



# Protection of Freedoms Act 2012

## 2012 CHAPTER 9

### PART 6

#### FREEDOM OF INFORMATION AND DATA PROTECTION

##### *Publication of certain datasets*

###### **102 Release and publication of datasets held by public authorities**

- (1) The Freedom of Information Act 2000 is amended as follows.
- (2) In section 11 (means by which communication to be made)—
  - (a) after subsection (1) insert—

“(1A) Where—

    - (a) an applicant makes a request for information to a public authority in respect of information that is, or forms part of, a dataset held by the public authority, and
    - (b) on making the request for information, the applicant expresses a preference for communication by means of the provision to the applicant of a copy of the information in electronic form,

the public authority must, so far as reasonably practicable, provide the information to the applicant in an electronic form which is capable of re-use.”,
  - (b) in subsection (4), for “subsection (1)” substitute “subsections (1) and (1A)”, and
  - (c) after subsection (4) insert—

“(5) In this Act “dataset” means information comprising a collection of information held in electronic form where all or most of the information in the collection—

- (a) has been obtained or recorded for the purpose of providing a public authority with information in connection with the provision of a service by the authority or the carrying out of any other function of the authority,
- (b) is factual information which—
  - (i) is not the product of analysis or interpretation other than calculation, and
  - (ii) is not an official statistic (within the meaning given by section 6(1) of the Statistics and Registration Service Act 2007), and
- (c) remains presented in a way that (except for the purpose of forming part of the collection) has not been organised, adapted or otherwise materially altered since it was obtained or recorded.”

(3) After section 11 (means by which communication to be made) insert—

#### **“11A Release of datasets for re-use**

- (1) This section applies where—
  - (a) a person makes a request for information to a public authority in respect of information that is, or forms part of, a dataset held by the authority,
  - (b) any of the dataset or part of a dataset so requested is a relevant copyright work,
  - (c) the public authority is the only owner of the relevant copyright work, and
  - (d) the public authority is communicating the relevant copyright work to the applicant in accordance with this Act.
- (2) When communicating the relevant copyright work to the applicant, the public authority must make the relevant copyright work available for re-use by the applicant in accordance with the terms of the specified licence.
- (3) The public authority may exercise any power that it has by virtue of regulations under section 11B to charge a fee in connection with making the relevant copyright work available for re-use in accordance with subsection (2).
- (4) Nothing in this section or section 11B prevents a public authority which is subject to a duty under subsection (2) from exercising any power that it has by or under an enactment other than this Act to charge a fee in connection with making the relevant copyright work available for re-use.
- (5) Where a public authority intends to charge a fee (whether in accordance with regulations under section 11B or as mentioned in subsection (4)) in connection with making a relevant copyright work available for re-use by an applicant, the authority must give the applicant a notice in writing (in this section referred to as a “re-use fee notice”) stating that a fee of an amount specified in, or determined in accordance with, the notice is to be charged by the authority in connection with complying with subsection (2).

- (6) Where a re-use fee notice has been given to the applicant, the public authority is not obliged to comply with subsection (2) while any part of the fee which is required to be paid is unpaid.
- (7) Where a public authority intends to charge a fee as mentioned in subsection (4), the re-use fee notice may be combined with any other notice which is to be given under the power which enables the fee to be charged.
- (8) In this section—
- “copyright owner” has the meaning given by Part 1 of the Copyright, Designs and Patents Act 1988 (see section 173 of that Act);
  - “copyright work” has the meaning given by Part 1 of the Act of 1988 (see section 1(2) of that Act);
  - “database” has the meaning given by section 3A of the Act of 1988;
  - “database right” has the same meaning as in Part 3 of the Copyright and Rights in Databases Regulations 1997 ([S.I. 1997/3032](#));
  - “owner”, in relation to a relevant copyright work, means—
    - (a) the copyright owner, or
    - (b) the owner of the database right in the database;
  - “relevant copyright work” means—
    - (a) a copyright work, or
    - (b) a database subject to a database right,
  - but excludes a relevant Crown work or a relevant Parliamentary work;
  - “relevant Crown work” means—
    - (a) a copyright work in relation to which the Crown is the copyright owner, or
    - (b) a database in relation to which the Crown is the owner of the database right;
  - “relevant Parliamentary work” means—
    - (a) a copyright work in relation to which the House of Commons or the House of Lords is the copyright owner, or
    - (b) a database in relation to which the House of Commons or the House of Lords is the owner of the database right;
  - “the specified licence” is the licence specified by the Secretary of State in a code of practice issued under section 45, and the Secretary of State may specify different licences for different purposes.

### **11B Power to charge fees in relation to release of datasets for re-use**

- (1) The Secretary of State may, with the consent of the Treasury, make provision by regulations about the charging of fees by public authorities in connection with making relevant copyright works available for re-use under section 11A(2) or by virtue of section 19(2A)(c).
- (2) Regulations under this section may, in particular—
- (a) prescribe cases in which fees may, or may not, be charged,
  - (b) prescribe the amount of any fee payable or provide for any such amount to be determined in such manner as may be prescribed,

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- (c) prescribe, or otherwise provide for, times at which fees, or parts of fees, are payable,
- (d) require the provision of information about the manner in which amounts of fees are determined,
- (e) make different provision for different purposes.

(3) Regulations under this section may, in prescribing the amount of any fee payable or providing for any such amount to be determined in such manner as may be prescribed, provide for a reasonable return on investment.

(4) In this section “relevant copyright work” has the meaning given by section 11A(8). ”

(4) In section 19 (publication schemes)—

(a) after subsection (2) insert—

“(2A) A publication scheme must, in particular, include a requirement for the public authority concerned—

(a) to publish—

- (i) any dataset held by the authority in relation to which a person makes a request for information to the authority, and

- (ii) any up-dated version held by the authority of such a dataset,

unless the authority is satisfied that it is not appropriate for the dataset to be published,

(b) where reasonably practicable, to publish any dataset the authority publishes by virtue of paragraph (a) in an electronic form which is capable of re-use,

(c) where any information in a dataset published by virtue of paragraph (a) is a relevant copyright work in relation to which the authority is the only owner, to make the information available for re-use in accordance with the terms of the specified licence.

(2B) The public authority may exercise any power that it has by virtue of regulations under section 11B to charge a fee in connection with making the relevant copyright work available for re-use in accordance with a requirement imposed by virtue of subsection (2A)(c).

(2C) Nothing in this section or section 11B prevents a public authority which is subject to such a requirement from exercising any power that it has by or under an enactment other than this Act to charge a fee in connection with making the relevant copyright work available for re-use.

(2D) Where a public authority intends to charge a fee (whether in accordance with regulations under section 11B or as mentioned in subsection (2C)) in connection with making a relevant copyright work available for re-use by an applicant, the authority must give the applicant a notice in writing (in this section referred to as a “re-use fee notice”) stating that a fee of an amount specified in, or determined in accordance with, the notice is to be charged by the authority in

connection with complying with the requirement imposed by virtue of subsection (2A)(c).

(2E) Where a re-use fee notice has been given to the applicant, the public authority is not obliged to comply with the requirement imposed by virtue of subsection (2A)(c) while any part of the fee which is required to be paid is unpaid.

(2F) Where a public authority intends to charge a fee as mentioned in subsection (2C), the re-use fee notice may be combined with any other notice which is to be given under the power which enables the fee to be charged.”, and

(b) after subsection (7) insert—

“(8) In this section—

“copyright owner” has the meaning given by Part 1 of the Copyright, Designs and Patents Act 1988 (see section 173 of that Act);

“copyright work” has the meaning given by Part 1 of the Act of 1988 (see section 1(2) of that Act);

“database” has the meaning given by section 3A of the Act of 1988;

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

“owner”, in relation to a relevant copyright work, means—

(a) the copyright owner, or

(b) the owner of the database right in the database;

“relevant copyright work” means—

(a) a copyright work, or

(b) a database subject to a database right,

but excludes a relevant Crown work or a relevant Parliamentary work;

“relevant Crown work” means—

(a) a copyright work in relation to which the Crown is the copyright owner, or

(b) a database in relation to which the Crown is the owner of the database right;

“relevant Parliamentary work” means—

(a) a copyright work in relation to which the House of Commons or the House of Lords is the copyright owner, or

(b) a database in relation to which the House of Commons or the House of Lords is the owner of the database right;

“the specified licence” has the meaning given by section 11A(8).”

(5) In section 45 (issue of code of practice)—

(a) in subsection (2), after paragraph (d) (and before the word “and” at the end of the paragraph), insert—

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- “(da) the disclosure by public authorities of datasets held by them.”,
- (b) after subsection (2) insert—
  - “(2A) Provision of the kind mentioned in subsection (2)(da) may, in particular, include provision relating to—
    - (a) the giving of permission for datasets to be re-used,
    - (b) the disclosure of datasets in an electronic form which is capable of re-use,
    - (c) the making of datasets available for re-use in accordance with the terms of a licence,
    - (d) other matters relating to the making of datasets available for re-use,
    - (e) standards applicable to public authorities in connection with the disclosure of datasets.”, and
  - (c) in subsection (3) for “The code” substitute “Any code under this section”.
- (6) In section 84 (interpretation), after the definition of “the Commissioner”, insert—  
 ““dataset” has the meaning given by section 11(5);”.

*Other amendments relating to freedom of information*

### **103 Meaning of “publicly-owned company”**

- (1) Section 6 of the Freedom of Information Act 2000 (publicly-owned companies) is amended as follows.
- (2) In subsection (1)—
  - (a) omit “or” at the end of paragraph (a),
  - (b) in paragraph (b) for the words from “any public authority” to “particular information” substitute “the wider public sector”, and
  - (c) after paragraph (b) insert “, or
    - (c) it is wholly owned by the Crown and the wider public sector.”
- (3) For subsection (2) substitute—
  - “(2) For the purposes of this section—
    - (a) a company is wholly owned by the Crown if, and only if, every member is a person falling within sub-paragraph (i) or (ii)—
      - (i) a Minister of the Crown, government department or company wholly owned by the Crown, or
      - (ii) a person acting on behalf of a Minister of the Crown, government department or company wholly owned by the Crown,
    - (b) a company is wholly owned by the wider public sector if, and only if, every member is a person falling within sub-paragraph (i) or (ii)—
      - (i) a relevant public authority or a company wholly owned by the wider public sector, or
      - (ii) a person acting on behalf of a relevant public authority or of a company wholly owned by the wider public sector, and

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- (c) a company is wholly owned by the Crown and the wider public sector if, and only if, condition A, B or C is met.
- (2A) In subsection (2)(c)—
  - (a) condition A is met if—
    - (i) at least one member is a person falling within subsection (2)(a)(i) or (ii),
    - (ii) at least one member is a person falling within subsection (2)(b)(i) or (ii), and
    - (iii) every member is a person falling within subsection (2)(a)(i) or (ii) or (b)(i) or (ii),
  - (b) condition B is met if—
    - (i) at least one member is a person falling within subsection (2)(a)(i) or (ii) or (b)(i) or (ii),
    - (ii) at least one member is a company wholly owned by the Crown and the wider public sector, and
    - (iii) every member is a person falling within subsection (2)(a)(i) or (ii) or (b)(i) or (ii) or a company wholly owned by the Crown and the wider public sector, and
  - (c) condition C is met if every member is a company wholly owned by the Crown and the wider public sector.”
- (4) In subsection (3), at the end, insert—
  - ““relevant public authority” means any public authority listed in Schedule 1 other than—
    - (a) a government department, or
    - (b) any authority which is listed only in relation to particular information”.

#### **104 Extension of certain provisions to Northern Ireland bodies**

- (1) Omit—
  - (a) section 80A of the Freedom of Information Act 2000 (which modifies, in relation to information held by Northern Ireland bodies, certain provisions of the Act relating to historical records etc.), and
  - (b) paragraph 6 of Schedule 7 to the Constitutional Reform and Governance Act 2010 (which inserts section 80A into the Act of 2000).
- (2) The power of the Secretary of State under section 46(2) to (5) of the Act of 2010 to make transitional, transitory or saving provision in connection with the coming into force of paragraph 4 of Schedule 7 to that Act includes power to make such provision in connection with the coming into force of that paragraph of that Schedule as it has effect by virtue of this section.

*The Information Commissioner*

#### **105 Appointment and tenure of Information Commissioner**

- (1) In paragraph 2(1) of Schedule 5 to the Data Protection Act 1998 (maximum term of appointment for the Information Commissioner) for “five years” substitute “seven years”.

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(2) After paragraph 2(3) of that Schedule to that Act (removal of the Information Commissioner from office) insert—

“(3A) No motion is to be made in either House of Parliament for such an Address unless a Minister of the Crown has presented a report to that House stating that the Minister is satisfied that one or more of the following grounds is made out—

- (a) the Commissioner has failed to discharge the functions of the office for a continuous period of at least 3 months,
- (b) the Commissioner has failed to comply with the terms of appointment,
- (c) the Commissioner has been convicted of a criminal offence,
- (d) the Commissioner is an undischarged bankrupt or the Commissioner’s estate has been sequestrated in Scotland and the Commissioner has not been discharged,
- (e) the Commissioner has made an arrangement or composition contract with, or has granted a trust deed for, the Commissioner’s creditors,
- (f) the Commissioner is otherwise unfit to hold the office or unable to carry out its functions.

(3B) No recommendation may be made to Her Majesty for the appointment of a person as the Commissioner unless the person concerned has been selected on merit on the basis of fair and open competition.

(3C) A person appointed as the Commissioner may not be appointed again for a further term of office.”

(3) Omit paragraph 2(4) and (5) of that Schedule to that Act (termination of term of office on attaining 65 years of age etc. and eligibility for re-appointment).

(4) In the italic heading to paragraph 2 of that Schedule to that Act, after “office” insert “and appointment”.

(5) Omit section 18(5) to (7) of the Freedom of Information Act 2000 (spent provisions about period of office of Data Protection Commissioner as first Information Commissioner and application of paragraph 2(4)(b) and (5) of Schedule 5 to the Act of 1998 to that person).

## **106 Alteration of role of Secretary of State in relation to guidance powers**

(1) For section 41C(7) of the Data Protection Act 1998 (code of practice about assessment notices: requirement for approval of Secretary of State) substitute—

“(7) The Commissioner must consult the Secretary of State before issuing the code (or an altered or replacement code).”

(2) In section 52B of that Act (data-sharing code: approval by the Secretary of State)—

(a) for subsections (1) to (3) substitute—

“(1) When a code is prepared under section 52A, the Commissioner must—

(a) consult the Secretary of State, and

(b) submit the final version of the code to the Secretary of State.

(2) The Secretary of State must lay the code before Parliament.”, and”

(b) in subsection (6) for the words from the beginning to “the Commissioner” substitute “Where such a resolution is passed, the Commissioner”.

(3) For section 55C(5) of that Act (guidance about monetary penalty notices: requirement for approval of Secretary of State) substitute—

“(5) The Commissioner must consult the Secretary of State before issuing any guidance under this section.”

## **107 Removal of Secretary of State consent for fee-charging powers etc.**

(1) In section 51 of the Data Protection Act 1998 (general duties of the Information Commissioner)—

(a) in subsection (8) (power to charge fees, with the consent of the Secretary of State, in relation to any Part 6 services)—

(i) omit “with the consent of the Secretary of State”, and  
(ii) before “services” insert “relevant”, and

(b) after subsection (8) insert—

“(8A) In subsection (8) “relevant services” means—

(a) the provision to the same person of more than one copy of any published material where each of the copies of the material is either provided on paper, a portable disk which stores the material electronically or a similar medium,

(b) the provision of training, or  
(c) the provision of conferences.

(8B) The Secretary of State may by order amend subsection (8A).”

(2) In section 67(5)(a) of that Act (orders under the Act subject to negative procedure) after “51(3)” insert “or (8B)”.

(3) In section 47 of the Freedom of Information Act 2000 (general functions of the Information Commissioner)—

(a) in subsection (4) (power to charge fees, with the consent of the Secretary of State, in relation to services provided under that section)—

(i) omit “with the consent of the Secretary of State”, and  
(ii) before “services” insert “relevant”, and

(b) after subsection (4) insert—

“(4A) In subsection (4) “relevant services” means—

(a) the provision to the same person of more than one copy of any published material where each of the copies of the material is either provided on paper, a portable disk which stores the material electronically or a similar medium,

(b) the provision of training, or  
(c) the provision of conferences.

(4B) The Secretary of State may by order amend subsection (4A).

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- (4C) An order under subsection (4B) may include such transitional or saving provision as the Secretary of State considers appropriate.
  - (4D) The Secretary of State must consult the Commissioner before making an order under subsection (4B)."
- (4) In section 82(3)(a) of that Act (orders under the Act subject to negative procedure) after "4(1)" insert "or 47(4B)".

**108 Removal of Secretary of State approval for staff numbers, terms etc.**

- (1) Paragraph 4 of Schedule 5 to the Data Protection Act 1998 (appointment of officers and staff of the Information Commissioner) is amended as follows.
- (2) After sub-paragraph (4) insert—
  - "(4A) In making appointments under this paragraph, the Commissioner must have regard to the principle of selection on merit on the basis of fair and open competition."
- (3) Omit sub-paragraph (5) (approval of Secretary of State required for number, and terms and conditions, of persons to be appointed).