

## SCHEDULES

### SCHEDULE 9

Section 33

#### DATA MATCHING

##### *Power to conduct data matching exercises*

- 1 (1) A relevant minister may conduct data matching exercises or arrange for them to be conducted on the minister's behalf.
- (2) "Relevant minister" means the Secretary of State or the Minister for the Cabinet Office.
- (3) A data matching exercise is an exercise involving the comparison of sets of data to determine how far they match (including the identification of any patterns and trends).
- (4) The power in sub-paragraph (1) is exercisable for the purpose of assisting in the prevention and detection of fraud.
- (5) A data matching exercise may not be used to identify patterns and trends in an individual's characteristics or behaviour which suggest nothing more than the individual's potential to commit fraud in the future.
- (6) In this Schedule, any reference to a data matching exercise is to an exercise conducted or arranged to be conducted under this paragraph.

##### *Mandatory provision of data*

- 2 (1) A relevant minister may require a person within sub-paragraph (2) to provide the minister or a person acting on the minister's behalf with such data (and in such form) as the minister or that person may reasonably require for the purpose of conducting data matching exercises.
- (2) The persons within this sub-paragraph are—
  - (a) a relevant authority,
  - (b) a best value authority which is not a relevant authority, and
  - (c) an NHS foundation trust.
- (3) "Best value authority" has the meaning given by section 1 of the Local Government Act 1999.

##### *Voluntary provision of data*

- 3 (1) If a relevant minister thinks it appropriate to conduct a data matching exercise using data held by or on behalf of a body or person in England, the data may be disclosed to the minister or a person acting on the minister's behalf.

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- (2) Sub-paragraph (1) applies to the disclosure of data by a relevant authority, a best value authority or an NHS foundation trust otherwise than in response to a requirement under paragraph 2 as it applies to other disclosures of data.
- (3) Sub-paragraph (1) does not authorise—
  - (a) a disclosure which contravenes the Data Protection Act 1998, or
  - (b) a disclosure prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000.
- (4) Data may not be disclosed under sub-paragraph (1) if the data comprise or include patient data.
- (5) “Patient data” means data relating to an individual which are held for medical purposes (within the meaning of section 251 of the National Health Service Act 2006) and from which the individual can be identified.
- (6) A disclosure under sub-paragraph (1) does not breach—
  - (a) any obligation of confidence owed by a person making the disclosure, or
  - (b) any other restriction on the disclosure of information (however imposed).
- (7) This paragraph does not limit the circumstances in which data may be disclosed apart from this paragraph.
- (8) Data matching exercises may include data provided by a body or person outside England.

*Disclosure of results of data matching etc*

- 4 (1) This paragraph applies to the following information—
  - (a) information relating to a particular body or person obtained by or on behalf of a relevant minister for the purpose of conducting a data matching exercise, and
  - (b) the results of any such exercise.
- (2) Information to which this paragraph applies may be disclosed by or on behalf of the minister if the disclosure—
  - (a) is for or in connection with a purpose for which the data matching exercise is conducted,
  - (b) is to a local auditor and is made for or in connection with the auditor’s functions,
  - (c) is in pursuance of a duty imposed by or under an enactment, or
  - (d) is within sub-paragraph (3).
- (3) A disclosure is within this sub-paragraph if it is—
  - (a) to a relevant audit authority or a related party, and
  - (b) for or in connection with a function of the relevant audit authority corresponding or similar to—
    - (i) the functions of a local auditor, or
    - (ii) the functions of a relevant minister under this Schedule.
- (4) “Relevant audit authority” means—
  - (a) the Auditor General for Wales;

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- (b) the Auditor General for Scotland;
  - (c) the Accounts Commission for Scotland;
  - (d) Audit Scotland;
  - (e) the Comptroller and Auditor General for Northern Ireland;
  - (f) a person designated as a local government auditor under Article 4 of the Local Government (Northern Ireland) Order 2005 (SI 2005/1968 (N.I.18)).
- (5) The related parties in relation to a relevant audit authority are—
- (a) a body or person acting on the authority’s behalf,
  - (b) a body whose accounts are required to be audited by the authority or by a person appointed by the authority, and
  - (c) a person appointed by the authority to audit those accounts.
- (6) If the data used for a data matching exercise include patient data—
- (a) sub-paragraph (2)(a) applies only so far as the purpose for which the disclosure is made relates to a relevant NHS body;
  - (b) sub-paragraph (2)(b) or (d) applies only so far as the function for or in connection with which the disclosure is made relates to a relevant NHS body.
- (7) Information disclosed under sub-paragraph (2) may not be further disclosed except—
- (a) in the case of information disclosed under sub-paragraph (2)(a), for or in connection with the purpose for which it was disclosed under that sub-paragraph,
  - (b) in the case of information disclosed under sub-paragraph (2)(b) or under sub-paragraphs (2)(d) and (3), for or in connection with the function for which it was disclosed under that sub-paragraph or those sub-paragraphs,
  - (c) for the investigation or prosecution of an offence (so far as the disclosure does not fall within paragraph (a) or (b)), or
  - (d) in pursuance of a duty imposed by or under an enactment.
- (8) A person who discloses information to which this paragraph applies, except so far as that disclosure is authorised by sub-paragraph (2) or (7), is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (9) If section 85(1) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 comes into force on or before the day on which this Act is passed—
- (a) section 85 of that Act (removal of limit on certain fines on conviction by magistrates’ court) applies in relation to the offence in sub-paragraph (8) as if it were a relevant offence (as defined in section 85(3) of that Act), and
  - (b) regulations described in section 85(11) of that Act may amend or otherwise modify sub-paragraph (8).
- (10) Schedule 11 (restriction on disclosure of information obtained under this Act) does not apply to information to which this paragraph applies.
- (11) In this paragraph “enactment” includes—
- (a) an enactment contained in, or in an instrument made under, a Measure or Act of the National Assembly for Wales,
  - (b) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament, and
  - (c) an enactment contained in, or in an instrument made under, Northern Ireland legislation.

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- (12) In sub-paragraph (6)—
- “patient data” has the same meaning as in paragraph 3(5);
  - “relevant NHS body” means—
    - (a) a health service body;
    - (b) an NHS foundation trust;
    - (c) the NHS Commissioning Board;
    - (d) a Welsh NHS body as defined in section 60 of the Public Audit (Wales) Act 2004;
    - (e) an NHS body as defined in section 22(1) of the Community Care and Health (Scotland) Act 2002;
    - (f) a health and social care body mentioned in paragraphs (a) to (e) of section 1(5) of the Health and Social Care (Reform) Act (Northern Ireland) 2009.

#### *Publication*

- 5
- (1) Nothing in paragraph 4 prevents a relevant minister from publishing a report on a data matching exercise (including on the results of the exercise).
  - (2) But the report may not include information relating to a particular body or person if—
    - (a) the body or person is the subject of any data included in the data matching exercise,
    - (b) the body or person can be identified from the information, and
    - (c) the information is not otherwise in the public domain.
  - (3) A report published under this paragraph may be published in such manner as the relevant minister considers appropriate for bringing it to the attention of those members of the public who may be interested.

#### *Fees for data matching*

- 6
- (1) A relevant minister must prescribe a scale or scales of fees in respect of data matching exercises.
  - (2) A person within paragraph 2(2) who is required under that paragraph to provide data for a data matching exercise must pay to the relevant minister by whom or on whose behalf the exercise is conducted the fee applicable to that exercise in accordance with the appropriate scale.
  - (3) But if it appears to the relevant minister that the work involved in the exercise was substantially more or less than that envisaged by the appropriate scale, the minister may charge the person a fee which is larger or smaller than that referred to in sub-paragraph (2).
  - (4) Before prescribing a scale of fees under this paragraph, a relevant minister must consult—
    - (a) the persons within paragraph 2(2),
    - (b) such representatives of persons within paragraph 2(2) as the minister thinks appropriate, and
    - (c) such other bodies or persons as the minister thinks appropriate.

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- (5) In addition to the power under sub-paragraph (2), a relevant minister may charge a fee to any body or person providing data for or receiving the results of a data matching exercise.
- (6) A fee under sub-paragraph (5) is payable in accordance with terms agreed between the relevant minister and that body or person.

#### *Code of data matching practice*

- 7
- (1) A relevant minister must prepare, and keep under review, a code of practice with respect to data matching exercises.
  - (2) Regard must be had to the code in conducting and participating in any data matching exercise.
  - (3) Before preparing or altering the code, the relevant minister must consult—
    - (a) the persons within paragraph 2(2),
    - (b) such representatives of persons within paragraph 2(2) as the minister thinks appropriate,
    - (c) the Information Commissioner, and
    - (d) such other bodies or persons as the minister thinks appropriate.
  - (4) The relevant minister must—
    - (a) lay a copy of the code, and of any alterations made to it, before Parliament, and
    - (b) from time to time publish the code as for the time being in force.

#### *Powers to amend this Schedule*

- 8
- (1) A relevant minister may by regulations amend this Schedule—
    - (a) to add a purpose mentioned in sub-paragraph (2) to the purposes for which data matching exercises may be conducted (see paragraph 1(4));
    - (b) to modify the application of this Schedule in relation to a purpose so added.
  - (2) The purposes which may be added are—
    - (a) to assist in the prevention and detection of crime (other than fraud),
    - (b) to assist in the apprehension and prosecution of offenders,
    - (c) to assist in the prevention and detection of errors and inaccuracies, and
    - (d) to assist in the recovery of debt owing to public bodies.
  - (3) Before making regulations under sub-paragraph (1), a relevant minister must consult—
    - (a) the persons within paragraph 2(2),
    - (b) such representatives of persons within paragraph 2(2) as the minister thinks appropriate, and
    - (c) such other bodies or persons as the minister thinks appropriate.
  - (4) A relevant minister may by regulations amend this Schedule—
    - (a) to add a public body to the list in paragraph 2(2);
    - (b) to modify the application of this Schedule in relation to a body so added;
    - (c) to remove a person from that list.

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- (5) Before making regulations under sub-paragraph (4), a relevant minister must consult—
- (a) the body or person who is to be the subject of the regulations,
  - (b) such representatives of persons within paragraph 2(2) as the minister thinks appropriate, and
  - (c) such other bodies or persons as the minister thinks appropriate.
- (6) In this paragraph, “public body” means a body or person whose functions—
- (a) are functions of a public nature, or
  - (b) include functions of that nature,
- but, in the latter case, the body or person is a public body only to the extent of those functions.