

## SCHEDULES

### SCHEDULE 20

Section 175

#### AMENDMENTS OF THE DATA PROTECTION ACT 1998 (C. 29)

##### PART 1

###### DATA CONTROLLERS' REGISTRATION

- 1 In section 16 of the Data Protection Act 1998 (meaning of “the registrable particulars” etc), in subsection (1)—
  - (a) omit “and” at the end of paragraph (ff), and
  - (b) after paragraph (g) insert “, and
  - (h) such information about the data controller as may be prescribed under section 18(5A).”
- 2 In section 18 of that Act (notification by data controllers), after subsection (5) insert—

“(5A) Notification regulations may prescribe the information about the data controller which is required for the purpose of verifying the fee payable under subsection (5).”
- 3 In section 19 of that Act (register of notifications), after subsection (7) add—

“(8) Nothing in subsection (6) or (7) applies to information which is included in an entry in the register only by reason of it falling within section 16(1)(h).”
- 4 In section 20 of that Act (duty to notify changes), in subsection (2)—
  - (a) omit “that at any time”,
  - (b) at the beginning of paragraph (a) insert “that at any time”,
  - (c) before “and” at the end of that paragraph insert—

“(aa) that the correct fee is paid under section 19(4),” and
  - (d) at the beginning of paragraph (b) insert “that at any time”.

##### PART 2

###### ASSESSMENT NOTICES

- 5 (1) Section 48 of that Act (rights of appeal) is amended as follows.
  - (2) In subsection (1) after “enforcement notice” insert “, an assessment notice”.
  - (3) In subsection (3)—
    - (a) after “enforcement notice” insert “, an assessment notice”, and
    - (b) after “40(8)” insert “, 41B(2)”.

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- 6 In section 67 of that Act (general provision about orders etc under the Act)—
- (a) in subsection (4) insert at the appropriate place—  
“section 41A(2)(c),” and
  - (b) in subsection (5)(a) insert at the appropriate place—  
“section 41A(2)(b),”.
- 7 In section 70(1) of that Act (supplementary definitions) for the definition of “government department” substitute—
- ““government department” includes—
  - (a) any part of the Scottish Administration;
  - (b) a Northern Ireland department;
  - (c) the Welsh Assembly Government;
  - (d) any body or authority exercising statutory functions on behalf of the Crown.”

### PART 3

#### POWERS TO REQUIRE INFORMATION

- 8 (1) Section 43 of that Act (information notices) is amended as follows.
- (2) In subsection (1) for “, within” to the end substitute “to furnish the Commissioner with specified information relating to the request or to compliance with the principles.”
- (3) After that subsection insert—
- “(1A) In subsection (1) “specified information” means information—
  - (a) specified, or described, in the information notice, or
  - (b) falling within a category which is specified, or described, in the information notice.
  - (1B) The Commissioner may also specify in the information notice—
  - (a) the form in which the information must be furnished;
  - (b) the period within which, or the time and place at which, the information must be furnished.”
- (4) In subsection (4) for “the time” to “expire” substitute “a period specified in an information notice under subsection (1B)(b) must not end, and a time so specified must not fall,”.
- 9 (1) Section 44 of that Act (special information notices) is amended as follows.
- (2) in subsection (1) for “, within” to the end substitute “to furnish the Commissioner with specified information for the purpose specified in subsection (2).”
- (3) After subsection (1) insert—
- “(1A) In subsection (1) “specified information” means information—
  - (a) specified, or described, in the special information notice, or
  - (b) falling within a category which is specified, or described, in the special information notice.
  - (1B) The Commissioner may also specify in the special information notice—

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- (a) the form in which the information must be furnished;
  - (b) the period within which, or the time and place at which, the information must be furnished.”
- (4) In subsection (5) for “the time” to “expire” substitute “a period specified in a special information notice under subsection (1B)(b) must not end, and a time so specified must not fall,”.

## PART 4

### RESTRICTION ON USE OF INFORMATION

- 10 (1) Section 43 of that Act (information notices) is amended as follows.
- (2) In subsection (8), for “other than an offence under this Act,” substitute “, other than an offence under this Act or an offence within subsection (8A),”.
- (3) After that subsection insert—
- “(8A) The offences mentioned in subsection (8) are—
- (a) an offence under section 5 of the Perjury Act 1911 (false statements made otherwise than on oath),
  - (b) an offence under section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (false statements made otherwise than on oath), or
  - (c) an offence under Article 10 of the Perjury (Northern Ireland) Order 1979 (false statutory declarations and other false unsworn statements).
- (8B) Any relevant statement provided by a person in response to a requirement under this section may not be used in evidence against that person on a prosecution for any offence under this Act (other than an offence under section 47) unless in the proceedings—
- (a) in giving evidence the person provides information inconsistent with it, and
  - (b) evidence relating to it is adduced, or a question relating to it is asked, by that person or on that person’s behalf.
- (8C) In subsection (8B) “relevant statement”, in relation to a requirement under this section, means—
- (a) an oral statement, or
  - (b) a written statement made for the purposes of the requirement.”
- 11 (1) Section 44 of that Act (special information notices) is amended as follows.
- (2) In subsection (9), for “other than an offence under this Act,” substitute “, other than an offence under this Act or an offence within subsection (9A),”.
- (3) After subsection (9) of that section insert—
- “(9A) The offences mentioned in subsection (9) are—
- (a) an offence under section 5 of the Perjury Act 1911 (false statements made otherwise than on oath),

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- (b) an offence under section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (false statements made otherwise than on oath), or
  - (c) an offence under Article 10 of the Perjury (Northern Ireland) Order 1979 (false statutory declarations and other false unsworn statements).
- (9B) Any relevant statement provided by a person in response to a requirement under this section may not be used in evidence against that person on a prosecution for any offence under this Act (other than an offence under section 47) unless in the proceedings—
- (a) in giving evidence the person provides information inconsistent with it, and
  - (b) evidence relating to it is adduced, or a question relating to it is asked, by that person or on that person’s behalf.
- (9C) In subsection (9B) “relevant statement”, in relation to a requirement under this section, means—
- (a) an oral statement, or
  - (b) a written statement made for the purposes of the requirement.”
- 12 (1) Paragraph 11 of Schedule 7 to that Act (miscellaneous exemptions: self incrimination) is amended as follows.
- (2) In sub-paragraph (1), for “other than an offence under this Act,” substitute “, other than an offence under this Act or an offence within sub-paragraph (1A),”.
- (3) After that sub-paragraph insert—
- “(1A) The offences mentioned in sub-paragraph (1) are—
- (a) an offence under section 5 of the Perjury Act 1911 (false statements made otherwise than on oath),
  - (b) an offence under section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (false statements made otherwise than on oath), or
  - (c) an offence under Article 10 of the Perjury (Northern Ireland) Order 1979 (false statutory declarations and other false unsworn statements).”

## PART 5

### MONETARY PENALTIES: RESTRICTION ON MATTERS TO BE TAKEN INTO ACCOUNT

- 13 In section 55A of that Act (power of Commissioner to impose monetary penalties), after subsection (3) insert—
- “(3A) The Commissioner may not be satisfied as mentioned in subsection (1) by virtue of any matter which comes to the Commissioner’s attention as a result of anything done in pursuance of—
- (a) an assessment notice;
  - (b) an assessment under section 51(7).”

## PART 6

### WARRANT FOR ENTRY AND INSPECTION

- 14 (1) Schedule 9 to that Act (powers of entry and inspection) is amended as follows.
- (2) After sub-paragraph (1) of paragraph 1 insert—
- “(1A) Sub-paragraph (1B) applies if a circuit judge or a District Judge (Magistrates’ Courts) is satisfied by information on oath supplied by the Commissioner that a data controller has failed to comply with a requirement imposed by an assessment notice.
- (1B) The judge may, for the purpose of enabling the Commissioner to determine whether the data controller has complied or is complying with the data protection principles, grant a warrant to the Commissioner in relation to any premises that were specified in the assessment notice; but this is subject to sub-paragraph (2) and paragraph 2.”
- (3) In sub-paragraph (3) of that paragraph—
- (a) for “sub-paragraph (1)” substitute “this Schedule”, and
- (b) for the words from “to enter” to the end substitute “—
- (a) to enter the premises;
- (b) to search the premises;
- (c) to inspect, examine, operate and test any equipment found on the premises which is used or intended to be used for the processing of personal data;
- (d) to inspect and seize any documents or other material found on the premises which—
- (i) in the case of a warrant issued under sub-paragraph (1), may be such evidence as is mentioned in that paragraph;
- (ii) in the case of a warrant issued under sub-paragraph (1B), may enable the Commissioner to determine whether the data controller has complied or is complying with the data protection principles;
- (e) to require any person on the premises to provide an explanation of any document or other material found on the premises;
- (f) to require any person on the premises to provide such other information as may reasonably be required for the purpose of determining whether the data controller has contravened, or is contravening, the data protection principles.”
- (4) After sub-paragraph (1) of paragraph 2 insert—
- “(1A) In determining whether the Commissioner has given an occupier the seven days’ notice referred to in sub-paragraph (1)(a) any assessment notice served on the occupier is to be disregarded.”
- (5) In paragraph 5 for “evidence in question would not be found” substitute “object of the warrant would be defeated”.
- (6) In paragraph 12, at the end of paragraph (b) insert—

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- “(c) makes a statement in response to a requirement under paragraph (e) or (f) of paragraph 1(3) which that person knows to be false in a material respect, or
- (d) recklessly makes a statement in response to such a requirement which is false in a material respect.”.

(7) After paragraph 15 add—

*“Self-incrimination*

- 16 An explanation given, or information provided, by a person in response to a requirement under paragraph (e) or (f) of paragraph 1(3) may only be used in evidence against that person—
- (a) on a prosecution for an offence under—
    - (i) paragraph 12,
    - (ii) section 5 of the Perjury Act 1911 (false statements made otherwise than on oath),
    - (iii) section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (false statements made otherwise than on oath), or
    - (iv) Article 10 of the Perjury (Northern Ireland) Order 1979 (false statutory declarations and other false unsworn statements), or
  - (b) on a prosecution for any other offence where—
    - (i) in giving evidence that person makes a statement inconsistent with that explanation or information, and
    - (ii) evidence relating to that explanation or information is adduced, or a question relating to it is asked, by that person or on that person’s behalf.”