

## SCHEDULES

### SCHEDULE 7

#### DATA MATCHING

##### PART 1

##### DATA MATCHING: ENGLAND

2 After Part 2 insert—

##### “PART 2A

##### DATA MATCHING

#### **32A Power to conduct data matching exercises**

- (1) The Commission may conduct data matching exercises or arrange for them to be conducted on its behalf.
- (2) 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).
- (3) The power in subsection (1) is exercisable for the purpose of assisting in the prevention and detection of fraud.
- (4) That assistance may, but need not, form part of an audit.
- (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 his potential to commit fraud in the future.
- (6) In the following provisions of this Part, reference to a data matching exercise is to an exercise conducted or arranged to be conducted under this section.

#### **32B Mandatory provision of data**

- (1) The Commission may require—
  - (a) any body mentioned in subsection (2), and
  - (b) any officer or member of such a body,to provide the Commission or a person acting on its behalf with such data (and in such form) as the Commission or that person may reasonably require for the purpose of conducting data matching exercises.
- (2) The bodies are—
  - (a) a body subject to audit,

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- (b) an English best value authority which is not a body subject to audit.
- (3) A person who without reasonable excuse fails to comply with a requirement of the Commission under subsection (1)(b) is guilty of an offence and liable on summary conviction—
  - (a) to a fine not exceeding level 3 on the standard scale, and
  - (b) to an additional fine not exceeding £20 for each day on which the offence continues after conviction for that offence.
- (4) Any expenses incurred by the Commission in connection with proceedings for an offence under subsection (3) alleged to have been committed by an officer or member of a body, so far as not recovered from any other source, are recoverable from that body.
- (5) “English best value authority” means a best value authority other than—
  - (a) a county council, county borough council or community council in Wales,
  - (b) a National Park authority for a National Park in Wales,
  - (c) a police authority for a police area in Wales,
  - (d) a fire and rescue authority in Wales constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004 (c. 21) or a scheme to which section 4 of that Act applies.

### **32C Voluntary provision of data**

- (1) If the Commission thinks it appropriate to conduct a data matching exercise using data held by or on behalf of a body or person not subject to section 32B, the data may be disclosed to the Commission or a person acting on its behalf.
- (2) A disclosure under subsection (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).
- (3) But nothing in this section authorises a disclosure which—
  - (a) contravenes the Data Protection Act 1998 (c. 29), or
  - (b) is prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000 (c. 23).
- (4) Data may not be disclosed under subsection (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 (c. 41)) and from which the individual can be identified.
- (6) This section does not limit the circumstances in which data may be disclosed apart from this section.
- (7) Data matching exercises may include data provided by a body or person outside England and Wales.

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### **32D Disclosure of results of data matching etc**

- (1) This section applies to the following information—
  - (a) information relating to a particular body or person obtained by or on behalf of the Commission for the purpose of conducting a data matching exercise,
  - (b) the results of any such exercise.
- (2) Information to which this section applies may be disclosed by or on behalf of the Commission if the disclosure is—
  - (a) for or in connection with a purpose for which the data matching exercise is conducted,
  - (b) to a body mentioned in subsection (3) (or a related party) for or in connection with a function of that body corresponding or similar to the functions of an auditor under Part 2 or the functions of the Commission under this Part, or
  - (c) in pursuance of a duty imposed by or under a statutory provision.
- (3) The bodies are—
  - (a) the Auditor General for Wales,
  - (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 ([S.I. 2005/1968 \(N.I.18\)](#)).
- (4) “Related party”, in relation to a body mentioned in subsection (3), means—
  - (a) a body or person acting on its behalf,
  - (b) a body whose accounts are required to be audited by it or by a person appointed by it,
  - (c) a person appointed by it to audit those accounts.
- (5) If the data used for a data matching exercise include patient data—
  - (a) subsection (2)(a) applies only so far as the purpose for which the disclosure is made relates to a relevant NHS body,
  - (b) subsection (2)(b) applies only so far as the function for or in connection with which the disclosure is made relates to such a body.
- (6) In subsection (5)—
  - (a) “patient data” has the same meaning as in section 32C,
  - (b) “relevant NHS body” means—
    - (i) a health service body,
    - (ii) a Welsh NHS body,
    - (iii) an NHS body as defined in section 22(1) of the Community Care and Health (Scotland) Act 2002 ([asp 5](#)),
    - (iv) a body to which Article 90 of the Health and Personal Social Services (Northern Ireland) Order 1972 ([S.I. 1972/1265 \(N.I.14\)](#)) applies.

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- (7) Information disclosed under subsection (2) may not be further disclosed except—
- (a) for or in connection with the purpose for which it was disclosed under paragraph (a) or the function for which it was disclosed under paragraph (b) of that subsection,
  - (b) for the investigation or prosecution of an offence (so far as the disclosure does not fall within paragraph (a)), or
  - (c) in pursuance of a duty imposed by or under a statutory provision.
- (8) Except as authorised by subsections (2) and (7), a person who discloses information to which this section applies is guilty of an offence and liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine or to both, or
  - (b) on summary conviction, to imprisonment for a term not exceeding 12 months, to a fine not exceeding the statutory maximum or to both.
- (9) Section 49 does not apply to information to which this section applies.
- (10) In this section, “body” includes office.

### **32E Publication**

- (1) Nothing in section 32D prevents the Commission 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 section may be published in such manner as the Commission considers appropriate for bringing it to the attention of those members of the public who may be interested.
- (4) Section 51 does not apply to information to which section 32D applies.
- (5) This section does not affect any powers of an auditor where the data matching exercise in question forms part of an audit under Part 2.

### **32F Fees for data matching**

- (1) The Commission must prescribe a scale or scales of fees in respect of data matching exercises.
- (2) A body required under section 32B(1) to provide data for a data matching exercise must pay to the Commission the fee applicable to that exercise in accordance with the appropriate scale.
- (3) But if it appears to the Commission that the work involved in the exercise was substantially more or less than that envisaged by the appropriate scale, the Commission may charge the body a fee which is larger or smaller than that referred to in subsection (2).

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- (4) Before prescribing a scale of fees under this section, the Commission must consult—
  - (a) the bodies mentioned in section 32B(2), and
  - (b) such other bodies or persons as the Commission thinks fit.
- (5) If the Secretary of State considers it necessary or desirable to do so, he may by regulations prescribe a scale or scales of fees to have effect, for such period as is specified in the regulations, in place of any scale or scales of fees prescribed by the Commission and, if he does so, references in this section to the appropriate scale are to be read as respects that period as references to the appropriate scale prescribed by the Secretary of State.
- (6) Before making any regulations under subsection (5), the Secretary of State must consult—
  - (a) the Commission, and
  - (b) such other bodies or persons as he thinks fit.
- (7) In addition to the power under subsection (2), the Commission may charge a fee to any other body or person providing data for or receiving the results of a data matching exercise, such fee to be payable in accordance with terms agreed between the Commission and that body or person.

### **32G Code of data matching practice**

- (1) The Commission 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 such exercise.
- (3) Before preparing or altering the code, the Commission must consult the bodies mentioned in section 32B(2), the Information Commissioner and such other bodies or persons as the Commission thinks fit.
- (4) The Commission must—
  - (a) send a copy of the code, and of any alterations made to the code, to the Secretary of State, who must lay the copy before Parliament, and
  - (b) from time to time publish the code as for the time being in force.

### **32H Powers of Secretary of State**

- (1) The Secretary of State may by order amend this Part—
  - (a) to add any purpose mentioned in subsection (2) to the purposes for which data matching exercises may be conducted,
  - (b) to modify the application of this Part 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 recovery of debt owing to public bodies.
- (3) The Secretary of State may by order amend this Part—

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- (a) to add a public body to the list of bodies in section 32B(2),
  - (b) to modify the application of this Part in relation to a body so added,
  - (c) to remove a body from that list.
- (4) An order under this section may include such incidental, consequential, supplemental or transitional provision as the Secretary of State thinks fit.
- (5) In this section, “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 to the extent only of those functions.”