretary of State considers relevant, including the desirability of facilitating transfers of personal data to and from the United Kingdom.
- (4) Regulations under this section may, among other things— 15
- (a) make provision by reference to a third country or international organisation specified in the regulations or a description of country or organisation;
 - (b) approve all transfers of personal data to a third country or international organisation or only transfers specified or described in the regulations; 20
 - (c) identify a transfer of personal data by any means, including by reference to—
 - (i) a sector or geographic area within a third country,
 - (ii) the controller or processor, 25
 - (iii) the recipient of the personal data,
 - (iv) the personal data transferred,
 - (v) the means by which the transfer is made, or
 - (vi) relevant legislation, schemes, lists or other arrangements or documents, as they have effect from time to time; 30
 - (d) confer a discretion on a person.
- (5) Regulations under this section are subject to the negative resolution procedure.

74AB The data protection test

35

- (1) For the purposes of section 74AA, the data protection test is met in relation to transfers to a third country or international organisation if the standard of the protection provided for data subjects with regard to law enforcement processing of personal data in the country

- or by the organisation is not materially lower than the standard of the protection provided for data subjects by or under –
- (a) this Part, and
 - (b) Parts 5 to 7, so far as relevant to law enforcement processing.
- (2) In considering whether the data protection test is met in relation to transfers of personal data to a third country or international organisation, the Secretary of State must consider, among other things –
- (a) respect for the rule of law and for human rights in the country or by the organisation, 10
 - (b) the existence, and powers, of an authority responsible for enforcing the protection of data subjects with regard to the processing of personal data in the country or by the organisation,
 - (c) arrangements for judicial or non-judicial redress for data subjects in connection with such processing, 15
 - (d) rules about the transfer of personal data from the country or by the organisation to other countries or international organisations,
 - (e) relevant international obligations of the country or organisation, and 20
 - (f) the constitution, traditions and culture of the country or organisation.
- (3) In subsections (1) and (2) –
- (a) the references to the protection provided for data subjects are to that protection taken as a whole, 25
 - (b) the references to law enforcement processing are to processing by a competent authority for any of the law enforcement purposes or equivalent types of processing in the third country or by the international organisation (as appropriate), and 30
 - (c) the references to processing of personal data in the third country or by the international organisation are references only to the processing of personal data transferred to the country or organisation by means of processing to which this Act applies as described in section 207(2). 35
- (4) When the data protection test is applied only to certain transfers to a third country or international organisation that are specified or described, or to be specified or described, in regulations (in accordance with section 74AA(4)(b)) – 40
- (a) the references in subsections (1) to (3) to personal data are to be read as references only to personal data likely to be the subject of such transfers, and

- (b) the reference in subsection (2)(d) to transfer to other countries or international organisations is to be read as including transfer within the third country or international organisation.”

Transfers approved by regulations: monitoring

5

- 5 (1) Section 74B (transfers based on adequacy regulations: review etc) is amended as follows.
- (2) For the heading substitute “Transfers approved by regulations: monitoring”.
- (3) Omit subsections (1) and (2).
- (4) In subsection (3), for “under section 74A” substitute “giving approval under section 74AA”. 10
- (5) In subsection (4), for the words from the beginning to “otherwise,” substitute “Where the Secretary of State becomes aware that the data protection test is no longer met in relation to transfers approved, or of a description approved, in regulations under section 74AA,”. 15
- (6) In subsection (5)–
- (a) for “section 74A” substitute “section 74AA”, and
- (b) for “remedying the lack of an adequate level of protection” substitute “improving the protection provided to data subjects with regard to the processing of personal data in the country or by the organisation”. 20
- (7) In subsection (6)(a)–
- (a) omit “, territories and specified sectors within a third country”,
- (b) omit “, territories, sectors”, and
- (c) for “specified in regulations under section 74A” substitute “approved by regulations under section 74AA as places or persons to which personal data may be transferred”. 25
- (8) In subsection (6)(b)–
- (a) omit “, territories and specified sectors within a third country”,
- (b) omit “, territories, sectors”, and
- (c) for “specified in” substitute “approved by”. 30
- (9) In subsection (7)–
- (a) for “regulations under section 74A which specify that an adequate level of protection of personal data is ensured only for a transfer” substitute “regulations under section 74AA which approve only certain transfers to a third country or international organisation that are”, 35
- (b) after “the regulations” insert “(in accordance with section 74AA(4)(b))”, and
- (c) omit paragraph (a) (together with the final “and”). 40

Transfers subject to appropriate safeguards

- 6 (1) Section 75 (transfers on the basis of appropriate safeguards) is amended as follows.
- (2) In the heading, for “on the basis of” substitute “subject to”.
- (3) Omit subsection (1). 5
- (4) After that subsection insert –
- “(1A) A transfer of personal data to a third country or an international organisation is made subject to appropriate safeguards only if –
- (a) an appropriate legal instrument binds the intended recipient of the data (see subsection (4)), or 10
- (b) the controller, acting reasonably and proportionately, considers that the data protection test is met in relation to the transfer or that type of transfer (see subsection (5)).”
- (5) In subsection (2), for “subsection (1)(b)” substitute “subsection (1A)(b) but not in reliance on section 73(4)(aa) (transfer to processor)”. 15
- (6) In subsection (3), for “subsection (1)” substitute “this section but not in reliance on section 73(4)(aa) (transfer to processor)”.
- (7) At the end insert –
- “(4) For the purposes of this section, a legal instrument is “appropriate”, in relation to a transfer of personal data, if – 20
- (a) the instrument is intended to be relied on in connection with the transfer or that type of transfer,
- (b) at least one competent authority is a party to the instrument, and
- (c) each competent authority that is a party to the instrument, acting reasonably and proportionately, considers that the data protection test is met in relation to the transfers, or types of transfer, intended to be made in reliance on the instrument (see subsection (5)). 25
- (5) For the purposes of this section, the data protection test is met in relation to a transfer, or a type of transfer, of personal data if, after the transfer, the standard of the protection provided for the data subject with regard to that personal data, whether by a binding legal instrument or by other means, would not be materially lower than the standard of the protection provided for the data subject with regard to the personal data by or under – 30
- (a) this Part, and
- (b) Parts 5 to 7, so far as they relate to processing by a competent authority for any of the law enforcement purposes. 35
- (6) For the purposes of subsections (1A)(b) and (4)(c), what is reasonable and proportionate is to be determined by reference to all the 40

circumstances, or likely circumstances, of the transfer or type of transfer, including the nature and volume of the personal data transferred.

- (7) In this section, references to the protection provided for the data subject are to that protection taken as a whole.” 5

Transfers based on special circumstances

- 7 (1) Section 76 (transfers on the basis of special circumstances) is amended as follows.
- (2) In the heading, for “on the basis of” substitute “based on”.
- (3) Before subsection (1) insert— 10
- “(A1) A transfer of personal data to a third country or international organisation is based on special circumstances where—
- (a) it is made in the absence of approval by regulations under section 74AA and of compliance with section 75 (appropriate safeguards), and 15
- (b) it is necessary for a special purpose.”
- (4) In subsection (1)—
- (a) for the words before paragraph (a) substitute “A transfer of personal data is necessary for a special purpose if it is necessary—”,
- (b) in paragraph (c)— 20
- (i) after “public security” insert “or national security”, and
- (ii) at the end insert “or the United Kingdom”,
- (c) in paragraph (d), for “in individual cases” substitute “in particular circumstances,”, and
- (d) in paragraph (e), for “in individual cases” substitute “in particular circumstances,”. 25
- (5) In subsection (2), for “But subsection (1)(d) and (e) do not apply” substitute “But a transfer of personal data is not necessary for a special purpose by virtue of subsection (1)(d) or (e)”.
- (6) After subsection (2) insert— 30
- “(2A) In accordance with the third data protection principle, the amount of personal data transferred in reliance on this section must not be excessive in relation to the special purpose relied on.”
- (7) In subsection (3), for “subsection (1)” substitute “this section”.

Transfers to particular recipients 35

- 8 For the italic heading before section 77 substitute “Additional conditions”.
- 9 (1) Section 77 (conditions for transfers of personal data to persons other than relevant authorities) is amended as follows.

- (2) For the heading substitute “Additional conditions for transfers in reliance on section 73(4)(b)”.
- (3) In subsection (6), for “other than a relevant authority” substitute “in reliance on section 73(4)(b)”.
- (4) In subsection (7)(a), for “other than a relevant authority” substitute “that takes place in reliance on section 73(4)(b)”.

Subsequent transfers

- 10 (1) Section 78 (subsequent transfers) is amended as follows.
- (2) Before subsection (1) insert –
 - “(A1) Subsections (1) to (6) apply where a transfer to which section 73 applies takes place otherwise than in reliance on section 73(4)(aa) (transfer to processor).”
 - (3) In subsection (1) –
 - (a) omit “Where personal data is transferred in accordance with section 73,”,
 - (b) after “transfer” insert “–
(a),”
 - (c) for “the data” substitute “the personal data”, and
 - (d) at the end insert “(the “UK authoriser”), or
(b) that –
 - (i) the personal data is not to be so transferred without such authorisation except where subsection (1A) applies, and
 - (ii) where a transfer is made without such authorisation, the UK authoriser must be informed without delay.”
 - (4) After subsection (1) insert –
 - “(1A) This subsection applies if –
 - (a) the transfer is necessary for the prevention of an immediate and serious threat to the public security or national security of a third country or the United Kingdom, and
 - (b) authorisation from the UK authoriser cannot be obtained in good time.”
 - (5) In subsection (2) –
 - (a) for “A competent authority” substitute “The UK authoriser”, and
 - (b) for “under subsection (1)” substitute “for the purposes of a condition described in subsection (1)”.
 - (6) In subsection (3), for “competent authority” substitute “UK authoriser”.

- (7) In subsection (4), for “an authorisation may not be given under subsection (1)” substitute “the UK authoriser may not give an authorisation for the purposes of a condition described in subsection (1)”.
- (8) In subsection (5)(a), for the words from “either” to “State” substitute “to the public security, national security or essential interests of a third country or the United Kingdom”. 5
- (9) In subsection (6) –
- (a) after “made” insert “in a case described in subsection (4)”,
 - (b) for “subsection (4)” substitute “that subsection (whether made with or without authorisation from the UK authoriser), the UK authoriser must, without delay, inform”, and 10
 - (c) omit “must be informed without delay”.
- (10) At the end insert –
- “(7) Where a transfer takes place in reliance on section 73(4)(aa) (transfer to processor), the transferring controller must make it a condition of the transfer that the data is only to be further transferred to a third country or international organisation where – 15
- (a) the terms of any relevant contract entered into, or authorisation given, by the transferring controller in accordance with section 59 are complied with, and 20
 - (b) the further transfer satisfies the requirements in section 73(1).”

SCHEDULE 9

Section 84

TRANSFERS OF PERSONAL DATA TO THIRD COUNTRIES ETC: MINOR AND CONSEQUENTIAL AMENDMENTS AND TRANSITIONAL PROVISION 25

PART 1

MINOR AND CONSEQUENTIAL AMENDMENTS

The UK GDPR

- 1 The UK GDPR is amended as follows.
- 2 In Article 13(1)(f) (information to be provided where personal data is collected from the data subject) – 30
- (a) for “adequacy regulations under section 17A of the 2018 Act” substitute “regulations under Article 45A”, and
 - (b) for “reference to the appropriate or suitable safeguards” substitute “the safeguards relied on”. 35
- 3 In Article 14(1)(f) (information to be provided where personal data is not obtained from the data subject) –

- (a) for “adequacy regulations under section 17A of the 2018 Act” substitute “regulations under Article 45A”, and
- (b) for “reference to the appropriate or suitable safeguards” substitute “the safeguards relied on”.
- 4 In Article 15(2) (right of access by the data subject) – 5
- (a) after “organisation” insert “in reliance on Article 46”, and
- (b) for “appropriate safeguards pursuant to Article 46 relating to” substitute “safeguards provided in accordance with Article 46(1A)(a)(i) or (b)(i) for the purposes of”.
- 5 (1) Article 40 (codes of conduct) is amended as follows. 10
- (2) In paragraph 3 omit “appropriate” in both places.
- (3) In paragraph 5, for “provides sufficient appropriate safeguards” substitute “is capable of providing safeguards for the purposes of Article 46”.
- 6 In Article 42(2) (certification) omit “appropriate” in both places.
- 7 In Article 46(2)(d) (transfers subject to appropriate safeguards: standard data protection clauses), after “Commissioner” insert “for the purposes of this Article”. 15
- 8 In Article 57(1) (Information Commissioner’s tasks) –
- (a) in point (m) omit “which provide sufficient safeguards,”, and
- (b) after point (s) insert – 20
- “(sa) provide authorisation required under regulations made under Article 47A;”.
- 9 In Article 58(3) (authorisation and advisory powers of the Commissioner), after point (j) insert –
- “(k) to provide authorisation required under regulations made 25
under Article 47A”.
- 10 In Article 83(5)(c) (general conditions for imposing administrative fines), for “44” substitute “44A”.

The 2018 Act

- 11 The 2018 Act is amended as follows. 30
- 12 Omit section 17A (transfers based on adequacy decisions) and the italic heading before it.
- 13 Omit section 17B (transfers based on adequacy regulations: review etc).
- 14 Omit section 17C (standard data protection clauses).
- 15 Omit section 18 (transfers of personal data to third countries etc: public interest). 35
- 16 In section 24(2) (manual unstructured data held by FOI public authorities) –
- (a) in paragraph (c), for “44 to 49” substitute “44A to 49A”, and

- (b) omit paragraph (ca).
- 17 In section 26(2) (national security and defence exemption), omit paragraph (fa).
- 18 In section 75 (transfers on the basis of appropriate safeguards), after subsection (7) (inserted by Schedule 8 to this Act) insert— 5
- “(8) For provision about standard data protection clauses which the Commissioner considers are capable of securing that the data protection test in this section is met, see section 119A.”
- 19 In section 78A (law enforcement processing: national security exemption) (inserted by section 87 of this Act), in subsection (2)(e), after sub-paragraph (i) insert— 10
- “(ia) section 119A (standard clauses for transfers to third countries);”.
- 20 (1) Section 119A (power of Information Commissioner to specify standard clauses for transfers to third countries etc providing appropriate safeguards) is amended as follows. 15
- (2) In subsection (1), for the words from “provide” to the end substitute “are capable of securing that the data protection test set out in Article 46 of the UK GDPR or section 75 of this Act (or both) is met in relation to transfers of personal data”. 20
- (3) In subsection (3), after paragraph (a) insert—
- “(aa) may make provision generally or in relation to types of transfer described in the document,”.
- 21 In section 149(2)(e) (enforcement notices), for “44 to 49” substitute “44A to 49A”. 25
- 22 (1) Section 182 (regulations and consultation) is amended as follows.
- (2) Omit subsection (4).
- (3) In subsection (6), for “Where regulations under this Act” substitute “For the purposes of this Act, where regulations”.
- (4) In subsection (7), for “Where regulations under this Act” substitute “For the purposes of this Act, where regulations”. 30
- (5) In subsection (8)—
- (a) for “Where regulations under this Act” substitute “For the purposes of this Act, regulations”,
- (b) after “procedure” insert “if”, 35
- (c) in paragraph (a), for “the urgency” substitute “an urgency”, and
- (d) in paragraph (b), for “the period of 120 days” substitute “a period”.
- (6) Omit subsections (9) and (10).

- (7) In subsection (11), after “by regulations” insert “made under this Act or another enactment that are”.
- (8) For subsection (14) substitute –
- “(14) For the purposes of this section, an urgency statement is a reasoned statement that the Secretary of State considers it desirable for regulations to come into force without delay.” 5
- 23 In section 205(2)(e) (references to periods of time) omit “and (9)”.
- 24 In paragraph 26(9)(d) of Schedule 2 (exemptions etc for journalistic, academic, artistic and literary purposes), for “44” substitute “44A”.
- 25 (1) Part 3 of Schedule 21 (further transitional provision etc: transfers to third countries and international organisations) is amended as follows. 10
- (2) In the heading before paragraph 4, for “adequacy decisions and adequacy regulations” substitute “transfers approved by regulations”.
- (3) In paragraph 4 (UK GDPR: adequacy decisions and adequacy regulations) – 15
- (a) in sub-paragraph (1), for “based on adequacy regulations” substitute “to be treated as approved by regulations made under Article 45A of the UK GDPR”,
- (b) in sub-paragraph (4)(a), for “lists or other” substitute “schemes, lists or other arrangements or”, and
- (c) omit sub-paragraph (6). 20
- (4) In paragraph 6 (UK GDPR: application of certain provisions referring to regulations made under section 17A of the 2018 Act) –
- (a) in sub-paragraph (1)(a), for “section 17A” substitute “Article 45A of the UK GDPR”,
- (b) for sub-paragraph (2) substitute – 25
- “(2) Those provisions are Articles 13(1)(f), 14(1)(f), 45C, 49(1) and 49A(1) of the UK GDPR.”, and
- (c) after that sub-paragraph insert –
- “(3) In its application to transfers treated as approved by virtue of paragraph 1, Article 45C(5) of the UK GDPR (transfers approved by regulations: monitoring) has effect as if the reference to Article 45A(4)(b) were omitted.” 30
- (5) Omit paragraphs 7 and 8 (UK GDPR: transfers subject to appropriate safeguards provided by standard data protection clauses).
- (6) In paragraph 9 (UK GDPR: transfers subject to appropriate safeguards provided by binding corporate rules) – 35
- (a) in sub-paragraph (1) –
- (i) for “The appropriate safeguards referred to in Article 46(1) of the UK GDPR may be provided for” substitute “The requirement for safeguards to be provided under Article 46(1A)(a)(i) of the UK GDPR may be satisfied”, and 40

- (ii) after “described” insert “in”,
 - (b) in sub-paragraph (3)(a) –
 - (i) for “or provision” substitute “, of provision”, and
 - (ii) for “(or both)” substitute “or of the amendment of Chapter 5 of the UK GDPR by the Data (Use and Access) Act 2024”, and
 - (c) in sub-paragraph (4), after paragraph (a) insert –
 - “(aa) changing references to provision made by regulations under section 17A into references to provision made by regulations made under Article 45A of the UK GDPR;”.
- (7) In the heading before paragraph 10, for “adequacy decisions and adequacy regulations” substitute “transfers approved by regulations”.
- (8) In paragraph 10 (law enforcement processing: adequacy decisions and adequacy regulations) –
- (a) in sub-paragraph (1), for “based on adequacy regulations” substitute “to be treated as approved by regulations made under section 74AA”,
 - (b) in sub-paragraph (4)(a), for “lists or other” substitute “schemes, lists or other arrangements or”, and
 - (c) omit sub-paragraph (6).
- (9) In paragraph 12 (Part 3 (law enforcement processing): application of certain provisions referring to regulations made under section 74A) –
- (a) the existing text becomes sub-paragraph (1),
 - (b) in that sub-paragraph –
 - (i) for the words before paragraph (a) substitute “In sections 74B and 76(A1)–”, and
 - (ii) in paragraph (a), for “74A” substitute “74AA”, and
 - (c) after that sub-paragraph insert –
 - “(2) In its application to transfers treated as approved by virtue of paragraph 10, section 74B(7) (transfers approved by regulations: monitoring) has effect as if the reference to section 74AA(4)(b) were omitted.”

PART 2

TRANSITIONAL PROVISION

The UK GDPR: transfers approved by regulations

- 26 (1) Regulations made under section 17A of the 2018 Act (transfers based on adequacy regulations) and in force immediately before the relevant day are to be treated, on and after that day, as if made under Article 45A of the UK GDPR (inserted by Schedule 7 to this Act).

- (2) In this paragraph, “the relevant day” means the day on which paragraph 4 of Schedule 7 to this Act comes into force.

The UK GDPR: transfers subject to appropriate safeguards

- 27 (1) For the purposes of Article 44A(1)(a) and (2)(b) of the UK GDPR (general principles for transfers of personal data), a transfer of personal data to a third country or an international organisation made on or after the relevant day is made subject to appropriate safeguards where—
- (a) the transfer is made under arrangements entered into before the relevant day,
 - (b) safeguards are provided in accordance with paragraph 2 or 3 of Article 46 of the UK GDPR or paragraph 9 of Schedule 21 to the 2018 Act, and
 - (c) if the transfer had been made immediately before the relevant day, it would have satisfied—
 - (i) the condition in Article 46(1) of the UK GDPR relating to data subjects’ rights and legal remedies, and
 - (ii) the requirements of the last sentence of Article 44 of the UK GDPR (level of protection must not be undermined).
- (2) Sub-paragraph (1) has effect in addition to Article 46(1A) of the UK GDPR.
- (3) In this paragraph—
- “international organisation” has the same meaning as in the 2018 Act (see section 205 of that Act);
 - “personal data” has the same meaning as in the 2018 Act (see section 3 of that Act);
 - “the relevant day” means the day on which paragraph 6 of Schedule 7 to this Act comes into force;
 - “third country” has the same meaning as in Part 3 of the 2018 Act (see section 33 of that Act).

The UK GDPR: transfers subject to appropriate safeguards provided by standard data protection clauses

- 28 (1) Regulations made under section 17C of the 2018 Act (standard data protection clauses) and in force immediately before the relevant day are to be treated, on and after that day, as if made under Article 47A(1) of the UK GDPR (inserted by Schedule 7 to this Act).
- (2) In this paragraph, “the relevant day” means the day on which paragraph 8 of Schedule 7 to this Act comes into force.
- 29 (1) This paragraph applies to a requirement for safeguards to be provided under—
- (a) Article 46(1A)(a)(i) of the UK GDPR, or
 - (b) paragraph 27(1)(b) of this Schedule.

- (2) The requirement may be satisfied on and after the relevant day by a version of pre-commencement standard clauses incorporating changes where—
- (a) all of the changes are made in consequence of the amendment of Chapter 5 of the UK GDPR by this Act, and
 - (b) none of the changes alters the effect of the clauses. 5
- (3) Changing a reference to regulations under section 17A of the 2018 Act into a reference to regulations made under Article 45A of the UK GDPR is to be treated as a change falling within sub-paragraph (2).
- (4) Sub-paragraphs (2) and (3) cease to apply in relation to pre-commencement standard clauses if— 10
- (a) the clauses are specified in regulations and a provision of the regulations relating to the clauses is amended or revoked on or after the relevant day, or
 - (b) the clauses are specified in another document and a provision of the document relating to the clauses is amended or withdrawn by the Information Commissioner on or after the relevant day. 15
- (5) Sub-paragraph (2) has effect in addition to Article 46(2) and (3) of the UK GDPR.
- (6) In this paragraph— 20
- “pre-commencement standard clauses” means standard data protection clauses specified in—
 - (a) regulations made under section 17C of the 2018 Act and in force immediately before the relevant day, or
 - (b) a document issued by the Information Commissioner under section 119A of the 2018 Act before the relevant day and not withdrawn before that day; 25
- “the relevant day” means the day on which paragraph 6 of Schedule 7 to this Act comes into force.

The UK GDPR: transfers necessary for important reasons of public interest

- 30 (1) Regulations made under section 18(1) of the 2018 Act (transfers necessary for important reasons of public interest) and in force immediately before the relevant day are to be treated, on and after that day, as if made under Article 49(4A) of the UK GDPR (inserted by Schedule 7 to this Act). 30
- (2) In this paragraph, “the relevant day” means the day on which paragraph 9(5) of Schedule 7 to this Act comes into force. 35

The UK GDPR: restrictions on transfers of personal data to third countries and international organisations

- 31 (1) Regulations made under section 18(2) of the 2018 Act (restrictions on transfers of personal data to third countries and international organisations) and in force immediately before the relevant day are to be treated, on and 40

after that day, as if made under Article 49A of the UK GDPR (inserted by Schedule 7 to this Act).

- (2) In this paragraph, “the relevant day” means the day on which paragraph 10 of Schedule 7 to this Act comes into force.

Part 3 of the 2018 Act (law enforcement processing): transfers approved by regulations 5

32 (1) Regulations made under section 74A of the 2018 Act (transfers based on adequacy regulations) and in force immediately before the relevant day are to be treated, on and after that day, as if made under section 74AA of that Act (inserted by Schedule 8 to this Act).

- (2) In this paragraph, “the relevant day” means the day on which paragraph 4 of Schedule 8 to this Act comes into force. 10

Part 3 of the 2018 Act (law enforcement processing): transfers subject to appropriate safeguards

33 (1) For the purposes of section 73(3) of the 2018 Act (general principles for transfers of personal data), a transfer of personal data to a third country or an international organisation made on or after the relevant day is a transfer made subject to appropriate safeguards where— 15

- (a) an appropriate pre-commencement legal instrument binds the intended recipient of the data, and
 (b) if the transfer had been made immediately before the relevant day, the requirement in section 75(1)(a) of the 2018 Act (binding legal instrument containing appropriate safeguards) would have been satisfied by virtue of that instrument. 20

(2) Sub-paragraph (1) has effect in addition to section 75(1A) of the 2018 Act.

(3) For the purposes of sub-paragraph (1), a legal instrument is an “appropriate pre-commencement legal instrument”, in relation to a transfer of personal data, if— 25

- (a) it was entered into before the relevant day,
 (b) it is intended to be relied on in connection with the transfer or that type of transfer, and
 (c) at least one competent authority is a party to the instrument. 30

(4) In this paragraph—

“competent authority” has the same meaning as in Part 3 of the 2018 Act (see section 30 of that Act);

“international organisation” has the same meaning as in the 2018 Act (see section 205 of that Act); 35

“personal data” has the same meaning as in the 2018 Act (see section 3 of that Act);

“the relevant day” means the day on which paragraph 6 of Schedule 8 to this Act comes into force;

“third country” has the same meaning as in Part 3 of the 2018 Act (see section 33 of that Act).

SCHEDULE 10

Section 102

COMPLAINTS: MINOR AND CONSEQUENTIAL AMENDMENTS

<i>The UK GDPR</i>	5
1 The UK GDPR is amended as follows.	
2 In Article 12(4) (transparent information, communication and modalities for the exercise of the rights of the data subject), for “lodging a complaint with the Commissioner” substitute “making a complaint to the controller under section 164A of the 2018 Act, making a complaint to the Commissioner under section 165 of that Act”.	10
3 (1) Article 13(2) (information to be provided where personal data are collected from the data subject) is amended as follows.	
(2) After point (c) insert—	
“(ca) the right to make a complaint to the controller under section 164A of the 2018 Act;”.	15
(3) In point (d), for “lodge a complaint with the Commissioner” substitute “make a complaint to the Commissioner under section 165 of the 2018 Act”.	
4 (1) Article 14(2) (information to be provided where personal data have not been obtained from the data subject) is amended as follows.	20
(2) After point (d) insert—	
“(da) the right to make a complaint to the controller (see section 164A of the 2018 Act);”.	
(3) In point (e), for “lodge a complaint with the Commissioner” substitute “make a complaint to the Commissioner under section 165 of the 2018 Act”.	25
5 (1) Article 15(1) (right of access by the data subject) is amended as follows.	
(2) After point (e) insert—	
“(ea) the right to make a complaint to the controller under section 164A of the 2018 Act;”.	
(3) In point (f), for “lodge a complaint with the Commissioner” substitute “make a complaint to the Commissioner under section 165 of the 2018 Act”.	30
6 In Article 47 (binding corporate rules), in paragraph 2(e), for “lodge a complaint with the Commissioner and” substitute “make a complaint to the controller under section 164A of the 2018 Act, the right to make a complaint to the Commissioner under section 165 of the 2018 Act, the right to lodge a complaint”.	35

- 7 (1) Article 80 (representation of data subjects) is amended as follows.
- (2) In paragraph 1 –
- (a) for “lodge the complaint” substitute “make a complaint under section 164A or 165 of the 2018 Act”, and
 - (b) omit “77,”. 5
- (3) In paragraph 2, for “lodge a complaint with the Commissioner” substitute “make a complaint under section 164A or 165 of the 2018 Act”.

The 2018 Act

- 8 The 2018 Act is amended as follows.
- 9 In section 26(2)(f) (national security and defence exemption), omit 10
sub-paragraph (zi) (inserted by section 87 of this Act).
- 10 (1) Section 44 (information: controller’s general duties) is amended as follows.
- (2) In subsection (1) –
- (a) after paragraph (d) insert – 15
 - “(da) the existence of the right to make a complaint to the controller (see section 164A);”, and
 - (b) in paragraph (e), after “Commissioner”, in the first place it occurs, insert “(see section 165)”.
- (3) In subsection (5) – 20
- (a) after paragraph (c) insert – 20
 - “(ca) of the data subject’s right to make a complaint to the controller under section 164A,”, and
 - (b) in paragraph (d), after “Commissioner” insert “under section 165”.
- 11 (1) Section 45 (right of access by the data subject) is amended as follows.
- (2) In subsection (2) – 25
- (a) after paragraph (e) insert – 30
 - “(ea) the existence of the data subject’s right to make a complaint to the controller (see section 164A);”, and
 - (b) in paragraph (f), after “the Commissioner”, in the first place it occurs, insert “(see section 165)”.
- (3) In subsection (5) –
- (a) after paragraph (c) insert – 35
 - “(ca) of the data subject’s right to make a complaint to the controller under section 164A,”, and
 - (b) in paragraph (d), at the end insert “under section 165”.

- 12 In section 45A (exemption from sections 44 and 45: legal professional privilege) (inserted by section 79 of this Act), in subsection (2), after paragraph (c) insert –
- “(ca) the data subject’s right to make a complaint to the controller under section 164A,”. 5
- 13 (1) Section 48 (rights to rectification, to erasure or to restriction of processing: supplementary) is amended as follows.
- (2) In subsection (1)(b) –
- (a) after sub-paragraph (ii) insert –
- “(iia) of the data subject’s right to make a complaint to the controller under section 164A,” and 10
- (b) in sub-paragraph (iii), after “Commissioner” insert “under section 165”.
- (3) In subsection (4) –
- (a) after paragraph (b) insert – 15
- “(ba) of the data subject’s right to make a complaint to the controller under section 164A,” and
- (b) in paragraph (c), after “Commissioner” insert “under section 165”.
- 14 In section 93(1)(e) (right to information), after “Commissioner”, in the first place it occurs, insert “under section 165”. 20
- 15 In section 94(2)(f) (right of access), after “Commissioner”, in the first place it occurs, insert “under section 165”.
- 16 (1) Section 149 (enforcement notices) is amended as follows.
- (2) In subsection (1), for “or (5)” substitute “, (5) or (5A)”.
- (3) After subsection (5) insert – 25
- “(5A) The fifth type of failure is where a controller has failed, or is failing, to comply with section 164A or with regulations under section 164B.”
- (4) In subsection (6), for “or (5)” substitute “, (5) or (5A)”.
- 17 In section 155 (penalty notices), in subsection (1)(a), for “or (5)” substitute “, (5) or (5A)”. 30
- 18 In section 157 (maximum amount of penalty), after subsection (4) insert –
- “(4A) In relation to an infringement of section 164A or of regulations under section 164B, the maximum amount of the penalty that may be imposed by a penalty notice is the standard maximum amount.” 35
- 19 In section 165 (complaints by data subjects), in the heading, at the end insert “to the Commissioner”.
- 20 (1) Section 166 (orders to progress complaints) is amended as follows.

- (2) In the heading, at the end insert “to the Commissioner”.
- (3) In subsection (1), omit “or Article 77 of the UK GDPR”.
- 21 (1) Section 187 (representation of data subjects with their authority) is amended as follows.
- (2) In subsection (1)(a)– 5
- (a) for “Articles 77,” substitute “sections 164A and 165 (complaints) and Articles”, and
- (b) omit “to lodge complaints and”.
- (3) In subsection (2)–
- (a) before paragraph (a) insert – 10
- “(za) the right under section 164A (complaints to the controller);”, and
- (b) in paragraph (a), for “165(2) and (4)(d)” substitute “165”.

SCHEDULE 11

Section 107

FURTHER MINOR PROVISION ABOUT DATA PROTECTION

15

The UK GDPR

- 1 The UK GDPR is amended as follows.
- 2 (1) Article 4(1) (interpretation) is amended as follows.
- (2) After point (15) insert –
- “(15A) “direct marketing” means the communication (by whatever means) of advertising or marketing material which is directed to particular individuals;” 20
- (3) After point (28) insert –
- “(29) “enactment” has the same meaning as in the 2018 Act (see section 205 of that Act); 25
- (30) “tribunal” means any tribunal in which legal proceedings may be brought.”
- 3 After Article 4 insert –

“Article 4A

Periods of time

30

1. References in this Regulation to a period expressed in hours, days, weeks, months or years are to be interpreted in accordance with Article 3 of the Periods of Time Regulation, except in Article 91A(8) and (9).

2. In this Article, “the Periods of Time Regulation” means Regulation (EEC, Euratom) No. 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits.”
- 4 In Article 9 (processing of special categories of personal data) –
- (a) in paragraph 2, after “apply if” insert “the processing is based on Article 6(1) and”, 5
 - (b) in paragraph 2(f), after “courts” insert “or tribunals”, and
 - (c) in paragraph 3, for the words from the beginning to “data are” substitute “Paragraph 1 is only disapplied by point (h) of paragraph 2 if the personal data is”. 10
- 5 In Article 12(5) (information etc to be provided free of charge), at the beginning insert “Subject to Article 15(3),”.
- 6 In Article 23(1)(h) (restrictions), for “(a)” substitute “(c)”.
- 7 In Article 24(3) (responsibility of the controller), for “an element by which to demonstrate” substitute “a means of demonstrating”. 15
- 8 In Article 25(3) (data protection by design and by default), for “an element to demonstrate” substitute “a means of demonstrating”.
- 9 In Article 28(5) (processors), for “an element by which to demonstrate” substitute “a means of demonstrating”.
- 10 In Article 32(3) (security of processing), for “an element by which to demonstrate” substitute “a means of demonstrating”. 20
- 11 In Article 37(1)(a), after “courts” insert “and tribunals”.
- 12 Omit Article 59 (activity reports).

The 2018 Act

- 13 The 2018 Act is amended as follows. 25
- 14 In section 3(9) (definition of “the data protection legislation”) –
- (a) insert “and” at the end of paragraph (c), and
 - (b) omit paragraph (e) (regulations under section 2(2) of the European Communities Act 1972 which relate to the EU GDPR or the Law Enforcement Directive) and the “and” before it. 30
- 15 Omit section 20 (meaning of “court” in Part 2).
- 16 In section 94 (data subject’s right of access under Part 4), in subsection (10), for “subsection (6)” substitute “subsections (3), (5) and (6)”.
- 17 In section 119A(11) (standard clauses for transfers to third countries etc), after “any” insert “whole days that fall within a”. 35
- 18 In section 124(5) (data protection and journalism code), in the definition of “good practice in the processing of personal data for the purposes of journalism” –

- (a) in paragraph (a), omit “, including compliance with the requirements of the data protection legislation”, and
- (b) after paragraph (b) insert—
- “and includes compliance with the requirements of the data protection legislation;”.
- 5
- 19 (1) Section 125 (approval of codes of practice prepared by the Commissioner) is amended as follows.
- (2) Omit subsection (2).
- (3) In subsection (8), after “any” insert “whole days that fall within a”.
- (4) In subsection (9), for “subsections (2) and (5)” substitute “subsection (5)”. 10
- 20 In section 139 (reporting to Parliament), omit subsection (2).
- 21 In section 161(6) (approval of first guidance about regulatory action), after “any” insert “whole days that fall within a”.
- 22 In section 181 (interpretation of Part 6) omit the definition of “representative”. 15
- 23 In section 184(4) (prohibition of requirement to produce relevant records), after “prevention” insert “, investigation”.
- 24 In section 192(6) (approval of the Framework), after “any” insert “whole days that fall within a”.
- 25 In section 206 (index of defined expressions), in the Table, omit the entry for “representative (in Part 6)”. 20
- 26 (1) Schedule 1 (special categories of personal data and criminal convictions etc data) is amended as follows.
- (2) In the heading before paragraph 10, for “or detecting” substitute “etc”.
- (3) In paragraph 10(1)(a) (preventing etc unlawful acts), after “prevention” insert “, investigation”. 25
- (4) In paragraph 13(1)(a) (journalism etc in connection with unlawful acts and dishonesty etc), after “consists of” insert “, or is carried out in preparation for,”.
- (5) In paragraph 14(1)(b) (preventing fraud), after sub-paragraph (ii) (but before the “or” at the end of that sub-paragraph) insert— 30
- “(iia) the processing of personal data carried out in preparation for disclosure described in sub-paragraph (i) or (ii),”.
- (6) In paragraph 24(1)(a) (disclosure to elected representatives), after “consists of” insert “, or is carried out in preparation for,”. 35
- 27 (1) Schedule 2 (exemptions etc from the UK GDPR) is amended as follows.
- (2) In paragraph 2(1)(a) (crime), after “prevention” insert “, investigation”.

- (3) In paragraph 3(2)(b)(ii) (crime: risk assessment systems), after “prevention” insert “, investigation”.
- 28 In paragraph 8(1)(b) of Schedule 8 (conditions for sensitive processing under Part 3: preventing fraud), after sub-paragraph (ii) (but before the “or” at the end of that sub-paragraph) insert— 5
- “(iia) the processing of personal data carried out in preparation for disclosure described in sub-paragraph (i) or (ii).”
- 29 In paragraph 2(a) of Schedule 11 (other exemptions under Part 4: crime), after “prevention” insert “, investigation”. 10

Victims and Prisoners Act 2024

- 30 The following provisions (inserted by section 31 of the Victims and Prisoners Act 2024) extend to Scotland and Northern Ireland (as well as to England and Wales)—
- (a) Article 17(1)(g), (4) and (5) of the UK GDPR (right to erasure), and 15
- (b) section 13A of the 2018 Act (meaning of “relevant offence” for purpose of right to erasure).

SCHEDULE 12

Section 111

STORING INFORMATION IN THE TERMINAL EQUIPMENT OF A SUBSCRIBER OR USER

In the PEC Regulations, before Schedule 1 insert— 20

“SCHEDULE A1

Regulation 6

Storing information in the terminal equipment of a subscriber or user

Interpretation

1. —(1) In this Schedule, “website” includes a mobile application and any other platform by means of which an information society service is provided. 25

(2) For further provision about the interpretation of this Schedule, see regulation 6(2).

Consent

2. —(1) Regulation 6(1) does not prevent a person storing information, or gaining access to information stored, in the terminal equipment of a subscriber or user if the subscriber or user— 30

(a) is provided with clear and comprehensive information about the purpose of the storage or access, and

(b) gives consent to the storage or access.

(2) Where an electronic communications network is used by the same person to store or access information in the terminal equipment of a subscriber or user for the same purpose on more than one occasion, it is sufficient that the requirements of sub-paragraph (1) are met in respect of the initial use. 5

(3) For the purposes of sub-paragraph (1)(b), the means by which the subscriber or user may signify consent include—

(a) amending or setting controls on the internet browser which the subscriber or user uses; 10

(b) using another application or programme.

Transmission of a communication over an electronic communications network

3. Regulation 6(1) does not apply to—

(a) technical storage of information in the terminal equipment of a subscriber or user, or 15

(b) technical access to information stored in such equipment,

for the sole purpose of carrying out the transmission of a communication over an electronic communications network.

Storage or access strictly necessary to provide an information society service 20

4. —(1) Regulation 6(1) does not apply to—

(a) technical storage of information in the terminal equipment of a subscriber or user, or

(b) technical access to information stored in such equipment,

where the storage or access is strictly necessary for the provision of an information society service requested by the subscriber or user. 25

(2) For the purposes of this paragraph, the technical storage of, or technical access to, information is strictly necessary for the provision of an information society service requested by the subscriber or user if, for example, the storage or access is strictly necessary— 30

(a) to protect information provided in connection with, or relating to, the provision of the service requested,

(b) to ensure that the security of the terminal equipment of the subscriber or user is not adversely affected by the provision of the service requested,

(c) to prevent or detect fraud in connection with the provision of the service requested, 35

(d) to prevent or detect technical faults in connection with the provision of the service requested, or

- (e) to enable either of the following things to be done where necessary for the provision of the service requested –
 - (i) automatically authenticating the identity of the subscriber or user, or
 - (ii) maintaining a record of selections made on a website, or information put into a website, by the subscriber or user.

5

Collecting information for statistical purposes

5. – (1) Regulation 6(1) does not prevent a person storing information, or gaining access to information stored, in the terminal equipment of a subscriber or user if –

- (a) the person provides an information society service,
- (b) the sole purpose of the storage or access is to enable the person –
 - (i) to collect information for statistical purposes about how the service is used with a view to making improvements to the service, or
 - (ii) to collect information for statistical purposes about how a website by means of which the service is provided is used with a view to making improvements to the website,
- (c) any information that the storage or access enables the person to collect is not shared with any other person except for the purpose of enabling that other person to assist with making improvements to the service or website,
- (d) the subscriber or user is provided with clear and comprehensive information about the purpose of the storage or access, and
- (e) the subscriber or user is given a simple means of objecting, free of charge, to the storage or access and does not object.

10

15

20

(2) In sub-paragraph (1), the reference to gaining access to information stored in the terminal equipment of a subscriber or user does not include a reference to collecting or monitoring information automatically emitted by the terminal equipment.

25

(3) Where an electronic communications network is used by the same person to store or access information in the terminal equipment of a subscriber or user for the same purpose on more than one occasion, it is sufficient that the requirements of sub-paragraph (1)(d) and (e) are met in respect of the initial use.

Website appearance etc

30

6. – (1) Regulation 6(1) does not prevent a person storing information, or gaining access to information stored, in the terminal equipment of a subscriber or user if –

- (a) the person provides an information society service by means of a website,
- (b) the sole purpose of the storage or access is –
 - (i) to enable the way the website appears or functions when displayed on, or accessed by, the terminal equipment to adapt to the preferences of the subscriber or user, or

35

- (ii) to otherwise enable an enhancement of the appearance or functionality of the website when displayed on, or accessed by, the terminal equipment,
 - (c) the subscriber or user is provided with clear and comprehensive information about the purpose of the storage or access, and 5
 - (d) the subscriber or user is given a simple means of objecting, free of charge, to the storage or access and does not object.
- (2) Where an electronic communications network is used by the same person to store or access information in the terminal equipment of a subscriber or user for the same purpose on more than one occasion, it is sufficient that the requirements of sub-paragraph (1)(c) and (d) are met in respect of the initial use. 10

Emergency assistance

7. Regulation 6(1) does not prevent a person storing information, or gaining access to information stored, in the terminal equipment of a subscriber or user if—
- (a) the person receives a communication from the terminal equipment, 15
 - (b) the communication is a request from the subscriber or user for emergency assistance or otherwise indicates that the subscriber or user is in need of emergency assistance, and
 - (c) the sole purpose of the storage or access is to enable the geographical position of the subscriber or user to be ascertained with a view to the emergency assistance being provided.” 20

SCHEDULE 13

Section 113

PRIVACY AND ELECTRONIC COMMUNICATIONS: COMMISSIONER’S ENFORCEMENT POWERS

This is the Schedule to be substituted for Schedule 1 to the PEC Regulations—

“SCHEDULE 1

Regulation 31

25

Information Commissioner’s enforcement powers

Provisions applied for enforcement purposes

1. For the purposes of enforcing these Regulations, the following provisions of Parts 5 to 7 of the Data Protection Act 2018 apply with the modifications set out in paragraphs 2 to 29— 30
- section 140 (publication by the Commissioner);
 - section 141A (notices from the Commissioner);
 - section 142 (information notices);

section 143 (information notices: restrictions);	
section 144 (false statements made in response to an information notice);	
section 145 (information orders);	
section 146 (assessment notices);	
section 146A (assessment notices: approval of person to prepare report);	5
section 147 (assessment notices: restrictions);	
section 148 (destroying or falsifying information and documents etc);	
section 148A (interview notices);	
section 148B (interview notices: restrictions);	
section 148C (false statements made in response to interview notices);	10
section 149 (enforcement notices);	
section 150 (enforcement notices: supplementary);	
section 152 (enforcement notices: restrictions);	
section 153 (enforcement notices: cancellation and variation);	
section 154 and Schedule 15 (powers of entry and inspection);	15
section 155 and Schedule 16 (penalty notices);	
section 156 (penalty notices: restrictions);	
section 157 (maximum amount of penalty);	
section 159 (amount of penalties: supplementary);	
section 160 (guidance about regulatory action);	20
section 161 (approval of first guidance about regulatory action);	
section 162 (rights of appeal);	
section 163 (determination of appeals);	
section 164 (applications in respect of urgent notices);	
section 180 (jurisdiction);	25
section 181 (interpretation of Part 6);	
section 182 (regulations and consultation);	
section 196 (penalties for offences);	
section 197(1) and (2) (prosecution);	
section 198 (liability of directors etc);	30
section 200 (guidance about PACE codes of practice);	
section 202 (proceedings in the First-tier Tribunal: contempt);	
section 203 (Tribunal Procedure Rules).	

General modification of references to the Data Protection Act 2018

2. The provisions listed in paragraph 1 have effect as if— 35

- (a) references to the Data Protection Act 2018 or to a Part of that Act were references to the provisions of that Act or that Part as applied by these Regulations;
- (b) references to a particular provision of that Act were references to that provision as applied by these Regulations.

5

Modification of section 142 (information notices)

3. Section 142 has effect as if –

- (a) in subsection (1), for paragraphs (a) and (b) there were substituted –

“(a) require any person to provide the Commissioner with information or documents that the Commissioner reasonably requires for the purposes of determining whether that person has complied or is complying with the requirements of the PEC Regulations,

10

(b) require a communications provider to provide the Commissioner with information or documents relating to another person’s use of an electronic communications network or electronic communications service for the purposes of determining whether that other person has complied or is complying with the requirements of the PEC Regulations, or

15

(c) require any person to provide the Commissioner with information or documents that the Commissioner reasonably requires for the purposes of investigating a suspected failure by another person to comply with the requirements of the PEC Regulations.”;

20

- (b) in subsection (2)(a), for “(b)(i) or (b)(ii)” there were substituted “(b) or (c)”;

25

- (c) after subsection (8) there were inserted –

“(8A) Subsections (8B) and (8C) apply if an information notice given to a person under subsection (1)(b) or (c) contains –

(a) a statement that a duty of confidentiality applies in relation to the notice, and

30

(b) an explanation of the effects of subsections (8B) and (8C).

(8B) The person to whom the information notice is given, and any person employed or engaged for the purpose of that person’s business, must not disclose the existence of the notice without reasonable excuse.

(8C) Subsection (8B) does not prevent –

35

(a) a disclosure to a person employed or engaged for the purpose of the business of the person to whom the notice is given,

(b) a disclosure made with the permission of the Commissioner (whether the permission is contained in the information notice or otherwise), or

40

(c) a disclosure made for the purpose of obtaining legal advice.”;

(d) subsections (9) and (10) were omitted.

Modification of section 143 (information notices: restrictions)

4. – (1) Section 143 has effect as if subsections (1) and (9) were omitted.

(2) In that section –

- (a) subsections (3)(b) and (4)(b) have effect as if for “the data protection legislation” there were substituted “the PEC Regulations”; 5
- (b) subsection (7)(a) has effect as if for “this Act” there were substituted “section 144, 148 or 148C or paragraph 15 of Schedule 15”;
- (c) subsection (8) has effect as if for “this Act (other than an offence under section 144)” there were substituted “section 148 or 148C or paragraph 15 of Schedule 15”. 10

Modification of section 145 (information orders)

5. Section 145(2)(b) has effect as if for “section 142(2)(b)” there were substituted “section 142(2)”.

Modification of section 146 (assessment notices)

15

6. Section 146 has effect as if –

- (a) in subsection (1) –
 - (i) for “a controller or processor” there were substituted “a person within subsection (1A)”;
 - (ii) for “the controller or processor” there were substituted “the person”; 20
 - (iii) for “the data protection legislation” there were substituted “the requirements of the PEC Regulations”;
- (b) after subsection (1) there were inserted –
 - “(1A) A person is within this subsection if the person –
 - (a) is a communications provider, or 25
 - (b) is engaged in any activity regulated by the PEC Regulations.”;
- (c) in subsection (2) –
 - (i) for “controller or processor” there were substituted “person to whom it is given”;
 - (ii) in paragraph (h), for “the processing of personal data” there were substituted “any activity regulated by the PEC Regulations”; 30
 - (iii) in paragraph (i), for “process personal data on behalf of the controller” there were substituted “are involved in any such activity on behalf of the person to whom the notice is given”;
- (d) in subsection (3A), for “controller or processor” there were substituted “person”; 35

- (e) in subsection (7), for “controller or processor” there were substituted “person to whom the notice is given”;
- (f) in subsection (8)–
 - (i) in paragraph (a), for “controller or processor” there were substituted “person to whom the notice is given”; 5
 - (ii) in the words after paragraph (c), for “controller or processor” there were substituted “person”;
- (g) in subsection (9)–
 - (i) in paragraph (a), for the words from “a controller” to “this Act” there were substituted “the person to whom the notice is given has failed or is failing to comply with the requirements of the PEC Regulations or that an offence under section 144, 148 or 148C or paragraph 15 of Schedule 15”; 10
 - (ii) in paragraph (d), for “controller or processor” there were substituted “person”; 15
- (h) in subsection (10), for “controller or processor” there were substituted “person”;
- (i) subsection (11) were omitted;
- (j) in subsection (11A)–
 - (i) for “controller or processor”, in the first place it occurs, there were substituted “person to whom it is given”; 20
 - (ii) for “controller or processor”, in the second place it occurs, there were substituted “the person”.

Modification of section 146A (assessment notices: approval of person to prepare report) 25

7. Section 146A has effect as if—

- (a) in subsection (1), for “a controller or processor” there were substituted “a person (“P”)”; 30
- (b) in subsection (2), for “The controller or processor” there were substituted “P”;
- (c) in subsections (3) to (6), for “the controller or processor” (in each place) there were substituted “P”.

Modification of section 147 (assessment notices: restrictions)

8. –(1) Section 147 has effect as if subsection (5) were omitted.

- (2) In that section, subsections (2)(b) and (3)(b) have effect as if for “the data protection legislation” there were substituted “the PEC Regulations”. 35

Modification of section 148A (interview notices)

9. Section 148A has effect as if—

- (a) in subsection (1) –
 - (i) for “a controller or processor” there were substituted “a person”;
 - (ii) in paragraph (a), for “as described in section 149(2)” there were substituted “to comply with a requirement of the PEC Regulations”;
 - (iii) in paragraph (b), for “this Act” there were substituted “section 144, 148 or 148C or paragraph 15 of Schedule 15”; 5
- (b) in subsection (3) –
 - (i) in paragraph (a), for “the controller or processor” there were substituted “the person mentioned in subsection (1)”;
 - (ii) in paragraph (b), for “the controller or processor” there were substituted “that person”; 10
 - (iii) in paragraph (c), for “the controller or processor” there were substituted “that person”.

Modification of section 148B (interview notices: restrictions)

10. – (1) Section 148B has effect as if subsections (8) and (9) were omitted. 15
- (2) In that section –
- (a) subsections (2)(b) and (3)(b) have effect as if for “the data protection legislation” there were substituted “the PEC Regulations”;
 - (b) subsection (6)(a) has effect as if for “this Act” there were substituted “section 144, 148 or 148C or paragraph 15 of Schedule 15”; 20
 - (c) subsection (7) has effect as if for “this Act (other than an offence under section 148C)” there were substituted “section 144 or 148 or paragraph 15 of Schedule 15”.

Modification of section 149 (enforcement notices)

11. – (1) Section 149 has effect as if subsections (2) to (5A) and (7) to (9) were omitted. 25
- (2) In that section –
- (a) subsection (1) has effect as if –
 - (i) for “as described in subsections (2), (3), (4), (5) or (5A)” there were substituted “to comply with a requirement of the PEC Regulations”; 30
 - (ii) for “sections 150 and 151” there were substituted “section 150”;
 - (b) subsection (6) has effect as if the words “given in reliance on subsection (2), (3), (5) or (5A)” were omitted.

Modification of section 150 (enforcement notices: supplementary)

12. – (1) Section 150 has effect as if subsection (3) were omitted. 35
- (2) In that section, subsection (2) has effect as if the words “in reliance on section 149(2)” were omitted.

Modification of section 152 (enforcement notices: restrictions)

13. Section 152 has effect as if subsections (1), (2) and (4) were omitted.

Modification of Schedule 15 (powers of entry and inspection)

14. –(1) Schedule 15 has effect as if paragraph 3 were omitted.

(2) Paragraph 1(1) of that Schedule (issue of warrants in connection with non-compliance and offences) has effect as if for paragraph (a) (but not the final “and”) there were substituted – 5

“(a) there are reasonable grounds for suspecting that –

(i) a person has failed or is failing to comply with a requirement of the PEC Regulations, or 10

(ii) an offence under section 144, 148, or 148C or paragraph 15 of this Schedule has been or is being committed,”.

(3) Paragraph 2 of that Schedule (issue of warrants in connection with assessment notices) has effect as if –

(a) in sub-paragraphs (1) and (2), for “controller or processor” there were substituted “person”; 15

(b) in sub-paragraph (2), for “the data protection legislation” there were substituted “the PEC Regulations”.

(4) Paragraph 5 of that Schedule (content of warrants) has effect as if –

(a) in sub-paragraph (1)(c), for “the processing of personal data” there were substituted “an activity regulated by the PEC Regulations”; 20

(b) in sub-paragraph (2)(d), for the words from “controller or processor” to the end there were substituted “person mentioned in paragraph 1(1)(a) has failed or is failing to comply with a requirement of the PEC Regulations”;

(c) in sub-paragraph (3)(a) and (d) – 25

(i) for “controller or processor” there were substituted “person mentioned in paragraph 2(1)”;

(ii) for “the data protection legislation” there were substituted “the requirements of the PEC Regulations”.

(5) Paragraph 11 of that Schedule (privileged communications) has effect as if, in sub-paragraphs (1)(b) and (2)(b), for “the data protection legislation” there were substituted “the PEC Regulations”. 30

Modification of section 155 (penalty notices)

15. Section 155 has effect as if –

(a) in subsection (1) – 35

(i) in paragraph (a), for “as described in section 149(2), (3), (4), (5) or (5A)” there were substituted “to comply with a requirement of the PEC Regulations”;

- (ii) after paragraph (c), there were inserted “, or
(d) has failed to comply with the prohibition in section 142(8B),”;
- (b) after subsection (1) there were inserted –
- “(1A) But the Commissioner may not give a penalty notice to a person in respect of a failure to comply with regulation 5A of the PEC Regulations.”; 5
- (c) for subsection (2) there were substituted –
- “(2) When deciding whether to give a penalty notice to a person and determining the amount of the penalty, the Commission must have regard to the matters listed in subsection (3), so far as relevant.”; 10
- (d) in subsection (3) –
- (i) for “the controller or processor” (in each place) there were substituted “the person”;
- (ii) in paragraph (c), for the words from “data subjects” to the end there were substituted “subscribers or users”; 15
- (iii) in paragraph (d), for the words “in accordance with section 57, 66, 103 or 107” there were substituted “with a view to securing compliance with the requirements of the PEC Regulations”;
- (iv) paragraph (g) were omitted;
- (v) in paragraph (j), the words “or certification mechanism” were omitted; 20
- (e) subsection (4) were omitted;
- (f) after subsection (4) there were inserted –
- “(4A) If a penalty notice is given to a body in respect of a failure to comply with any of regulations 19 to 24 of the PEC Regulations, the Commissioner may also give a penalty notice to an officer of the body if the Commissioner is satisfied that the failure – 25
- (a) took place with the consent or connivance of the officer, or
- (b) was attributable to any neglect on the part of the officer.
- (4B) In subsection (4A) –
- “body” means a body corporate or a Scottish partnership; 30
- “officer”, in relation to a body, means –
- (a) in relation to a body corporate –
- (i) a director, manager, secretary or other similar officer of the body or any person purporting to act in such capacity, and 35
- (ii) where the affairs of the body are managed by its members, a member; or
- (b) in relation to a Scottish partnership, a partner or any person purporting to act as a partner.”;
- (g) subsections (6) to (8) were omitted. 40

Modification of Schedule 16 (penalties)

16. Schedule 16 has effect as if paragraphs 3(2)(b) and 5(2)(b) were omitted.

Modification of section 156 (penalty notices: restrictions)

17. – (1) Section 156 has effect as if subsections (1), (2), (4)(b) and (5) were omitted.

(2) In that section, subsection (3) has effect as if for the words from “controller” to “determined by or” there were substituted “penalty notice to a person who acts”. 5

Modification of section 157 (maximum amount of penalty)

18. Section 157 has effect as if –

(a) subsection (1) were omitted;

(b) in subsection (2) – 10

(i) for “Part 3 of this Act” there were substituted “the PEC Regulations”;

(ii) in paragraph (a), for the words from “section 35” to “or 78” there were substituted “regulation 5, 6, 7, 8, 14, 19, 20, 21, 21A, 21B, 22, 23 or 24”;

(c) subsections (3) and (4A) were omitted;

(d) after subsection (4A) there were inserted – 15

“(4B) In relation to an infringement of section 142(8B) of this Act, the maximum amount of the penalty that may be imposed by a penalty notice is the higher maximum amount.”

Modification of section 159 (amount of penalties: supplementary)

19. Section 159 has effect as if – 20

(a) in subsection (1), the words “Article 83 of the UK GDPR and” were omitted;

(b) in subsection (2), the words “Article 83 of the UK GDPR,” and “and section 158” were omitted.

Modification of section 160 (guidance)

20. Section 160 has effect as if, in subsection (4)(f), for “controllers and processors” there were substituted “persons”. 25

Modification of section 162 (rights of appeal)

21. Section 162 has effect as if subsection (4) were omitted.

Modification of section 163 (determination of appeals)

22. Section 163 has effect as if subsection (6) were omitted. 30

Modification of section 180 (jurisdiction)

23. – (1) Section 180 has effect as if subsections (2)(b), (c), (d) and (e) and (3) were omitted.

(2) Subsection (1) of that section has effect as if for “subsections (3) and (4)” there were substituted “subsection (4)”. 5

Modification of section 181 (interpretation of Part 6)

24. Section 181 has effect as if the definition of “certification provider” were omitted.

Modification of section 182 (regulations and consultation)

25. – (1) Section 182 has effect as if subsections (3), (6), (8), (11), (12) and (14) were omitted. 10

(2) Subsection (13) of that section has effect as if for “provision comes into force” there were substituted “coming into force of section 113 of the Data (Use and Access) Act 2024”.

Modification of section 196 (penalties for offences)

26. – (1) Section 196 has effect as if subsections (3) to (5) were omitted. 15

(2) In that section –

- (a) subsection (1) has effect as if the words “section 119 or 173 or” were omitted;
- (b) subsection (2) has effect as if for “section 132, 144, 148, 148C, 170, 171 or 184” there were substituted “section 144, 148 or 148C”.

Modification of section 200 (guidance about PACE codes of practice) 20

27. Section 200 has effect as if, in subsection (1), for “this Act” there were substituted “section 144, 148 and 148C and paragraph 15 of Schedule 15”.

Modification of section 202 (proceedings in the First-tier Tribunal: contempt)

28. Section 202 has effect as if, in subsection (1)(a), for sub-paragraphs (i) and (ii) there were substituted “on an appeal under section 162”. 25

Modification of section 203 (tribunal procedure rules)

29. Section 203 has effect as if –

- (a) in subsection (1), for paragraphs (a) and (b) there were substituted “the exercise of the rights of appeal conferred by section 162”;
- (b) in subsection (2) – 30
 - (i) in paragraph (a), for “the processing of personal data” there were substituted “any activity regulated by the PEC Regulations”;

- (ii) in paragraph (b), for “the processing of personal data” there were substituted “any such activity”.

Interpretation

30. In this Schedule, “the PEC Regulations” means these Regulations.”

	SCHEDULE 14	Section 115	5
	THE INFORMATION COMMISSION		
	<i>Schedule 12A to the Data Protection Act 2018</i>		
1	In the Data Protection Act 2018, after Schedule 12 insert—		
	“SCHEDULE 12A	Section 114A	
	THE INFORMATION COMMISSION		10
	<i>Status</i>		
1	(1) The Commission is not to be regarded—		
	(a) as a servant or agent of the Crown, or		
	(b) as enjoying any status, immunity or privilege of the Crown.		15
	(2) The Commission’s property is not to be regarded—		
	(a) as property of the Crown, or		
	(b) as property held on behalf of the Crown.		
	<i>Number of members</i>		
2	(1) The number of members of the Commission is to be determined by the Secretary of State.		20
	(2) That number must not be—		
	(a) less than 3, or		
	(b) more than 14.		
	(3) The Secretary of State may by regulations substitute a different number for the number for the time being specified in sub-paragraph (2)(b).		25
	(4) Regulations under this paragraph are subject to the negative resolution procedure.		
	<i>Membership: general</i>		30
3	(1) The Commission is to consist of—		

- (a) the non-executive members, and
 - (b) the executive members.
- (2) The non-executive members are –
- (a) a chair appointed by His Majesty by Letters Patent on the recommendation of the Secretary of State, and 5
 - (b) such other members as the Secretary of State may appoint.
- (3) The executive members are –
- (a) a chief executive appointed by the non-executive members or in accordance with paragraph 25, and
 - (b) such other members, if any, as the non-executive members may appoint. 10
- (4) The Secretary of State must consult the chair of the Commission before appointing a non-executive member.
- (5) The non-executive members must consult the Secretary of State before appointing the chief executive. 15
- (6) The non-executive members must consult the chief executive about whether there should be any executive members within sub-paragraph (3)(b) and, if so, how many there should be.
- (7) The Secretary of State may by direction set a maximum and a minimum number of executive members. 20
- (8) The Commission may appoint one of the non-executive members as a deputy to the chair.

Membership: non-executive members to outnumber executive members

- 4 The Secretary of State must exercise the powers conferred on the Secretary of State by paragraphs 2 and 3 so as to secure that the number of non-executive members of the Commission is, so far as practicable, at all times greater than the number of executive members. 25

Membership: selection on merit etc

- 5 (1) The Secretary of State may not recommend a person for appointment as the chair of the Commission unless the person has been selected on merit on the basis of fair and open competition. 30
- (2) A person may not be appointed as a member of the Commission unless the person has been selected on merit on the basis of fair and open competition. 35

Membership: conflicts of interests

- 6 (1) Before –

- (a) recommending a person for appointment as the chair of the Commission, or
 - (b) appointing a person as a non-executive member of the Commission,
 - the Secretary of State must be satisfied that the person does not have a conflict of interest. 5
 - (2) The Secretary of State must check from time to time that none of the non-executive members has a conflict of interest.
 - (3) The Secretary of State may require a non-executive member to provide whatever information the Secretary of State considers necessary for the purpose of checking that the member does not have a conflict of interest. 10
 - (4) A non-executive member who is required to provide information under sub-paragraph (3) must provide it within such period as may be specified by the Secretary of State. 15
 - (5) In this Schedule, “conflict of interest”, in relation to a person, means a financial or other interest which is likely to affect prejudicially the discharge by the person of the person’s functions as a member of the Commission.
- Tenure of the chair* 20
- 7 (1) The chair of the Commission holds and vacates office in accordance with the terms of the chair’s appointment, subject to the provisions of this paragraph.
- (2) The chair must be appointed for a term of not more than 7 years.
 - (3) On the recommendation of the Secretary of State, His Majesty may by Letters Patent extend the term of the chair’s appointment but not so the term as extended is more than 7 years. 25
 - (4) A person cannot be appointed as the chair more than once.
 - (5) The chair may be relieved from office by His Majesty at the chair’s own request. 30
 - (6) The chair may be removed from office by His Majesty on an Address from both Houses of Parliament.
 - (7) No motion is to be made in either House of Parliament for such an Address unless the Secretary of State has presented a report to that House stating that the Secretary of State is satisfied that – 35
 - (a) the chair is guilty of serious misconduct,
 - (b) the chair has a conflict of interest (see paragraph 6(5)),
 - (c) the chair has failed to comply with paragraph 6(4), or
 - (d) the chair is unable, unfit or unwilling to carry out the chair’s functions. 40

Tenure of deputy chair

- 8 (1) A deputy chair of the Commission may resign that office by giving written notice to the Commission.
- (2) A deputy chair of the Commission ceases to hold that office on ceasing to be a non-executive member of the Commission. 5
- (3) A deputy chair of the Commission may be removed from that office by the Commission.

Tenure of the other non-executive members

- 9 (1) This paragraph applies to a non-executive member of the Commission appointed by the Secretary of State. 10
- (2) The member holds and vacates office in accordance with the terms of their appointment, subject to the provisions of this paragraph.
- (3) The member must be appointed for a term of not more than 7 years. 15
- (4) The Secretary of State may extend the term of the member's appointment but not so that the term as extended is more than 7 years.
- (5) The Secretary of State may not appoint the member as a non-executive member of the Commission on a subsequent occasion. 20
- (6) The member may resign from office by giving written notice to the Secretary of State and the Commission.
- (7) The Secretary of State may remove the member from office by written notice if satisfied that— 25
- (a) the member is guilty of serious misconduct,
 - (b) the member has a conflict of interest (see paragraph 6(5)),
 - (c) the member has failed to comply with paragraph 6(4), or
 - (d) the member is unable, unfit or unwilling to carry out the member's functions. 30
- (8) At the time of removing the member from office the Secretary of State must make public the decision to do so.
- (9) The Secretary of State must— 35
- (a) give the member a statement of reasons for the removal, and
 - (b) if asked to do so by the member, publish the statement.

Remuneration and pensions of non-executive members

- 10 (1) The Commission may pay to the non-executive members of the Commission such remuneration and allowances as the Secretary of State may determine.
- (2) The Commission may pay, or make provision for paying, to or in respect of the non-executive members of the Commission, such sums by way of pensions, allowances or gratuities (including pensions, allowances or gratuities paid by way of compensation in respect of loss of office) as the Secretary of State may determine. 5
- (3) The Commission may make a payment to a person of such amount as the Secretary of State may determine where— 10
- (a) the person ceases to be a non-executive member of the Commission otherwise than on the expiry of the person’s term of office, and
- (b) it appears to the Secretary of State that there are special circumstances which make it appropriate for the person to receive compensation. 15

Executive members: terms and conditions

- 11 (1) The executive members of the Commission are to be employees of the Commission. 20
- (2) The executive members are to be employed by the Commission on such terms and conditions, including those as to remuneration, as the non-executive members of the Commission may determine.
- (3) The Commission must—
- (a) pay to or in respect of the executive members of the Commission such pensions, allowances or gratuities (including pensions, allowances or gratuities paid by way of compensation in respect of loss of office) as the non-executive members of the Commission may determine, and 25
- (b) provide and maintain for them such pension schemes (whether contributory or not) as the non-executive members of the Commission may determine. 30

Other staff: appointment, terms and conditions

- 12 (1) The Commission may— 35
- (a) appoint other employees, and
- (b) make such other arrangements for the staffing of the Commission as it considers appropriate.

- (2) In appointing an employee, the Commission must have regard to the principle of selection on merit on the basis of fair and open competition.
- (3) Employees appointed by the Commission are to be appointed on such terms and conditions, including those as to remuneration, as the Commission may determine. 5
- (4) The Commission may –
- (a) pay to or in respect of those employees such pensions, allowances or gratuities (including pensions, allowances or gratuities paid by way of compensation in respect of loss of employment) as the Commission may determine, and 10
- (b) provide and maintain for them such pension schemes (whether contributory or not) as the Commission may determine. 15

Committees

- 13 (1) The Commission may establish committees.
- (2) A committee of the Commission may consist of or include persons who are neither members nor employees of the Commission.
- (3) But a committee of the Commission to which functions are delegated under paragraph 14(1)(c) must include at least one person who is either a member or an employee of the Commission. 20
- (4) Where a person who is neither a member nor an employee of the Commission is a member of a committee of the Commission, the Commission may pay to that person such remuneration and expenses as it may determine. 25

Delegation of functions

- 14 (1) The Commission may delegate any of its functions to –
- (a) a member of the Commission, 30
- (b) an employee of the Commission, or
- (c) a committee of the Commission.
- (2) A function is delegated under sub-paragraph (1) to the extent and on the terms that the Commission determines.
- (3) A committee of the Commission may delegate any function delegated to it to a member of the committee. 35
- (4) A function is delegated under sub-paragraph (3) to the extent and on the terms that the committee determines.

- (5) The power of a committee of the Commission to delegate a function, and to determine the extent and terms of the delegation, is subject to the Commission’s power to direct what a committee established by it may and may not do.
- (6) The delegation of a function by the Commission or a committee of the Commission under this paragraph does not prevent the Commission or the committee from exercising that function.

5

Advice from committees

- 15 The Commission may require a committee of the Commission to give the Commission advice about matters relating to the discharge of the Commission’s functions.

10

Proceedings

- 16 (1) The Commission may make arrangements for regulating –
- (a) its own procedure, and
 - (b) the procedure of a committee of the Commission.
- (2) The non-executive members of the Commission may by majority make arrangements for regulating the procedure for the carrying out of the separate functions which are conferred on them under this Schedule.
- (3) Arrangements under this paragraph may include arrangements as to quorum and the making of decisions by a majority.
- (4) The Commission must publish arrangements which it makes under this paragraph.
- (5) This paragraph is subject to paragraph 18.

15

20

Records of proceedings

25

- 17 The Commission must make arrangements for the keeping of proper records of –
- (a) its proceedings,
 - (b) the proceedings of a committee of the Commission,
 - (c) the proceedings at a meeting of the non-executive members of the Commission,
 - (d) anything done by a member or employee of the Commission under paragraph 14(1), and
 - (e) anything done by a member of a committee of the Commission under paragraph 14(3).

30

35

Disqualification for acting in relation to certain matters

- 18 (1) This paragraph applies if –

-
- (a) a member of the Commission has a direct or indirect interest in a matter falling to be considered at a meeting of the Commission,
- (b) a non-executive member of the Commission has a direct or indirect interest in a matter falling to be considered at a meeting of the non-executive members, or 5
- (c) a member of a committee of the Commission has a direct or indirect interest in a matter falling to be considered at a meeting of the committee.
- (2) The member with the interest must declare it. 10
- (3) The declaration must be recorded in the minutes of the meeting.
- (4) The member with the interest may not take part in a discussion or decision at the meeting relating to the matter, unless –
- (a) in the case of a meeting of the Commission, the other members of the Commission who are present have resolved unanimously that the interest is to be disregarded, 15
- (b) in the case of a meeting of the non-executive members, the other non-executive members who are present have resolved unanimously that the interest is to be disregarded, or 20
- (c) in the case of a meeting of a committee, the other members of the committee who are present have, in the manner authorised by the Commission, resolved that the interest is to be disregarded.
- (5) In giving authorisation for the purposes of sub-paragraph (4)(c), the Commission must secure that a resolution for those purposes does not allow a member to take part in a discussion or decision at a meeting of a committee to which functions are delegated under paragraph 14(1)(c) unless the number of other members of the committee in favour of the resolution – 25
- (a) is not less than two thirds of those who are both present and entitled to vote on the resolution, and 30
- (b) is not less than its quorum.
- (6) For the purposes of this paragraph, a notification given at or sent to a meeting of the Commission that a person – 35
- (a) is a member of a company or firm, and
- (b) is to be regarded as interested in any matter involving that company or firm,
- is to be regarded as compliance with sub-paragraph (2) in relation to any such matter for the purposes of that meeting and subsequent meetings of the Commission, of the non-executive members or of a committee. 40

- (7) For the purposes of this paragraph, a notification given at or sent to a meeting of the non-executive members of the Commission or of a committee of the Commission that –
- (a) a person is a member of a company or firm, and
 - (b) is to be regarded as interested in any matter involving that company or firm,
- is to be regarded as compliance with sub-paragraph (2) in relation to any such matter for the purposes of that meeting and subsequent meetings of the non-executive members or (as the case may be) of the committee.
- (8) A notification described in sub-paragraph (6) or (7) remains in force until it is withdrawn.
- (9) A person required to make a declaration for the purposes of this paragraph in relation to any meeting –
- (a) is not required to attend the meeting, but
 - (b) is to be taken to have complied with the requirements of this paragraph if the person takes reasonable steps to secure that notice of the person’s interest is read out, and taken into consideration, at the meeting in question.

Validity of proceedings

- 19 (1) The validity of proceedings of the Commission, of the non-executive members of the Commission or of a committee of the Commission is not affected by –
- (a) a vacancy in the membership of the Commission or of the committee,
 - (b) a defect in the appointment of a member of the Commission,
 - (c) a failure of the Secretary of State to comply with the requirements of paragraph 4, or
 - (d) a failure to comply with arrangements under paragraph 16 or with a requirement under paragraph 18.
- (2) Nothing in sub-paragraph (1)(d) validates proceedings of a meeting which is inquorate unless it is inquorate by reason only of a matter within sub-paragraph (1)(b) or (c).

Money

- 20 The Secretary of State may make payments to the Commission.

Fees etc and other sums

- 21 (1) All fees, charges, penalties and other sums received by the Commission in carrying out its functions are to be paid to the Secretary of State.

- (2) Sub-paragraph (1) does not apply where the Secretary of State otherwise directs.
- (3) Any sums received by the Secretary of State under this paragraph are to be paid into the Consolidated Fund.

Accounts

5

- 22 (1) The Commission must keep proper accounts and proper records in relation to them.
- (2) The Commission must prepare a statement of accounts in respect of each financial year in the form specified by the Secretary of State. 10
- (3) The Commission must send a copy of each statement of accounts to the Secretary of State and the Comptroller and Auditor General before the end of August next following the financial year to which the statement relates.
- (4) The Comptroller and Auditor General must— 15
 - (a) examine, certify and report on the statement of accounts, and
 - (b) send a copy of the certified statement and the report to the Secretary of State.
- (5) The Secretary of State must lay before Parliament each document received under sub-paragraph (4)(b). 20
- (6) In this paragraph “financial year” means—
 - (a) the period beginning with the date on which the Commission is established and ending with the 31 March following that date, and 25
 - (b) each successive period of 12 months.

Authentication of seal and presumption of authenticity of documents

- 23 (1) The application of the Commission’s seal must be authenticated by the signature of—
 - (a) the chair of the Commission, or 30
 - (b) another person authorised for that purpose by the Commission.
- (2) A document purporting to be duly executed under the Commission’s seal or signed on its behalf—
 - (a) is to be received in evidence, and 35
 - (b) is to be taken to be executed or signed in that way, unless the contrary is shown.
- (3) This paragraph does not extend to Scotland.

Supplementary powers

- 24 The Commission may do anything it thinks appropriate for the purposes of, or in connection with, its functions.

Transitional provision: interim chief executive

- 25 (1) The first chief executive of the Commission is to be appointed by the chair of the Commission. 5
- (2) Before making the appointment the chair must consult the Secretary of State.
- (3) The appointment must be for a term of not more than 2 years.
- (4) The chair may extend the term of the appointment but not so the term as extended is more than 2 years. 10
- (5) For the term of appointment, the person appointed under sub-paragraph (1) is “the interim chief executive”.
- (6) Until the expiry of the term of appointment, the powers conferred on the non-executive members by paragraph 11(2) and (3) are exercisable in respect of the interim chief executive by the chair (instead of by the non-executive members). 15
- (7) In sub-paragraphs (5) and (6), the references to the term of appointment are to the term of appointment described in sub-paragraph (3), including any extension of the term under sub-paragraph (4). 20

Interpretation

- 26 In this Schedule—
- (a) references to pensions, allowances or gratuities include references to any similar benefits provided on death or retirement, and 25
- (b) references to the payment of pensions, allowances or gratuities to or in respect of a person include references to the making of payments towards the provision of pensions, allowances or gratuities to be paid to or in respect of a person.” 30

Transitional provision: first chair

- 2 (1) This paragraph applies to the person who holds the office of Information Commissioner immediately before the day on which this Schedule comes into force. 35
- (2) The person is to be treated as having been appointed as the chair of the Information Commission for a term that expires at the time the person

would cease to hold the office of Information Commissioner but for the abolition of that office by section 116.

- (3) For the purposes of paragraph 7(3) of Schedule 12A to the Data Protection Act 2018 (extension of chair’s term), the term of the person’s appointment as chair of the Information Commission is to be treated as a term beginning when the person began to hold the office of Information Commissioner. 5

Transitional provision: consultation about non-executive members

- 3 (1) This paragraph is about the requirement under paragraph 3(4) of Schedule 12A to the Data Protection Act 2018 for the Secretary of State to consult the chair of the Information Commission before appointing a non-executive member of the Information Commission. 10
- (2) The requirement may be satisfied by consultation, before this Schedule comes into force, with the person who holds the office of Information Commissioner.

Transitional provision: consultation about interim chief executive 15

- 4 (1) This paragraph is about the requirement under paragraph 25 of Schedule 12A to the Data Protection Act 2018 (transitional provision: interim chief executive) for the chair of the Information Commission to consult the Secretary of State before appointing the first chief executive of the Information Commission. 20
- (2) The requirement may be satisfied by consultation carried out, before this Schedule comes into force, by the person who holds the office of Information Commissioner.

SCHEDULE 15

Section 119

INFORMATION STANDARDS FOR HEALTH AND ADULT SOCIAL CARE IN ENGLAND 25

- 1 Chapter 1 of Part 9 of the Health and Social Care Act 2012 (health and adult social care services: information standards) is amended as follows.
- 2 Before section 250 insert—
- “Powers to publish standards”.*
- 3 (1) Section 250 (powers to publish information standards) is amended as follows. 30
- (2) In subsection (2), at the end insert “and includes, among other things, a standard relating to information technology or IT services used, or intended to be used, in connection with the processing of information (see section 250A)”. 35
- (3) In subsection (2B)(c)—

- (a) after “provision” insert “in, or in relation to, England”, and
 - (b) omit “in England”.
 - (4) In subsection (2B), at the end insert –
 - “(e) a relevant IT provider.”
 - (5) In subsection (3) – 5
 - (a) after “provision” insert “in, or in relation to, England”, and
 - (b) omit “in England”.
 - (6) In subsection (7) – 10
 - (a) in the opening words, for “section” substitute “Chapter”,
 - (b) after the definition of “health care” insert –
 - ““information technology” includes –
 - (a) computers,
 - (b) other devices whose uses include the processing of information by electronic means (“IT devices”),
 - (c) parts, accessories and other equipment made or adapted for use in connection with computers or IT devices, 15
 - (d) software and code made or adapted for use in connection with computers or IT devices, and
 - (e) networks and other infrastructure (whether physical or virtual) used in connection with other information technology; 20
 - “IT service” means an information technology service, including any service (whether physical or virtual) which consists of, or is provided in connection with, the development, making available, operation or maintenance of information technology;”, 25
 - (c) in the definition of “processing”, omit “and (14)”, and
 - (d) at the end insert –
 - ““relevant IT provider” means a person involved in marketing, supplying, providing or otherwise making available – 30
 - (a) information technology,
 - (b) an IT service, or
 - (c) a service which consists of processing information using information technology, 35
- whether for payment or free of charge, but only so far as the technology or service is used, or intended to be used, in connection with the provision in, or in relation to, England of health care or of adult social care.”

- 4 After section 250 insert –
- “250A Standards relating to information technology**
- (1) An information standard relating to information technology or IT services may, among other things, make provision about –
- (a) the design, quality, capabilities or other characteristics of such technology or services; 5
- (b) contracts or other arrangements under which such technology or services are marketed, supplied, provided or otherwise made available.
- (2) An information standard may include technical provision about information technology or IT services, including provision about – 10
- (a) functionality;
- (b) connectivity;
- (c) interoperability;
- (d) portability; 15
- (e) storage of, and access to, information;
- (f) security of information.
- (3) An information standard may make provision by reference to open standards or proprietary standards.”
- 5 (1) Section 251 (information standards: procedure etc) is amended as follows. 20
- (2) In the heading omit “Information standards:”.
- (3) For subsection (3) substitute –
- “(3) The power under section 250(1) may be exercised by –
- (a) adopting an information standard prepared or published by another person, including as it has effect from time to time, or 25
- (b) making provision by reference to an international agreement or another document, including as it has effect from time to time.”
- 6 After section 251 insert – 30
- “Compliance with standards”.*
- 7 For the heading of section 251ZA (information standards: compliance) substitute “Monitoring compliance”.
- 8 After that section insert –
- “251ZB Notice requesting compliance by relevant IT providers** 35
- (1) If the Secretary of State has reasonable grounds to suspect that a relevant IT provider is not complying with an information standard

which applies to the provider, the Secretary of State may give the provider a written notice which—

- (a) identifies the standard in question,
 - (b) sets out the Secretary of State’s grounds for suspecting that the provider is not complying with the standard, 5
 - (c) asks the provider to comply with the standard within a period specified in the notice,
 - (d) asks the provider, within a period specified in the notice, to provide evidence to the Secretary of State’s satisfaction that the provider is complying with the standard, and 10
 - (e) if the Secretary of State considers it appropriate, sets out the steps that the Secretary of State considers the provider must take, within a period specified in the notice, in order to comply with the standard.
- (2) A period specified for the purposes of subsection (1)(c), (d) or (e) must be a period of at least 28 days beginning with the day on which the notice is given. 15
- (3) The Secretary of State may, by giving the relevant IT provider a further written notice, vary or revoke a notice given under subsection (1). 20

251ZC Public censure of relevant IT providers

- (1) If the Secretary of State has reasonable grounds to suspect that a relevant IT provider is not complying with an information standard which applies to the provider, the Secretary of State may publish a statement to that effect. 25
- (2) The statement may include the text of a notice given to the provider under section 251ZB.
- (3) Before publishing a statement under this section, the Secretary of State must give the relevant IT provider— 30
 - (a) a copy of the terms of the proposed statement, and
 - (b) an opportunity to make representations about the decision to publish a statement and the terms of the statement.
- (4) If, after considering any representations, the Secretary of State decides to publish the statement, the Secretary of State must inform the relevant IT provider before publishing it. 35

251ZD Exercise of functions of Secretary of State by other persons

- (1) The Secretary of State may—
 - (a) direct a public body to exercise some or all of the functions listed in subsection (3), and

- (b) give the public body directions about the exercise of those functions, including directions about the processing of information that the body obtains in exercising those functions.
- (2) The Secretary of State may make arrangements for a person prescribed by regulations under this subsection to exercise some or all of the functions listed in subsection (3). 5
- (3) Those functions are—
- (a) the Secretary of State’s functions under section 251ZA, so far as they relate to relevant IT providers, and 10
- (b) the Secretary of State’s functions under section 251ZB.
- (4) Arrangements under subsection (2) may—
- (a) provide for the Secretary of State to make payments to the person, and
- (b) make provision as to the circumstances in which such payments are to be repaid to the Secretary of State. 15
- (5) Section 304(9) applies in relation to the power to make arrangements under subsection (2) as it applies to a power of the Secretary of State to give directions under this Act.

Accreditation 20

251ZE Accreditation of information technology etc

- (1) Regulations may make provision for the establishment and operation of a scheme for the accreditation of information technology and IT services so far as used, or intended to be used, in connection with the provision in, or in relation to, England of health care or of adult social care. 25
- (2) The regulations may provide for the scheme to be established and operated by a person specified in the regulations (“the operator”).
- (3) The regulations may, among other things, confer power on the operator— 30
- (a) to establish the procedure for accreditation under the scheme,
- (b) to set the criteria for accreditation under the scheme (“the accreditation criteria”),
- (c) to keep an accreditation under the scheme under review, and 35
- (d) to charge a reasonable fee in respect of an application for accreditation.
- (4) The regulations may, among other things, make provision requiring the operator—

- (a) to set some or all of the accreditation criteria by reference to information standards,
- (b) to publish details of the scheme, including the accreditation criteria,
- (c) to provide for the review of a decision to refuse an application for accreditation, and 5
- (d) to provide advice to applicants for accreditation with a view to ensuring that the accreditation criteria are met.”

SCHEDULE 16

Section 120

GRANT OF SMART METER COMMUNICATION LICENCES 10

PART 1

AMENDMENTS OF THE ENERGY ACT 2008

- 1 The Energy Act 2008 is amended as follows.
- 2 In the italic heading before section 88, after “meters” insert “: modification of licence conditions etc by Secretary of State”. 15
- 3 After section 91 insert –

“Grant of smart meter communication licences

91A Grant of smart meter communication licences

- (1) The Gas and Electricity Markets Authority may by regulations make provision about the procedure to be followed in relation to the grant of a smart meter communication licence. 20
- (2) Regulations under subsection (1) may provide that the procedure is to consist of either (but not both) of the following –
 - (a) a determination by the Authority, on a competitive basis, of the person to whom a licence is to be granted; 25
 - (b) the selection by the Authority, on a non-competitive basis, of the person to whom a licence is to be granted.
- (3) Regulations under subsection (1) may make provision by reference to a determination by the Authority or to the opinion of the Authority as to any matter. 30
- (4) The approval of the Secretary of State is required for the making of regulations under subsection (1).
- (5) In this section and in sections 91B to 91D –
 - “the Authority” means the Gas and Electricity Markets Authority; 35

“smart meter communication licence” means a licence under section 7AB of the Gas Act 1986 or a licence under section 6(1)(f) of the Electricity Act 1989.

91B Regulations under section 91A(1): further provision

- | | |
|--|----|
| (1) Regulations under section 91A(1)– | 5 |
| (a) must make provision so as to ensure that a smart meter communication licence must not be granted to a person unless the Authority is satisfied that the person would not, if granted the licence, have a financial or other interest likely to prejudice the discharge of their functions as the licence holder; | 10 |
| (b) may make provision about the granting of a licence to a person formed by the Authority. | |
| (2) Any sums received by the Authority under regulations under section 91A(1) are to be paid into the Consolidated Fund. | 15 |
| (3) Regulations made in reliance on section 91A(2)(a) may– | |
| (a) provide for the publication of a proposal to grant a smart meter communication licence; | |
| (b) provide for the inclusion in such a proposal of an invitation to apply for such a licence; | 20 |
| (c) impose conditions in relation to the making of an application for a licence; | |
| (d) impose restrictions in relation to persons who may apply for a licence; | |
| (e) impose requirements as to the period within which applications must be made; | 25 |
| (f) make provision for regulating the manner in which applications are to be considered or determined; | |
| (g) confer on the Authority functions in connection with tender exercises. | 30 |
| (4) Regulations in reliance on section 91A(2)(a) may also include provision– | |
| (a) enabling the Authority to require payments to be made, in the form and manner prescribed, in respect of costs incurred or likely to be incurred by the Authority for the purposes of a tender exercise; | 35 |
| (b) about the effect on a person’s participation in a tender exercise of a failure to comply with a requirement imposed by virtue of paragraph (a); | |
| (c) about the circumstances in which the tender exercise is to stop as a result of such a failure. | 40 |

- (5) In this section –
- “prescribed” means prescribed in or determined under regulations under section 91A(1);
 - “tender exercise” means the procedure set out in regulations made in reliance on section 91A(2)(a) for determining to whom a particular smart meter communication licence is to be granted. 5

91C Power of Gas and Electricity Markets Authority to amend licence conditions etc

- (1) The Authority may modify – 10
- (a) a condition of a particular relevant licence;
 - (b) the standard conditions incorporated in relevant licences of a particular type;
 - (c) a document maintained in accordance with the conditions of a relevant licence, or an agreement that gives effect to a document so maintained. 15
- (2) The Authority may exercise the power in subsection (1) only if the Authority considers it necessary or expedient to do so for the purposes of, or in preparation for, the grant of a smart meter communication licence. 20
- (3) The power conferred by subsection (1) –
- (a) may be exercised to make different provision for different purposes or different areas;
 - (b) may be exercised generally, only in relation to specified cases or subject to exceptions (including provision for a case to be excepted only so long as specified conditions are satisfied); 25
 - (c) includes a power to make incidental, supplementary, consequential or transitional modifications.
- (4) Provision included in a licence in reliance on subsection (1) –
- (a) need not relate to the activities authorised by the licence; 30
 - (b) in the case of a licence for the purposes of section 5 of the Gas Act 1986, may do any of the things authorised by section 7B(5) of that Act (which apply to the Authority’s power with respect to licence conditions under section 7B(4)(a));
 - (c) in the case of a licence for the purposes of section 4 of the Electricity Act 1989, may do any of the things authorised by section 7(2) to (4) of that Act (which apply to the Authority’s power with respect to licence conditions under section 7(1)(a)). 35
- (5) A modification under subsection (1) of part of a standard condition of a licence does not prevent any other part of the condition from 40

continuing to be regarded as a standard condition for the purposes of Part 1 of the Gas Act 1986 or Part 1 of the Electricity Act 1989.

- (6) Where the Authority makes modifications under subsection (1) of the standard conditions of a licence of any type, the Authority must – 5
- (a) make (as nearly as may be) the same modifications of those standard conditions for the purposes of their incorporation in licences of that type granted after that time, and
 - (b) publish the modifications.
- (7) In this section – 10
- “relevant licence” means a licence for the purposes of section 5 of the Gas Act 1986 or section 4 of the Electricity Act 1989 (prohibitions on unlicensed activities);
 - “specified” means specified in the modification.

91D Power under section 91C: procedure 15

- (1) Before making a modification under section 91C, the Authority must consult – 20
- (a) the holder of any licence being modified,
 - (b) the Secretary of State, and
 - (c) such other persons as the Authority considers appropriate.
- (2) Subsection (1) may be satisfied by consultation undertaken before the passing of the Data (Use and Access) Act 2024.
- (3) If, after carrying out the consultation, the Authority decides to make the modification, it must publish a notice about the decision which – 25
- (a) states that the Authority has decided to make the modification;
 - (b) sets out the modification and its effect;
 - (c) specifies the date from which the modification has effect;
 - (d) states how the Authority has taken account of any representations made during the consultation; 30
 - (e) states the reason for any differences between the modification consulted on and the proposed modification.
- (4) The notice must be published in such manner as the Authority considers appropriate for bringing it to the attention of those likely to be affected by the making of the modification.” 35

4 In section 104 (subordinate legislation) –

- (a) in subsection (1), for “or the Scottish Ministers” substitute “, the Scottish Ministers or the Gas and Electricity Markets Authority”;

- (b) in subsection (3), at the end insert “, and
- (c) regulations made by the Gas and Electricity Markets Authority under section 91A.”

PART 2

AMENDMENTS OF OTHER LEGISLATION

5

Gas Act 1986

- 5 (1) The Gas Act 1986 is amended as follows.
- (2) In section 7B (licences: general)–
 - (a) omit subsection (2B);
 - (b) in subsection (2C), after “for” insert “a smart meter communication licence or”. 10
- (3) In section 41HC (competitive tenders for licences for new licensable activities), in subsection (1), after “activities” insert “, other than a smart meter communication licence,”.

Electricity Act 1989

15

- 6 (1) The Electricity Act 1989 is amended as follows.
- (2) In section 6A (procedure for licence applications)–
 - (a) in subsection (1)(a), for “subsections (1A) and (1B)” substitute “subsection (1B)”;
 - (b) omit subsection (1A); 20
 - (c) in subsection (1B), after “for” insert “a smart meter communication licence or”.
- (3) In section 56FC (competitive tenders for licences for new licensable activities), in subsection (1), after “activities” insert “, other than a licence under section 6(1)(f) (smart meter communication licence),”. 25

Electricity and Gas (Competitive Tenders for Smart Meter Communication Licences) Regulations 2012

- 7 The Electricity and Gas (Competitive Tenders for Smart Meter Communication Licences) Regulations 2012 (S.I. 2012/2414) are revoked.

Data (Use and Access) Bill [HL]

[AS INTRODUCED]

A

B I L L

TO

Make provision about access to customer data and business data; to make provision about services consisting of the use of information to ascertain and verify facts about individuals; to make provision about the recording and sharing, and keeping of registers, of information relating to apparatus in streets; to make provision about the keeping and maintenance of registers of births and deaths; to make provision for the regulation of the processing of information relating to identified or identifiable living individuals; to make provision about privacy and electronic communications; to establish the Information Commission; to make provision about information standards for health and social care; to make provision about the grant of smart meter communication licences; to make provision about the disclosure of information to improve public service delivery; to make provision about the retention of information by providers of internet services in connection with investigations into child deaths; to make provision about providing information for purposes related to the carrying out of independent research into online safety matters; to make provision about the retention of biometric data; to make provision about services for the provision of electronic signatures, electronic seals and other trust services; and for connected purposes.

Baroness Jones ofWhitchurch

Ordered to be Printed, 23rd October 2024.

© Parliamentary copyright House of Lords 2024

This publication may be reproduced under the terms of the Open Parliament Licence, which is published at www.parliament.uk/site-information/copyright

PUBLISHED BY THE AUTHORITY OF THE HOUSE OF LORDS