



# Data Protection Act 2018

## 2018 CHAPTER 12

### PART 2

#### GENERAL PROCESSING

### CHAPTER 1

#### SCOPE AND DEFINITIONS

#### 4 Processing to which this Part applies

- (1) This Part is relevant to most processing of personal data.
- (2) [<sup>F1</sup>This Part]—
  - (a) applies to the types of processing of personal data to which the [<sup>F2</sup>UK GDPR] applies by virtue of Article 2 of the [<sup>F2</sup>UK GDPR], and
  - (b) supplements, and must be read with, the [<sup>F2</sup>UK GDPR].

<sup>F3</sup>(3) .....

#### Textual Amendments

- F1** Words in s. 4(2) substituted (31.12.2020) by [The Data Protection, Privacy and Electronic Communications \(Amendments etc\) \(EU Exit\) Regulations 2019 \(S.I. 2019/419\)](#), reg. 1(2), [Sch. 2 para. 5\(2\)\(a\)](#) (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F2** Words in s. 4(2) substituted (31.12.2020) by [The Data Protection, Privacy and Electronic Communications \(Amendments etc\) \(EU Exit\) Regulations 2019 \(S.I. 2019/419\)](#), reg. 1(2), [Sch. 2 para. 5\(2\)\(b\)](#) (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F3** S. 4(3) omitted (31.12.2020) by virtue of [The Data Protection, Privacy and Electronic Communications \(Amendments etc\) \(EU Exit\) Regulations 2019 \(S.I. 2019/419\)](#), reg. 1(2), [Sch. 2 para. 5\(3\)](#) (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)

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## 5 Definitions

- (1) Terms used in <sup>F4</sup>... this Part and in the [<sup>F5</sup>UK GDPR] have the same meaning in [<sup>F6</sup>this Part as] they have in the [<sup>F5</sup>UK GDPR].
- (2) In subsection (1), the reference to a term's meaning in the [<sup>F7</sup>UK GDPR] is to its meaning in the [<sup>F7</sup>UK GDPR] read with any provision of [<sup>F8</sup>this Part] which modifies the term's meaning for the purposes of the [<sup>F7</sup>UK GDPR].
- (3) Subsection (1) is subject to any provision in [<sup>F9</sup>this Part] which provides expressly for the term to have a different meaning and to section 204.
- <sup>F10</sup>(4) .....
- <sup>F10</sup>(5) .....
- <sup>F10</sup>(6) .....
- (7) A reference in <sup>F11</sup>... this Part to the processing of personal data is to processing to which [<sup>F12</sup>this Part] applies.
- (8) Sections 3 and 205 include definitions of other expressions used in this Part.

### Textual Amendments

- F4** Words in s. 5(1) omitted (31.12.2020) by virtue of The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (S.I. 2019/419), reg. 1(2), **Sch. 2 para. 6(2)(a)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F5** Words in s. 5(1) substituted (31.12.2020) by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (S.I. 2019/419), reg. 1(2), **Sch. 2 para. 6(2)(b)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F6** Words in s. 5(1) substituted (31.12.2020) by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (S.I. 2019/419), reg. 1(2), **Sch. 2 para. 6(2)(c)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F7** Words in s. 5(2) substituted (31.12.2020) by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (S.I. 2019/419), reg. 1(2), **Sch. 2 para. 6(3)(a)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F8** Words in s. 5(2) substituted (31.12.2020) by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (S.I. 2019/419), reg. 1(2), **Sch. 2 para. 6(3)(b)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F9** Words in s. 5(3) substituted (31.12.2020) by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (S.I. 2019/419), reg. 1(2), **Sch. 2 para. 6(4)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F10** S. 5(4)(5)(6) omitted (31.12.2020) by virtue of The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (S.I. 2019/419), reg. 1(2), **Sch. 2 para. 6(5)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F11** Words in s. 5(7) omitted (31.12.2020) by virtue of The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (S.I. 2019/419), reg. 1(2), **Sch. 2 para. 6(6)(a)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F12** Words in s. 5(7) substituted (31.12.2020) by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (S.I. 2019/419), reg. 1(2), **Sch. 2 para. 6(6)(b)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)

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## CHAPTER 2

### [<sup>F13</sup> THE UK GDPR]

#### Textual Amendments

- F13** Pt. 2 Ch. 2 heading substituted (31.12.2020) by [The Data Protection, Privacy and Electronic Communications \(Amendments etc\) \(EU Exit\) Regulations 2019 \(S.I. 2019/419\)](#), reg. 1(2), **Sch. 2 para. 7** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)

#### *Meaning of certain terms used in the [<sup>F14</sup> UK GDPR]*

#### Textual Amendments

- F14** Words in s. 6 cross-heading substituted (31.12.2020) by [The Data Protection, Privacy and Electronic Communications \(Amendments etc\) \(EU Exit\) Regulations 2019 \(S.I. 2019/419\)](#), reg. 1(2), **Sch. 2 para. 8** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)

## 6 Meaning of “controller”

- (1) The definition of “controller” in Article 4(7) of the [<sup>F15</sup> UK GDPR] has effect subject to—
- subsection (2),
  - section 209, and
  - section 210.
- (2) For the purposes of the [<sup>F16</sup> UK GDPR], where personal data is processed only—
- for purposes for which it is required by an enactment to be processed, and
  - by means by which it is required by an enactment to be processed,
- the person on whom the obligation to process the data is imposed by the enactment (or, if different, one of the enactments) is the controller.

#### Textual Amendments

- F15** Words in s. 6(1) substituted (31.12.2020) by [The Data Protection, Privacy and Electronic Communications \(Amendments etc\) \(EU Exit\) Regulations 2019 \(S.I. 2019/419\)](#), reg. 1(2), **Sch. 2 para. 9** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F16** Words in s. 6(2) substituted (31.12.2020) by [The Data Protection, Privacy and Electronic Communications \(Amendments etc\) \(EU Exit\) Regulations 2019 \(S.I. 2019/419\)](#), reg. 1(2), **Sch. 2 para. 9** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)

## 7 Meaning of “public authority” and “public body”

- (1) For the purposes of the [<sup>F17</sup> UK GDPR], the following (and only the following) are “public authorities” and “public bodies” <sup>F18</sup>...—
- a public authority as defined by the Freedom of Information Act 2000,
  - a Scottish public authority as defined by the Freedom of Information (Scotland) Act 2002 (asp 13),

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- [<sup>F19</sup>(ba) the Advanced Research and Invention Agency,] and
- (c) an authority or body specified or described by the Secretary of State in regulations,
- subject to subsections (2), (3) and (4).
- (2) An authority or body that falls within subsection (1) is only a “public authority” or “public body” for the purposes of the [<sup>F20</sup>UK GDPR] when performing a task carried out in the public interest or in the exercise of official authority vested in it.
- (3) The references in subsection (1)(a) and (b) to public authorities and Scottish public authorities as defined by the Freedom of Information Act 2000 and the Freedom of Information (Scotland) Act 2002 (asp 13) do not include any of the following that fall within those definitions—
- (a) a parish council in England;
  - (b) a community council in Wales;
  - (c) a community council in Scotland;
  - (d) a parish meeting constituted under section 13 of the Local Government Act 1972;
  - (e) a community meeting constituted under section 27 of that Act;
  - (f) charter trustees constituted—
    - (i) under section 246 of that Act,
    - (ii) under Part 1 of the Local Government and Public Involvement in Health Act 2007, or
    - (iii) by the Charter Trustees Regulations 1996 (S.I. 1996/263).
- (4) The Secretary of State may by regulations provide that a person specified or described in the regulations that is a public authority [<sup>F21</sup>described or mentioned in subsection (1) (a), (b) or (ba)] is not a “public authority” or “public body” for the purposes of the [<sup>F22</sup>UK GDPR].
- (5) Regulations under this section are subject to the affirmative resolution procedure.

#### Textual Amendments

- F17** Words in s. 7(1) substituted (31.12.2020) by [The Data Protection, Privacy and Electronic Communications \(Amendments etc\) \(EU Exit\) Regulations 2019 \(S.I. 2019/419\)](#), reg. 1(2), **Sch. 2 para. 10(2)(a)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F18** Words in s. 7(1) omitted (31.12.2020) by virtue of [The Data Protection, Privacy and Electronic Communications \(Amendments etc\) \(EU Exit\) Regulations 2019 \(S.I. 2019/419\)](#), reg. 1(2), **Sch. 2 para. 10(2)(b)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F19** S. 7(1)(ba) inserted (25.1.2023) by [Advanced Research and Invention Agency Act 2022 \(c. 4\)](#), s. 13(1), **Sch. 3 para. 14(a)**; S.I. 2023/58, reg. 2
- F20** Words in s. 7(2) substituted (31.12.2020) by [The Data Protection, Privacy and Electronic Communications \(Amendments etc\) \(EU Exit\) Regulations 2019 \(S.I. 2019/419\)](#), reg. 1(2), **Sch. 2 para. 10(3)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F21** Words in s. 7(4) substituted (25.1.2023) by [Advanced Research and Invention Agency Act 2022 \(c. 4\)](#), s. 13(1), **Sch. 3 para. 14(b)**; S.I. 2023/58, reg. 2
- F22** Words in s. 7(4) substituted (31.12.2020) by [The Data Protection, Privacy and Electronic Communications \(Amendments etc\) \(EU Exit\) Regulations 2019 \(S.I. 2019/419\)](#), reg. 1(2), **Sch. 2 para. 10(3)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)

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### Commencement Information

- II** S. 7 in force at Royal Assent for specified purposes, see s. 212(2)(f)

## *Lawfulness of processing*

### **8 Lawfulness of processing: public interest etc**

In Article 6(1) of the [<sup>F23</sup>UK GDPR] (lawfulness of processing), the reference in point (e) to processing of personal data that is necessary for the performance of a task carried out in the public interest or in the exercise of the controller's official authority includes processing of personal data that is necessary for—

- (a) the administration of justice,
- (b) the exercise of a function of either House of Parliament,
- (c) the exercise of a function conferred on a person by an enactment or rule of law,
- (d) the exercise of a function of the Crown, a Minister of the Crown or a government department, or
- (e) an activity that supports or promotes democratic engagement.

### Textual Amendments

- F23** Words in s. 8 substituted (31.12.2020) by [The Data Protection, Privacy and Electronic Communications \(Amendments etc\) \(EU Exit\) Regulations 2019 \(S.I. 2019/419\)](#), reg. 1(2), **Sch. 2 para. 11** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)

### **F24<sup>9</sup> Child's consent in relation to information society services**

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### Textual Amendments

- F24** S. 9 omitted (31.12.2020) by virtue of [The Data Protection, Privacy and Electronic Communications \(Amendments etc\) \(EU Exit\) Regulations 2019 \(S.I. 2019/419\)](#), reg. 1(2), **Sch. 2 para. 12** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)

## *Special categories of personal data*

### **10 Special categories of personal data and criminal convictions etc data**

(1) Subsections (2) and (3) make provision about the processing of personal data described in Article 9(1) of the [<sup>F25</sup>UK GDPR] (prohibition on processing of special categories of personal data) in reliance on an exception in one of the following points of Article 9(2)—

- (a) point (b) (employment, social security and social protection);
- (b) point (g) (substantial public interest);
- (c) point (h) (health and social care);
- (d) point (i) (public health);
- (e) point (j) (archiving, research and statistics).

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- (2) The processing meets the requirement in point (b), (h), (i) or (j) of Article 9(2) of the [F26UK GDPR] for authorisation by, or a basis in, the law of the United Kingdom or a part of the United Kingdom only if it meets a condition in Part 1 of Schedule 1.
- (3) The processing meets the requirement in point (g) of Article 9(2) of the [F27UK GDPR] for a basis in the law of the United Kingdom or a part of the United Kingdom only if it meets a condition in Part 2 of Schedule 1.
- (4) Subsection (5) makes provision about the processing of personal data relating to criminal convictions and offences or related security measures that is not carried out under the control of official authority.
- (5) The processing meets the requirement in Article [F2810(1) of the UK GDPR] for authorisation by the law of the United Kingdom or a part of the United Kingdom only if it meets a condition in Part 1, 2 or 3 of Schedule 1.
- (6) The Secretary of State may by regulations—
  - (a) amend Schedule 1—
    - (i) by adding or varying conditions or safeguards, and
    - (ii) by omitting conditions or safeguards added by regulations under this section, and
  - (b) consequentially amend this section.
- (7) Regulations under this section are subject to the affirmative resolution procedure.

#### Textual Amendments

- F25** Words in s. 10(1) substituted (31.12.2020) by [The Data Protection, Privacy and Electronic Communications \(Amendments etc\) \(EU Exit\) Regulations 2019 \(S.I. 2019/419\)](#), reg. 1(2), [Sch. 2 para. 13\(2\)](#) (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F26** Words in s. 10(2) substituted (31.12.2020) by [The Data Protection, Privacy and Electronic Communications \(Amendments etc\) \(EU Exit\) Regulations 2019 \(S.I. 2019/419\)](#), reg. 1(2), [Sch. 2 para. 13\(2\)](#) (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F27** Words in s. 10(3) substituted (31.12.2020) by [The Data Protection, Privacy and Electronic Communications \(Amendments etc\) \(EU Exit\) Regulations 2019 \(S.I. 2019/419\)](#), reg. 1(2), [Sch. 2 para. 13\(2\)](#) (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F28** Words in s. 10(5) substituted (31.12.2020) by [The Data Protection, Privacy and Electronic Communications \(Amendments etc\) \(EU Exit\) Regulations 2019 \(S.I. 2019/419\)](#), reg. 1(2), [Sch. 2 para. 13\(3\)](#) (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)

#### Commencement Information

- I2** S. 10 in force at Royal Assent for specified purposes, see s. 212(2)(f)

## 11 Special categories of personal data etc: supplementary

- (1) For the purposes of Article 9(2)(h) of the [F29UK GDPR] (processing for health or social care purposes etc), the circumstances in which the processing of personal data is carried out subject to the conditions and safeguards referred to in Article 9(3) of the [F29UK GDPR] (obligation of secrecy) include circumstances in which it is carried out—
  - (a) by or under the responsibility of a health professional or a social work professional, or

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- (b) by another person who in the circumstances owes a duty of confidentiality under an enactment or rule of law.
- (2) In Article 10 of the [F30UK GDPR] and section 10, references to personal data relating to criminal convictions and offences or related security measures include personal data relating to—
- (a) the alleged commission of offences by the data subject, or
  - (b) proceedings for an offence committed or alleged to have been committed by the data subject or the disposal of such proceedings, including sentencing.

#### Textual Amendments

- F29** Words in s. 11(1) substituted (31.12.2020) by [The Data Protection, Privacy and Electronic Communications \(Amendments etc\) \(EU Exit\) Regulations 2019 \(S.I. 2019/419\)](#), reg. 1(2), **Sch. 2 para. 14** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F30** Words in s. 11(2) substituted (31.12.2020) by [The Data Protection, Privacy and Electronic Communications \(Amendments etc\) \(EU Exit\) Regulations 2019 \(S.I. 2019/419\)](#), reg. 1(2), **Sch. 2 para. 14** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)

### *Rights of the data subject*

## 12 Limits on fees that may be charged by controllers

- (1) The Secretary of State may by regulations specify limits on the fees that a controller may charge in reliance on—
- (a) Article 12(5) of the [F31UK GDPR] (reasonable fees when responding to manifestly unfounded or excessive requests), or
  - (b) Article 15(3) of the [F32UK GDPR] (reasonable fees for provision of further copies).
- (2) 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 reliance on those provisions, and
  - (b) specify what the guidance must include.
- (3) Regulations under this section are subject to the negative resolution procedure.

#### Textual Amendments

- F31** Words in s. 12(1)(a) substituted (31.12.2020) by [The Data Protection, Privacy and Electronic Communications \(Amendments etc\) \(EU Exit\) Regulations 2019 \(S.I. 2019/419\)](#), reg. 1(2), **Sch. 2 para. 15** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F32** Words in s. 12(1)(b) substituted (31.12.2020) by [The Data Protection, Privacy and Electronic Communications \(Amendments etc\) \(EU Exit\) Regulations 2019 \(S.I. 2019/419\)](#), reg. 1(2), **Sch. 2 para. 15** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)

#### Commencement Information

- I3** S. 12 in force at Royal Assent for specified purposes, see s. 212(2)(f)

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### 13 Obligations of credit reference agencies

- (1) This section applies where a controller is a credit reference agency (within the meaning of section 145(8) of the Consumer Credit Act 1974).
- (2) The controller's obligations under Article 15(1) to (3) of the [F33UK GDPR] (confirmation of processing, access to data and safeguards for third country transfers) are taken to apply only to personal data relating to the data subject's financial standing, unless the data subject has indicated a contrary intention.
- (3) Where the controller discloses personal data in pursuance of Article 15(1) to (3) of the [F34UK GDPR], the disclosure must be accompanied by a statement informing the data subject of the data subject's rights under section 159 of the Consumer Credit Act 1974 (correction of wrong information).

#### Textual Amendments

- F33** Words in s. 13(2) substituted (31.12.2020) by [The Data Protection, Privacy and Electronic Communications \(Amendments etc\) \(EU Exit\) Regulations 2019 \(S.I. 2019/419\)](#), reg. 1(2), [Sch. 2 para. 16](#) (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F34** Words in s. 13(3) substituted (31.12.2020) by [The Data Protection, Privacy and Electronic Communications \(Amendments etc\) \(EU Exit\) Regulations 2019 \(S.I. 2019/419\)](#), reg. 1(2), [Sch. 2 para. 16](#) (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)

### 14 Automated decision-making authorised by law: safeguards

- (1) This section makes provision for the purposes of Article 22(2)(b) of the [F35UK GDPR] (exception from Article 22(1) of the [F35UK GDPR] for significant decisions based solely on automated processing that are [F36required or authorised under the law of the United Kingdom or a part of the United Kingdom] and subject to safeguards for the data subject's rights, freedoms and legitimate interests).
- (2) A decision is a “significant decision” for the purposes of this section if, in relation to a data subject, it—
  - (a) produces legal effects concerning the data subject, or
  - (b) similarly significantly affects the data subject.
- (3) A decision is a “qualifying significant decision” for the purposes of this section if—
  - (a) it is a significant decision in relation to a data subject,
  - (b) it is required or authorised by law, and
  - (c) it does not fall within Article 22(2)(a) or (c) of the [F37UK GDPR] (decisions necessary to a contract or made with the data subject's consent).
- (4) Where a controller takes a qualifying significant decision in relation to a data subject based solely on automated processing—
  - (a) the controller must, as soon as reasonably practicable, notify the data subject in writing that a decision has been taken based solely on automated processing, and
  - (b) the data subject may, before the end of the period of 1 month beginning with receipt of the notification, request the controller to—
    - (i) reconsider the decision, or
    - (ii) take a new decision that is not based solely on automated processing.

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- (5) If a request is made to a controller under subsection (4), the controller must, within the period described in Article 12(3) of the [F38UK GDPR]—
- (a) consider the request, including any information provided by the data subject that is relevant to it,
  - (b) comply with the request, and
  - (c) by notice in writing inform the data subject of—
    - (i) the steps taken to comply with the request, and
    - (ii) the outcome of complying with the request.
- (6) In connection with this section, a controller has the powers and obligations under Article 12 of the [F39UK GDPR] (transparency, procedure for extending time for acting on request, fees, manifestly unfounded or excessive requests etc) that apply in connection with Article 22 of the [F39UK GDPR].
- (7) The Secretary of State may by regulations make such further provision as the Secretary of State considers appropriate to provide suitable measures to safeguard a data subject's rights, freedoms and legitimate interests in connection with the taking of qualifying significant decisions based solely on automated processing.
- (8) Regulations under subsection (7)—
- (a) may amend this section, and
  - (b) are subject to the affirmative resolution procedure.

#### Textual Amendments

- F35** Words in s. 14(1) substituted (31.12.2020) by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (S.I. 2019/419), reg. 1(2), **Sch. 2 para. 17(2)(a)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F36** Words in s. 14(1) substituted (31.12.2020) by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (S.I. 2019/419), reg. 1(2), **Sch. 2 para. 17(2)(b)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F37** Words in s. 14(3)(c) substituted (31.12.2020) by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (S.I. 2019/419), reg. 1(2), **Sch. 2 para. 17(3)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F38** Words in s. 14(5) substituted (31.12.2020) by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (S.I. 2019/419), reg. 1(2), **Sch. 2 para. 17(3)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F39** Words in s. 14(6) substituted (31.12.2020) by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (S.I. 2019/419), reg. 1(2), **Sch. 2 para. 17(3)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)

#### Commencement Information

- I4** S. 14 in force at Royal Assent for specified purposes, see s. 212(2)(f)

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## *[<sup>F40</sup>Exemptions etc]*

### Textual Amendments

**F40** S. 15 cross-heading substituted (31.12.2020) by [The Data Protection, Privacy and Electronic Communications \(Amendments etc\) \(EU Exit\) Regulations 2019 \(S.I. 2019/419\)](#), reg. 1(2), **Sch. 2 para. 18** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)

## 15 Exemptions etc

- (1) Schedules 2, 3 and 4 make provision for exemptions from, and restrictions and adaptations of the application of, rules of the [<sup>F41</sup>UK GDPR].
- (2) In Schedule 2—
  - (a) Part 1 makes provision adapting or restricting the application of rules contained in Articles 13 to 21 and 34 of the [<sup>F42</sup>UK GDPR] in specified circumstances [<sup>F43</sup>(of a kind described in] Article 6(3) and Article 23(1) of the [<sup>F44</sup>UK GDPR]);
  - (b) Part 2 makes provision restricting the application of rules contained in Articles 13 to 21 and 34 of the [<sup>F45</sup>UK GDPR] in specified circumstances [<sup>F46</sup>(of a kind described in] Article 23(1) of the [<sup>F47</sup>UK GDPR]);
  - (c) Part 3 makes provision restricting the application of Article 15 of the [<sup>F48</sup>UK GDPR] where this is necessary to protect the rights of others [<sup>F49</sup>(of a kind described in] Article 23(1) of the [<sup>F50</sup>UK GDPR]);
  - (d) Part 4 makes provision restricting the application of rules contained in Articles 13 to 15 of the [<sup>F51</sup>UK GDPR] in specified circumstances [<sup>F52</sup>(of a kind described in] Article 23(1) of the [<sup>F53</sup>UK GDPR]);
  - (e) Part 5 makes provision containing exemptions or derogations from Chapters II, III, IV<sup>F54</sup> and V of the UK GDPR] for reasons relating to freedom of expression [<sup>F55</sup>(of a kind described in Article 85(2) of the UK GDPR)];
  - (f) Part 6 makes provision containing derogations from rights contained in Articles 15, 16, 18, 19, 20 and 21 of the [<sup>F56</sup>UK GDPR] for scientific or historical research purposes, statistical purposes and archiving purposes <sup>F57</sup>....
- (3) Schedule 3 makes provision restricting the application of rules contained in Articles 13 to 21 of the [<sup>F58</sup>UK GDPR] to health, social work, education and child abuse data [<sup>F59</sup>(of a kind described in] Article 23(1) of the [<sup>F60</sup>UK GDPR]).
- (4) Schedule 4 makes provision restricting the application of rules contained in Articles 13 to 21 of the [<sup>F61</sup>UK GDPR] to information the disclosure of which is prohibited or restricted by an enactment [<sup>F62</sup>(of a kind described in] Article 23(1) of the [<sup>F63</sup>UK GDPR]).
- <sup>F64</sup>(4A) In connection with the manual unstructured processing of personal data held by an FOI public authority, see Chapter 3 of this Part (sections 21, 24 and 25).]
- (5) In connection with the safeguarding of national security and with defence, see Chapter 3 of this Part [<sup>F65</sup>(sections 26 to 28)].

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### Textual Amendments

- F41** Words in s. 15(1) substituted (31.12.2020) by [The Data Protection, Privacy and Electronic Communications \(Amendments etc\) \(EU Exit\) Regulations 2019 \(S.I. 2019/419\)](#), reg. 1(2), **Sch. 2 para. 19(2)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F42** Words in s. 15(2)(a) substituted (31.12.2020) by [The Data Protection, Privacy and Electronic Communications \(Amendments etc\) \(EU Exit\) Regulations 2019 \(S.I. 2019/419\)](#), reg. 1(2), **Sch. 2 para. 19(3)(a)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F43** Words in s. 15(2)(a) substituted (31.12.2020) by [The Data Protection, Privacy and Electronic Communications \(Amendments etc\) \(EU Exit\) Regulations 2019 \(S.I. 2019/419\)](#), reg. 1(2), **Sch. 2 para. 19(3)(b)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F44** Words in s. 15(2)(a) substituted (31.12.2020) by [The Data Protection, Privacy and Electronic Communications \(Amendments etc\) \(EU Exit\) Regulations 2019 \(S.I. 2019/419\)](#), reg. 1(2), **Sch. 2 para. 19(3)(c)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F45** Words in s. 15(2)(b) substituted (31.12.2020) by [The Data Protection, Privacy and Electronic Communications \(Amendments etc\) \(EU Exit\) Regulations 2019 \(S.I. 2019/419\)](#), reg. 1(2), **Sch. 2 para. 19(4)(a)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F46** Words in s. 15(2)(b) substituted (31.12.2020) by [The Data Protection, Privacy and Electronic Communications \(Amendments etc\) \(EU Exit\) Regulations 2019 \(S.I. 2019/419\)](#), reg. 1(2), **Sch. 2 para. 19(4)(b)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F47** Words in s. 15(2)(b) substituted (31.12.2020) by [The Data Protection, Privacy and Electronic Communications \(Amendments etc\) \(EU Exit\) Regulations 2019 \(S.I. 2019/419\)](#), reg. 1(2), **Sch. 2 para. 19(4)(c)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F48** Words in s. 15(2)(c) substituted (31.12.2020) by [The Data Protection, Privacy and Electronic Communications \(Amendments etc\) \(EU Exit\) Regulations 2019 \(S.I. 2019/419\)](#), reg. 1(2), **Sch. 2 para. 19(5)(a)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F49** Words in s. 15(2)(c) substituted (31.12.2020) by [The Data Protection, Privacy and Electronic Communications \(Amendments etc\) \(EU Exit\) Regulations 2019 \(S.I. 2019/419\)](#), reg. 1(2), **Sch. 2 para. 19(5)(b)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F50** Words in s. 15(2)(c) substituted (31.12.2020) by [The Data Protection, Privacy and Electronic Communications \(Amendments etc\) \(EU Exit\) Regulations 2019 \(S.I. 2019/419\)](#), reg. 1(2), **Sch. 2 para. 19(5)(c)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F51** Words in s. 15(2)(d) substituted (31.12.2020) by [The Data Protection, Privacy and Electronic Communications \(Amendments etc\) \(EU Exit\) Regulations 2019 \(S.I. 2019/419\)](#), reg. 1(2), **Sch. 2 para. 19(6)(a)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F52** Words in s. 15(2)(d) substituted (31.12.2020) by [The Data Protection, Privacy and Electronic Communications \(Amendments etc\) \(EU Exit\) Regulations 2019 \(S.I. 2019/419\)](#), reg. 1(2), **Sch. 2 para. 19(6)(b)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F53** Words in s. 15(2)(d) substituted (31.12.2020) by [The Data Protection, Privacy and Electronic Communications \(Amendments etc\) \(EU Exit\) Regulations 2019 \(S.I. 2019/419\)](#), reg. 1(2), **Sch. 2 para. 19(6)(c)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F54** Words in s. 15(2)(e) substituted (31.12.2020) by [The Data Protection, Privacy and Electronic Communications \(Amendments etc\) \(EU Exit\) Regulations 2019 \(S.I. 2019/419\)](#), reg. 1(2), **Sch. 2 para. 19(7)(a)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F55** Words in s. 15(2)(e) substituted (31.12.2020) by [The Data Protection, Privacy and Electronic Communications \(Amendments etc\) \(EU Exit\) Regulations 2019 \(S.I. 2019/419\)](#), reg. 1(2), **Sch. 2 para. 19(7)(b)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F56** Words in s. 15(2)(f) substituted (31.12.2020) by [The Data Protection, Privacy and Electronic Communications \(Amendments etc\) \(EU Exit\) Regulations 2019 \(S.I. 2019/419\)](#), reg. 1(2), **Sch. 2 para. 19(8)(a)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)

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- F57** Words in s. 15(2)(f) omitted (31.12.2020) by virtue of The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (S.I. 2019/419), reg. 1(2), **Sch. 2 para. 19(8)(b)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F58** Words in s. 15(3) substituted (31.12.2020) by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (S.I. 2019/419), reg. 1(2), **Sch. 2 para. 19(9)(a)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F59** Words in s. 15(3) substituted (31.12.2020) by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (S.I. 2019/419), reg. 1(2), **Sch. 2 para. 19(9)(b)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F60** Words in s. 15(3) substituted (31.12.2020) by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (S.I. 2019/419), reg. 1(2), **Sch. 2 para. 19(9)(c)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F61** Words in s. 15(4) substituted (31.12.2020) by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (S.I. 2019/419), reg. 1(2), **Sch. 2 para. 19(10)(a)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F62** Words in s. 15(4) substituted (31.12.2020) by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (S.I. 2019/419), reg. 1(2), **Sch. 2 para. 19(10)(b)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F63** Words in s. 15(4) substituted (31.12.2020) by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (S.I. 2019/419), reg. 1(2), **Sch. 2 para. 19(10)(c)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F64** S. 15(4A) inserted (31.12.2020) by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (S.I. 2019/419), reg. 1(2), **Sch. 2 para. 19(11)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F65** Words in s. 15(5) substituted (31.12.2020) by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (S.I. 2019/419), reg. 1(2), **Sch. 2 para. 19(12)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)

## 16 Power to make further exemptions etc by regulations

- (1) The following powers to make provision altering the application of the [F66UK GDPR] may be exercised by way of regulations made by the Secretary of State under this section—
- (a) the power in Article 6(3) <sup>F67</sup>... to lay down a legal basis containing specific provisions to adapt the application of rules of the [F68UK GDPR] where processing is necessary for compliance with a legal obligation, for the performance of a task in the public interest or in the exercise of official authority;
  - (b) the power in Article 23(1) to make [F69provision] restricting the scope of the obligations and rights mentioned in that Article where necessary and proportionate to safeguard certain objectives of general public interest;
  - (c) the power in Article 85(2) to provide for exemptions or derogations from certain Chapters of the [F70UK GDPR] where necessary to reconcile the protection of personal data with the freedom of expression and information.
- (2) Regulations under this section may—
- (a) amend Schedules 2 to 4—
    - (i) by adding or varying provisions, and
    - (ii) by omitting provisions added by regulations under this section, <sup>F71</sup>...
  - (b) consequentially amend section 15 [F72], and

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- (c) consequentially amend the UK GDPR by adding, varying or omitting a reference to section 15, Schedule 2, 3 or 4, this section or regulations under this section.]

(3) Regulations under this section are subject to the affirmative resolution procedure.

#### Textual Amendments

- F66** Words in s. 16(1) substituted (31.12.2020) by [The Data Protection, Privacy and Electronic Communications \(Amendments etc\) \(EU Exit\) Regulations 2019 \(S.I. 2019/419\)](#), reg. 1(2), **Sch. 2 para. 20(2)(a)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F67** Words in s. 16(1)(a) omitted (31.12.2020) by virtue of [The Data Protection, Privacy and Electronic Communications \(Amendments etc\) \(EU Exit\) Regulations 2019 \(S.I. 2019/419\)](#), reg. 1(2), **Sch. 2 para. 20(2)(b)(i)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F68** Words in s. 16(1)(a) substituted (31.12.2020) by [The Data Protection, Privacy and Electronic Communications \(Amendments etc\) \(EU Exit\) Regulations 2019 \(S.I. 2019/419\)](#), reg. 1(2), **Sch. 2 para. 20(2)(b)(ii)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F69** Word in s. 16(1)(b) substituted (31.12.2020) by [The Data Protection, Privacy and Electronic Communications \(Amendments etc\) \(EU Exit\) Regulations 2019 \(S.I. 2019/419\)](#), reg. 1(2), **Sch. 2 para. 20(2)(c)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F70** Words in s. 16(1)(c) substituted (31.12.2020) by [The Data Protection, Privacy and Electronic Communications \(Amendments etc\) \(EU Exit\) Regulations 2019 \(S.I. 2019/419\)](#), reg. 1(2), **Sch. 2 para. 20(2)(d)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F71** Word in s. 16(2)(a)(ii) omitted (31.12.2020) by virtue of [The Data Protection, Privacy and Electronic Communications \(Amendments etc\) \(EU Exit\) Regulations 2019 \(S.I. 2019/419\)](#), reg. 1(2), **Sch. 2 para. 20(3)(a)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F72** S. 16(2)(c) and word inserted (31.12.2020) by [The Data Protection, Privacy and Electronic Communications \(Amendments etc\) \(EU Exit\) Regulations 2019 \(S.I. 2019/419\)](#), reg. 1(2), **Sch. 2 para. 20(3)(b)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)

#### Commencement Information

- I5** S. 16 in force at Royal Assent for specified purposes, see s. 212(2)(f)

*[<sup>F73</sup>Certification]*

#### Textual Amendments

- F73** S. 17 cross-heading substituted (31.12.2020) by [The Data Protection, Privacy and Electronic Communications \(Amendments etc\) \(EU Exit\) Regulations 2019 \(S.I. 2019/419\)](#), reg. 1(2), **Sch. 2 para. 21** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)

## 17 Accreditation of certification providers

- (1) Accreditation of a person as a certification provider is only valid when carried out by—
- the Commissioner, or
  - the [<sup>F74</sup>UK national accreditation body].
- (2) The Commissioner may only accredit a person as a certification provider where the Commissioner—

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- (a) has published a statement that the Commissioner will carry out such accreditation, and
  - (b) has not published a notice withdrawing that statement.
- (3) The [<sup>F75</sup>UK national accreditation body] may only accredit a person as a certification provider where the Commissioner—
- (a) has published a statement that the body may carry out such accreditation, and
  - (b) has not published a notice withdrawing that statement.
- (4) The publication of a notice under subsection (2)(b) or (3)(b) does not affect the validity of any accreditation carried out before its publication.
- (5) Schedule 5 makes provision about reviews of, and appeals from, a decision relating to accreditation of a person as a certification provider.
- (6) The [<sup>F76</sup>UK national accreditation body] may charge a reasonable fee in connection with, or incidental to, the carrying out of the body's functions under this section, Schedule 5 and Article 43 of the [<sup>F77</sup>UK GDPR].
- (7) The [<sup>F78</sup>UK national accreditation body] must provide the Secretary of State with such information relating to its functions under this section, Schedule 5 and Article 43 of the [<sup>F79</sup>UK GDPR] as the Secretary of State may reasonably require.
- (8) In this section—

“certification provider” means a person who issues certification for the purposes of Article 42 of the [<sup>F80</sup>UK GDPR];

“the [<sup>F81</sup>UK national accreditation body]” means the [<sup>F81</sup>UK national accreditation body] for the purposes of Article 4(1) of 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.

#### Textual Amendments

- F74** Words in s. 17(1)(b) substituted (31.12.2020) by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (S.I. 2019/419), reg. 1(2), **Sch. 2 para. 22(2)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F75** Words in s. 17(3) substituted (31.12.2020) by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (S.I. 2019/419), reg. 1(2), **Sch. 2 para. 22(3)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F76** Words in s. 17(6) substituted (31.12.2020) by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (S.I. 2019/419), reg. 1(2), **Sch. 2 para. 22(4)(a)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F77** Words in s. 17(6) substituted (31.12.2020) by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (S.I. 2019/419), reg. 1(2), **Sch. 2 para. 22(4)(b)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F78** Words in s. 17(7) substituted (31.12.2020) by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (S.I. 2019/419), reg. 1(2), **Sch. 2 para. 22(5)(a)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F79** Words in s. 17(7) substituted (31.12.2020) by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (S.I. 2019/419), reg. 1(2), **Sch. 2 para. 22(5)(b)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)

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- F80** Words in s. 17(8) substituted (31.12.2020) by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (S.I. 2019/419), reg. 1(2), **Sch. 2 para. 22(6)(a)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F81** Words in s. 17(8) substituted (31.12.2020) by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (S.I. 2019/419), reg. 1(2), **Sch. 2 para. 22(6)(b)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)

### *Transfers of personal data to third countries etc*

#### [<sup>F82</sup>17A Transfers based on adequacy regulations

- (1) The Secretary of State may by regulations specify any of the following which the Secretary of State considers ensures an adequate level of protection of personal data—
  - (a) a third country,
  - (b) a territory or one or more sectors within a third country,
  - (c) an international organisation, or
  - (d) a description of such a country, territory, sector or organisation.
- (2) For the purposes of the UK GDPR and this Part of this Act, a transfer of personal data to a third country or an international organisation is based on adequacy regulations if, at the time of the transfer, regulations made under this section are in force which specify, or specify a description which includes—
  - (a) in the case of a third country, the country or a relevant territory or sector within the country, or
  - (b) in the case of an international organisation, the organisation.
- (3) Regulations under this section may specify that the Secretary of State considers that an adequate level of protection of personal data is ensured only for a transfer specified or described in the regulations and, if they do so, only such a transfer may rely on those regulations for the purposes of subsection (2).
- (4) Article 45(2) of the UK GDPR makes provision about the assessment of the adequacy of the level of protection for the purposes of this section and section 17B.
- (5) Regulations under this section—
  - (a) where they relate to a third country, must specify their territorial and sectoral application;
  - (b) where applicable, must specify the independent supervisory authority or authorities referred to in Article 45(2)(b) of the UK GDPR.
- (6) Regulations under this section may, among other things—
  - (a) provide that in relation to a country, territory, sector, organisation or transfer specified, or falling within a description specified, in the regulations, section 17B(1) has effect as if it required the reviews described there to be carried out at such shorter intervals as are specified in the regulations;
  - (b) identify a transfer of personal data by any means, including by reference to the controller or processor, the recipient, the personal data transferred or the means by which the transfer is made or by reference to relevant legislation, lists or other documents, as they have effect from time to time;
  - (c) confer a discretion on a person.
- (7) Regulations under this section are subject to the negative resolution procedure.]

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### Textual Amendments

**F82** Ss. 17A-17C inserted (31.12.2020) by [The Data Protection, Privacy and Electronic Communications \(Amendments etc\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/419), reg. 1(2), **Sch. 2 para. 23** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)

### [<sup>F82</sup>17B Transfers based on adequacy regulations: review etc

- (1) For so long as regulations under section 17A are in force which specify, or specify a description which includes, a third country, a territory or sector within a third country or an international organisation, the Secretary of State must carry out a review of whether the country, territory, sector or organisation ensures an adequate level of protection of personal data at intervals of not more than 4 years.
- (2) Each review under subsection (1) must take into account all relevant developments in the third country or international organisation.
- (3) 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 section 17A or to amend or revoke such regulations.
- (4) Where the Secretary of State becomes aware that a country, territory, sector or organisation specified, or falling within a description specified, in regulations under section 17A no longer ensures an adequate level of protection of personal data, whether as a result of a review under this section or otherwise, the Secretary of State must, to the extent necessary, amend or revoke the regulations.
- (5) Where regulations under section 17A are amended or revoked in accordance with subsection (4), the Secretary of State must enter into consultations with the third country or international organisation concerned with a view to remedying the lack of an adequate level of protection.
- (6) The Secretary of State must publish—
  - (a) a list of the third countries, territories and specified sectors within a third country and international organisations, and the descriptions of such countries, territories, sectors and organisations, which are for the time being specified in regulations under section 17A, and
  - (b) a list of the third countries, territories and specified sectors within a third country and international organisations, and the descriptions of such countries, territories, sectors and organisations, which have been but are no longer specified in such regulations.
- (7) In the case of regulations under section 17A which specify that an adequate level of protection of personal data is ensured only for a transfer specified or described in the regulations—
  - (a) the duty under subsection (1) is only to carry out a review of the level of protection ensured for such a transfer, and
  - (b) the lists published under subsection (6) must specify or describe the relevant transfers.]

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#### Textual Amendments

**F82** Ss. 17A-17C inserted (31.12.2020) by [The Data Protection, Privacy and Electronic Communications \(Amendments etc\) \(EU Exit\) Regulations 2019 \(S.I. 2019/419\)](#), reg. 1(2), **Sch. 2 para. 23** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)

### [<sup>F82</sup>17C Standard data protection clauses

- (1) The Secretary of State may by regulations specify standard data protection clauses which the Secretary of State considers provide appropriate safeguards for the purposes of transfers of personal data to a third country or an international organisation in reliance on Article 46 of the UK GDPR (and see also section 119A).
- (2) The Secretary of State must keep under review the standard data protection clauses specified in regulations under this section that are for the time being in force.
- (3) Regulations under this section are subject to the negative resolution procedure.]

#### Textual Amendments

**F82** Ss. 17A-17C inserted (31.12.2020) by [The Data Protection, Privacy and Electronic Communications \(Amendments etc\) \(EU Exit\) Regulations 2019 \(S.I. 2019/419\)](#), reg. 1(2), **Sch. 2 para. 23** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)

### 18 Transfers of personal data to third countries etc [<sup>F83</sup>: public interest]

- (1) The Secretary of State may by regulations specify, for the purposes of Article 49(1) (d) of the [<sup>F84</sup>UK GDPR]—
  - (a) circumstances in which a transfer of personal data to a 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 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.
- (2) The Secretary of State may by regulations restrict the transfer of a category of personal data to a third country or international organisation where—
  - [<sup>F85</sup>(a) the transfer cannot take place based on adequacy regulations (see section 17A),] and
  - (b) the Secretary of State considers the restriction to be necessary for important reasons of public interest.
- (3) Regulations under this section—
  - (a) are subject to the made affirmative resolution procedure where the Secretary of State has made an urgency statement in respect of them;
  - (b) are otherwise subject to the affirmative resolution procedure.
- (4) For the purposes of this section, an urgency statement is a reasoned statement that the Secretary of State considers it desirable for the regulations to come into force without delay.

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### Textual Amendments

- F83** Words in s. 18 heading inserted (31.12.2020) by [The Data Protection, Privacy and Electronic Communications \(Amendments etc\) \(EU Exit\) Regulations 2019 \(S.I. 2019/419\)](#), reg. 1(2), **Sch. 2 para. 24(2)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F84** Words in s. 18(1) substituted (31.12.2020) by [The Data Protection, Privacy and Electronic Communications \(Amendments etc\) \(EU Exit\) Regulations 2019 \(S.I. 2019/419\)](#), reg. 1(2), **Sch. 2 para. 24(3)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F85** S. 18(2)(a) substituted (31.12.2020) by [The Data Protection, Privacy and Electronic Communications \(Amendments etc\) \(EU Exit\) Regulations 2019 \(S.I. 2019/419\)](#), reg. 1(2), **Sch. 2 para. 24(4)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)

### Commencement Information

- I6** S. 18 in force at Royal Assent for specified purposes, see s. 212(2)(f)

## *Specific processing situations*

### 19 Processing for archiving, research and statistical purposes: safeguards

- (1) This section makes provision about—
- (a) processing of personal data that is necessary for archiving purposes in the public interest,
  - (b) processing of personal data that is necessary for scientific or historical research purposes, and
  - (c) processing of personal data that is necessary for statistical purposes.
- (2) Such processing does not satisfy the requirement in Article 89(1) of the [F86UK GDPR] for the processing to be subject to appropriate safeguards for the rights and freedoms of the data subject if it is likely to cause substantial damage or substantial distress to a data subject.
- (3) Such processing does not satisfy that requirement if the processing is carried out for the purposes of measures or decisions with respect to a particular data subject, unless the purposes for which the processing is necessary include the purposes of approved medical research.
- (4) In this section—
- “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;

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- (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 (a) to (e) of section 1(5) of the Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1 (N.I.)).
- (5) The Secretary of State may by regulations change the meaning of “approved medical research” for the purposes of this section, including by amending subsection (4).
- (6) Regulations under subsection (5) are subject to the affirmative resolution procedure.

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#### Textual Amendments

- F86** Words in s. 19(2) substituted (31.12.2020) by [The Data Protection, Privacy and Electronic Communications \(Amendments etc\) \(EU Exit\) Regulations 2019 \(S.I. 2019/419\)](#), reg. 1(2), [Sch. 2 para. 25](#) (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)

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#### Commencement Information

- I7** S. 19 in force at Royal Assent for specified purposes, see s. 212(2)(f)

### *Minor definition*

## 20 Meaning of “court”

Section 5(1) (terms used in <sup>F87</sup>this Part] to have the same meaning as in the <sup>F88</sup>UK GDPR]) does not apply to references in <sup>F87</sup>this Part] to a court and, accordingly, such references do not include a tribunal.

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#### Textual Amendments

- F87** Words in s. 20 substituted (31.12.2020) by [The Data Protection, Privacy and Electronic Communications \(Amendments etc\) \(EU Exit\) Regulations 2019 \(S.I. 2019/419\)](#), reg. 1(2), [Sch. 2 para. 26\(a\)](#) (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F88** Words in s. 20 substituted (31.12.2020) by [The Data Protection, Privacy and Electronic Communications \(Amendments etc\) \(EU Exit\) Regulations 2019 \(S.I. 2019/419\)](#), reg. 1(2), [Sch. 2 para. 26\(b\)](#) (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)

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## CHAPTER 3

### [<sup>F89</sup>EXEMPTIONS FOR MANUAL UNSTRUCTURED PROCESSING AND FOR NATIONAL SECURITY AND DEFENCE PURPOSES]

#### Textual Amendments

**F89** Pt. 2 Ch. 3 heading substituted (31.12.2020) by [The Data Protection, Privacy and Electronic Communications \(Amendments etc\) \(EU Exit\) Regulations 2019 \(S.I. 2019/419\)](#), reg. 1(2), **Sch. 2 para. 27** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)

#### Modifications etc. (not altering text)

**C1** Pt. 2 Ch. 3 applied (31.12.2020) by Regulation (EU) No. 625/2017, Art. 143 (as substituted by [The Official Controls \(Animals, Feed and Food, Plant Health etc.\) \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1481\)](#), regs. 1, **27(3)** (with reg. 46))

### [<sup>F90</sup>Definitions]

#### Textual Amendments

**F90** S. 21 cross-heading substituted (31.12.2020) by [The Data Protection, Privacy and Electronic Communications \(Amendments etc\) \(EU Exit\) Regulations 2019 \(S.I. 2019/419\)](#), reg. 1(2), **Sch. 2 para. 28** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)

## 21 [<sup>F91</sup>Definitions]

<sup>F92</sup>(1) .....

<sup>F92</sup>(2) .....

<sup>F92</sup>(3) .....

<sup>F92</sup>(4) .....

(5) In this Chapter, “FOI public authority” means—

- (a) a public authority as defined in the Freedom of Information Act 2000, <sup>F93</sup>...
- (b) a Scottish public authority as defined in the Freedom of Information (Scotland) Act 2002 (asp 13) [<sup>F94</sup>, or
- (c) the Advanced Research and Invention Agency].

(6) References in this Chapter to personal data “held” by an FOI public authority are to be interpreted—

- (a) in relation to England and Wales and Northern Ireland, in accordance with section 3(2) of the Freedom of Information Act 2000, and
- (b) in relation to Scotland, in accordance with section 3(2), (4) and (5) of the Freedom of Information (Scotland) Act 2002 (asp 13),

but such references do not include information held by an intelligence service (as defined in section 82) on behalf of an FOI public authority.

(7) But personal data is not to be treated as “held” by an FOI public authority for the purposes of this Chapter, where—

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- (a) section 7 of the Freedom of Information Act 2000 prevents Parts 1 to 5 of that Act from applying to the personal data, or
- (b) section 7(1) of the Freedom of Information (Scotland) Act 2002 (asp 13) prevents that Act from applying to the personal data.

[<sup>F95</sup>(8) In relation to the Advanced Research and Invention Agency—

- (a) for the purposes of subsection (6)(a)—
  - (i) section 3(2) of the Freedom of Information Act 2000 is to be read as if “public authority” included that Agency, and
  - (ii) section 3(2) of the Freedom of Information (Scotland) Act 2002 (asp 13) is to be read as if “authority” included that Agency, and
- (b) subsection (7) does not apply.]

**Textual Amendments**

- F91** S. 21 heading substituted (31.12.2020) by [The Data Protection, Privacy and Electronic Communications \(Amendments etc\) \(EU Exit\) Regulations 2019 \(S.I. 2019/419\)](#), reg. 1(2), **Sch. 2 para. 29(2)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F92** S. 21(1)-(4) omitted (31.12.2020) by virtue of [The Data Protection, Privacy and Electronic Communications \(Amendments etc\) \(EU Exit\) Regulations 2019 \(S.I. 2019/419\)](#), reg. 1(2), **Sch. 2 para. 29(3)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F93** Word in s. 21(5)(a) omitted (25.1.2023) by virtue of [Advanced Research and Invention Agency Act 2022 \(c. 4\)](#), s. 13(1), **Sch. 3 para. 15(2)(a)**; S.I. 2023/58, **reg. 2**
- F94** S. 21(5)(c) and word inserted (25.1.2023) by [Advanced Research and Invention Agency Act 2022 \(c. 4\)](#), s. 13(1), **Sch. 3 para. 15(2)(b)**; S.I. 2023/58, **reg. 2**
- F95** S. 21(8) inserted (25.1.2023) by [Advanced Research and Invention Agency Act 2022 \(c. 4\)](#), s. 13(1), **Sch. 3 para. 15(3)**; S.I. 2023/58, reg. 2

<sup>F96</sup> ...

**Textual Amendments**

- F96** S. 22 and cross-heading omitted (31.12.2020) by virtue of [The Data Protection, Privacy and Electronic Communications \(Amendments etc\) \(EU Exit\) Regulations 2019 \(S.I. 2019/419\)](#), reg. 1(2), **Sch. 2 para. 30** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)

<sup>F96</sup>**22 Application of the GDPR to processing to which this Chapter applies**

.....

<sup>F97</sup>**23 Power to make provision in consequence of regulations related to the GDPR**

.....

**Textual Amendments**

- F97** S. 23 omitted (31.12.2020) by virtue of [The Data Protection, Privacy and Electronic Communications \(Amendments etc\) \(EU Exit\) Regulations 2019 \(S.I. 2019/419\)](#), reg. 1(2), **Sch. 2 para. 31** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)

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### *Exemptions etc*

## 24 Manual unstructured data held by FOI public authorities

- (1) The provisions of [F<sup>98</sup>the UK GDPR] and this Act listed in subsection (2) do not apply to personal data to which [F<sup>99</sup>the UK GDPR] applies by virtue of [F<sup>100</sup>Article 2(1A)] (manual unstructured personal data held by FOI public authorities).
- (2) Those provisions are—
- (a) in Chapter II of [F<sup>101</sup>the UK GDPR] (principles)—
    - (i) Article 5(1)(a) to (c), (e) and (f) (principles relating to processing, other than the accuracy principle),
    - (ii) Article 6 (lawfulness),
    - (iii) Article 7 (conditions for consent),
    - (iv) Article 8(1) and (2) (child's consent),
    - (v) Article 9 (processing of special categories of personal data),
    - (vi) Article 10 (data relating to criminal convictions etc), and
    - (vii) Article 11(2) (processing not requiring identification);
  - (b) in Chapter III of [F<sup>102</sup>the UK GDPR] (rights of the data subject)—
    - (i) Article 13(1) to (3) (personal data collected from data subject: information to be provided),
    - (ii) Article 14(1) to (4) (personal data collected other than from data subject: information to be provided),
    - (iii) Article 20 (right to data portability), and
    - (iv) Article 21(1) (objections to processing);
  - (c) in Chapter V of [F<sup>103</sup>the UK GDPR], Articles 44 to 49 (transfers of personal data to third countries or international organisations);
  - [F<sup>104</sup>(ca) in Part 2 of this Act, sections 17A, 17B and 17C (transfers to third countries);
  - (cb) in Part 5 of this Act, section 119A (standard clauses for transfers to third countries);]
  - [F<sup>105</sup>(d) in Part 7 of this Act, sections 170 and 171 (offences relating to personal data).]
- (see also paragraph 1(2) of Schedule 18).
- (3) In addition, the provisions of [F<sup>106</sup>the UK GDPR] listed in subsection (4) do not apply to personal data to which [F<sup>107</sup>the UK GDPR] applies by virtue of [F<sup>108</sup>Article 2(1A)] where the personal data relates to appointments, removals, pay, discipline, superannuation or other personnel matters in relation to—
- (a) service in any of the armed forces of the Crown;
  - (b) service in any office or employment under the Crown or under any public authority;
  - (c) service in any office or employment, or under any contract for services, in respect of which power to take action, or to determine or approve the action taken, in such matters is vested in—
    - (i) Her Majesty,
    - (ii) a Minister of the Crown,
    - (iii) the National Assembly for Wales,
    - (iv) the Welsh Ministers,
    - (v) a Northern Ireland Minister (within the meaning of the Freedom of Information Act 2000), or

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(vi) an FOI public authority.

(4) Those provisions are—

- (a) the remaining provisions of Chapters II and III (principles and rights of the data subject);
- (b) Chapter IV (controller and processor);
- (c) Chapter IX (specific processing situations).

(5) A controller is not obliged to comply with Article 15(1) to (3) of [<sup>F109</sup>the UK GDPR] (right of access by the data subject) in relation to personal data to which [<sup>F110</sup>the UK GDPR] applies by virtue of [<sup>F111</sup>Article 2(1A)] if—

- (a) the request under [<sup>F112</sup>Article 15] does not contain a description of the personal data, or
- (b) the controller estimates that the cost of complying with the request so far as relating to the personal data would exceed the appropriate maximum.

(6) Subsection (5)(b) does not remove the controller's obligation to confirm whether or not personal data concerning the data subject is being processed unless the estimated cost of complying with that obligation alone in relation to the personal data would exceed the appropriate maximum.

(7) An estimate for the purposes of this section must be made in accordance with regulations under section 12(5) of the Freedom of Information Act 2000.

(8) In subsections (5) and (6), “the appropriate maximum” means the maximum amount specified by the Secretary of State by regulations.

(9) Regulations under subsection (8) are subject to the negative resolution procedure.

#### Textual Amendments

- F98** Words in s. 24(1) substituted (31.12.2020) by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (S.I. 2019/419), reg. 1(2), **Sch. 2 para. 32(2)(a)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F99** Words in s. 24(1) substituted (31.12.2020) by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (S.I. 2019/419), reg. 1(2), **Sch. 2 para. 32(2)(b)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F100** Words in s. 24(1) substituted (31.12.2020) by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (S.I. 2019/419), reg. 1(2), **Sch. 2 para. 32(2)(c)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F101** Words in s. 24(2)(a) substituted (31.12.2020) by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (S.I. 2019/419), reg. 1(2), **Sch. 2 para. 32(3)(a)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F102** Words in s. 24(2)(b) substituted (31.12.2020) by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (S.I. 2019/419), reg. 1(2), **Sch. 2 para. 32(3)(a)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F103** Words in s. 24(2)(c) substituted (31.12.2020) by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (S.I. 2019/419), reg. 1(2), **Sch. 2 para. 32(3)(a)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F104** S. 24(2)(ca)(cb) inserted (31.12.2020) by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (S.I. 2019/419), reg. 1(2), **Sch. 2 para. 32(3)(b)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)

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- F105** S. 24(2)(d) substituted (31.12.2020) by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (S.I. 2019/419), reg. 1(2), **Sch. 2 para. 32(3)(c)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F106** Words in s. 24(3) substituted (31.12.2020) by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (S.I. 2019/419), reg. 1(2), **Sch. 2 para. 32(4)(a)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F107** Words in s. 24(3) substituted (31.12.2020) by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (S.I. 2019/419), reg. 1(2), **Sch. 2 para. 32(4)(b)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F108** Words in s. 24(3) substituted (31.12.2020) by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (S.I. 2019/419), reg. 1(2), **Sch. 2 para. 32(4)(c)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F109** Words in s. 24(5) substituted (31.12.2020) by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (S.I. 2019/419), reg. 1(2), **Sch. 2 para. 32(5)(a)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F110** Words in s. 24(5) substituted (31.12.2020) by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (S.I. 2019/419), reg. 1(2), **Sch. 2 para. 32(5)(b)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F111** Words in s. 24(5) substituted (31.12.2020) by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (S.I. 2019/419), reg. 1(2), **Sch. 2 para. 32(5)(c)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F112** Words in s. 24(5)(a) substituted (31.12.2020) by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (S.I. 2019/419), reg. 1(2), **Sch. 2 para. 32(5)(d)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)

#### Commencement Information

- I8** S. 24 in force at Royal Assent for specified purposes, see s. 212(2)(f)

## 25 Manual unstructured data used in longstanding historical research

- (1) The provisions of [F113 the UK GDPR] listed in subsection (2) do not apply to personal data to which [F114 the UK GDPR] applies by virtue of [F115 Article 2(1A)] (manual unstructured personal data held by FOI public authorities) at any time when—
- (a) the personal data—
    - (i) is subject to processing which was already underway immediately before 24 October 1998, and
    - (ii) is processed only for the purposes of historical research, and
  - (b) the processing is not carried out—
    - (i) for the purposes of measures or decisions with respect to a particular data subject, or
    - (ii) in a way that causes, or is likely to cause, substantial damage or substantial distress to a data subject.
- (2) Those provisions are—
- (a) in Chapter II F116...(principles), Article 5(1)(d) (the accuracy principle), and
  - (b) in Chapter III F117...(rights of the data subject)—
    - (i) Article 16 (right to rectification), and
    - (ii) Article 17(1) and (2) (right to erasure).
- (3) The exemptions in this section apply in addition to the exemptions in section 24.

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### Textual Amendments

- F113** Words in s. 25(1) substituted (31.12.2020) by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (S.I. 2019/419), reg. 1(2), **Sch. 2 para. 33(2)(a)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F114** Words in s. 25(1) substituted (31.12.2020) by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (S.I. 2019/419), reg. 1(2), **Sch. 2 para. 33(2)(b)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F115** Words in s. 25(1) substituted (31.12.2020) by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (S.I. 2019/419), reg. 1(2), **Sch. 2 para. 33(2)(c)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F116** Words in s. 25(2)(a) omitted (31.12.2020) by virtue of The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (S.I. 2019/419), reg. 1(2), **Sch. 2 para. 33(3)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F117** Words in s. 25(2)(b) omitted (31.12.2020) by virtue of The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (S.I. 2019/419), reg. 1(2), **Sch. 2 para. 33(3)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)

## 26 National security and defence exemption

- (1) A provision of [<sup>F118</sup>the UK GDPR] or this Act mentioned in subsection (2) does not apply to personal data to which [<sup>F119</sup>the UK GDPR] applies if exemption from the provision is required for—
- (a) the purpose of safeguarding national security, or
  - (b) defence purposes.
- (2) The provisions are—
- (a) Chapter II of [<sup>F120</sup>the UK GDPR] (principles) except for—
    - (i) Article 5(1)(a) (lawful, fair and transparent processing), so far as it requires processing of personal data to be lawful;
    - (ii) Article 6 (lawfulness of processing);
    - (iii) Article 9 (processing of special categories of personal data);
  - (b) Chapter III of [<sup>F121</sup>the UK GDPR] (rights of data subjects);
  - (c) in Chapter IV of [<sup>F122</sup>the UK GDPR]—
    - (i) Article 33 (notification of personal data breach to the Commissioner);
    - (ii) Article 34 (communication of personal data breach to the data subject);
  - (d) Chapter V of [<sup>F123</sup>the UK GDPR] (transfers of personal data to third countries or international organisations);
  - (e) in Chapter VI of [<sup>F124</sup>the UK GDPR]—
    - (i) Article 57(1)(a) and (h) (Commissioner's duties to monitor and enforce [<sup>F124</sup>the UK GDPR] and to conduct investigations);
    - (ii) Article 58 (investigative, corrective, authorisation and advisory powers of Commissioner);
  - (f) Chapter VIII of [<sup>F125</sup>the UK GDPR] (remedies, liabilities and penalties) except for—
    - (i) Article 83 (general conditions for imposing administrative fines);
    - (ii) Article 84 (penalties);
- [<sup>F126</sup>(fa) in Part 2 of this Act, sections 17A, 17B and 17C (transfers to third countries);]

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- (g) in Part 5 of this Act—
  - (i) in section 115 (general functions of the Commissioner), subsections (3) and (8);
  - (ii) in section 115, subsection (9), so far as it relates to Article 58(2)(i) of [<sup>F127</sup>the UK GDPR];
  - (iii) section 119 (inspection in accordance with international obligations);
  - [<sup>F128</sup>(iv) section 119A (standard clauses for transfers to third countries);]
- (h) in Part 6 of this Act—
  - (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);
- (i) in Part 7 of this Act, section 187 (representation of data subjects).

### Textual Amendments

- F118** Words in s. 26(1) substituted (31.12.2020) by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (S.I. 2019/419), reg. 1(2), **Sch. 2 para. 34(2)(a)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F119** Words in s. 26(1) substituted (31.12.2020) by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (S.I. 2019/419), reg. 1(2), **Sch. 2 para. 34(2)(b)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F120** Words in s. 26(2)(a) substituted (31.12.2020) by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (S.I. 2019/419), reg. 1(2), **Sch. 2 para. 34(3)(a)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F121** Words in s. 26(2)(b) substituted (31.12.2020) by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (S.I. 2019/419), reg. 1(2), **Sch. 2 para. 34(3)(a)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F122** Words in s. 26(2)(c) substituted (31.12.2020) by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (S.I. 2019/419), reg. 1(2), **Sch. 2 para. 34(3)(a)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F123** Words in s. 26(2)(d) substituted (31.12.2020) by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (S.I. 2019/419), reg. 1(2), **Sch. 2 para. 34(3)(a)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F124** Words in s. 26(2)(e) substituted (31.12.2020) by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (S.I. 2019/419), reg. 1(2), **Sch. 2 para. 34(3)(b)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F125** Words in s. 26(2)(f) substituted (31.12.2020) by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (S.I. 2019/419), reg. 1(2), **Sch. 2 para. 34(3)(c)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F126** S. 26(2)(fa) inserted (31.12.2020) by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (S.I. 2019/419), reg. 1(2), **Sch. 2 para. 34(3)(d)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F127** Words in s. 26(2)(g)(ii) substituted (31.12.2020) by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (S.I. 2019/419), reg. 1(2), **Sch. 2 para. 34(3)(e)(i)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F128** S. 26(2)(g)(iv) inserted (31.12.2020) by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (S.I. 2019/419), reg. 1(2), **Sch. 2 para. 34(3)(e)(ii)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)

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## 27 National security: certificate

- (1) Subject to subsection (3), a certificate signed by a Minister of the Crown certifying that exemption from all or any of the provisions listed in section 26(2) is, or at any time was, required in relation to any personal data for the purpose of safeguarding national security is conclusive evidence of that fact.
- (2) A certificate under subsection (1)—
  - (a) may identify the personal data to which it applies by means of a general description, and
  - (b) may be expressed to have prospective effect.
- (3) Any person directly affected by a certificate under subsection (1) may appeal to the Tribunal against the certificate.
- (4) If, on an appeal under subsection (3), the Tribunal finds that, applying the principles applied by a court on an application for judicial review, the Minister did not have reasonable grounds for issuing a certificate, the Tribunal may—
  - (a) allow the appeal, and
  - (b) quash the certificate.
- (5) Where, in any proceedings under or by virtue of [<sup>F129</sup>the UK GDPR] or this Act, it is claimed by a controller that a certificate under subsection (1) which identifies the personal data to which it applies by means of a general description applies to any personal data, another party to the proceedings may appeal to the Tribunal on the ground that the certificate does not apply to the personal data in question.
- (6) But, subject to any determination under subsection (7), the certificate is to be conclusively presumed so to apply.
- (7) On an appeal under subsection (5), the Tribunal may determine that the certificate does not so apply.
- (8) A document purporting to be a certificate under subsection (1) is to be—
  - (a) received in evidence, and
  - (b) deemed to be such a certificate unless the contrary is proved.
- (9) A document which purports to be certified by or on behalf of a Minister of the Crown as a true copy of a certificate issued by that Minister under subsection (1) is—
  - (a) in any legal proceedings, evidence of that certificate;
  - (b) in any legal proceedings in Scotland, sufficient evidence of that certificate.
- (10) The power conferred by subsection (1) on a Minister of the Crown is exercisable only by—
  - (a) a Minister who is a member of the Cabinet, or
  - (b) the Attorney General or the Advocate General for Scotland.

### Textual Amendments

**F129** Words in s. 27(5) substituted (31.12.2020) by [The Data Protection, Privacy and Electronic Communications \(Amendments etc\) \(EU Exit\) Regulations 2019 \(S.I. 2019/419\)](#), reg. 1(2), [Sch. 2 para. 35](#) (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)

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## 28 National security and defence: modifications to Articles 9 and 32 of the [F130UK GDPR]

- (1) Article 9(1) of [F131the UK GDPR] (prohibition on processing of special categories of personal data) does not prohibit the processing of personal data to which [F132the UK GDPR] applies to the extent that the processing is carried out—
  - (a) for the purpose of safeguarding national security or for defence purposes, and
  - (b) with appropriate safeguards for the rights and freedoms of data subjects.
- (2) Article 32 of [F133the UK GDPR] (security of processing) does not apply to a controller or processor to the extent that the controller or the processor (as the case may be) is processing personal data to which [F134the UK GDPR] applies for—
  - (a) the purpose of safeguarding national security, or
  - (b) defence purposes.
- (3) Where Article 32 of [F135the UK GDPR] does not apply, the controller or the processor must implement security measures appropriate to the risks arising from the processing of the personal data.
- (4) For the purposes of subsection (3), where the processing of personal data is carried out wholly or partly by automated means, the controller or the processor must, following an evaluation of the risks, implement measures designed to—
  - (a) prevent unauthorised processing or unauthorised interference with the systems used in connection with the processing,
  - (b) ensure that it is possible to establish the precise details of any processing that takes place,
  - (c) ensure that any systems used in connection with the processing function properly and may, in the case of interruption, be restored, and
  - (d) ensure that stored personal data cannot be corrupted if a system used in connection with the processing malfunctions.
- [F136(5) The functions conferred on the Commissioner in relation to the UK GDPR by Articles 57(1)(a), (d), (e), (h) and (u) and 58(1)(d) and (2)(a) to (d) of the UK GDPR (which are subject to safeguards set out in section 115) include functions in relation to subsection (3).]

### Textual Amendments

- F130** Words in s. 28 heading substituted (31.12.2020) by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (S.I. 2019/419), reg. 1(2), **Sch. 2 para. 36(2)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F131** Words in s. 28(1) substituted (31.12.2020) by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (S.I. 2019/419), reg. 1(2), **Sch. 2 para. 36(3)(a)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F132** Words in s. 28(1) substituted (31.12.2020) by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (S.I. 2019/419), reg. 1(2), **Sch. 2 para. 36(3)(b)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F133** Words in s. 28(2) substituted (31.12.2020) by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (S.I. 2019/419), reg. 1(2), **Sch. 2 para. 36(3)(a)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F134** Words in s. 28(2) substituted (31.12.2020) by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (S.I. 2019/419), reg. 1(2), **Sch. 2 para. 36(3)(b)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)

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- F135** Words in s. 28(3) substituted (31.12.2020) by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (S.I. 2019/419), reg. 1(2), **Sch. 2 para. 36(4)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)
- F136** S. 28(5) inserted (31.12.2020) by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (S.I. 2019/419), reg. 1(2), **Sch. 2 para. 36(5)** (with reg. 5); 2020 c. 1, Sch. 5 para. 1(1)

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 204(1)(l) inserted by [S.I. 2024/374 Sch. 5 para. 7](#)
- Sch. 3 para. 8(1)(y) added by [2022 c. 18 \(N.I.\) Sch. 3 para. 78\(3\)](#)