



Data Protection Act 2018

2018 CHAPTER 12

PART 5

THE INFORMATION COMMISSIONER

Charges

137 Charges payable to the Commissioner by controllers

- (1) The Secretary of State may by regulations require controllers to pay charges of an amount specified in the regulations to the Commissioner.
- (2) Regulations under subsection (1) may require a controller to pay a charge regardless of whether the Commissioner has provided, or proposes to provide, a service to the controller.
- (3) Regulations under subsection (1) may—
 - (a) make provision about the time or times at which, or period or periods within which, a charge must be paid;
 - (b) make provision for cases in which a discounted charge is payable;
 - (c) make provision for cases in which no charge is payable;
 - (d) make provision for cases in which a charge which has been paid is to be refunded.
- (4) In making regulations under subsection (1), the Secretary of State must have regard to the desirability of securing that the charges payable to the Commissioner under such regulations are sufficient to offset—
 - (a) expenses incurred by the Commissioner in discharging the Commissioner's functions—
 - (i) under the data protection legislation,
 - (ii) under the Data Protection Act 1998,
 - (iii) under or by virtue of sections 108 and 109 of the Digital Economy Act 2017, and

Status: This is the original version (as it was originally enacted).

- (iv) under or by virtue of the Privacy and Electronic Communications (EC Directive) Regulations 2003 ([S.I. 2003/2426](#)),
 - (b) any expenses of the Secretary of State in respect of the Commissioner so far as attributable to those functions,
 - (c) to the extent that the Secretary of State considers appropriate, any deficit previously incurred (whether before or after the passing of this Act) in respect of the expenses mentioned in paragraph (a), and
 - (d) to the extent that the Secretary of State considers appropriate, expenses incurred by the Secretary of State in respect of the inclusion of any officers or staff of the Commissioner in any scheme under section 1 of the Superannuation Act 1972 or section 1 of the Public Service Pensions Act 2013.
- (5) The Secretary of State may from time to time require the Commissioner to provide information about the expenses referred to in subsection (4)(a).
- (6) The Secretary of State may by regulations make provision—
- (a) requiring a controller to provide information to the Commissioner, or
 - (b) enabling the Commissioner to require a controller to provide information to the Commissioner,
- for either or both of the purposes mentioned in subsection (7).
- (7) Those purposes are—
- (a) determining whether a charge is payable by the controller under regulations under subsection (1);
 - (b) determining the amount of a charge payable by the controller.
- (8) The provision that may be made under subsection (6)(a) includes provision requiring a controller to notify the Commissioner of a change in the controller's circumstances of a kind specified in the regulations.

138 Regulations under section 137: supplementary

- (1) Before making regulations under section 137(1) or (6), the Secretary of State must consult such representatives of persons likely to be affected by the regulations as the Secretary of State thinks appropriate (and see also section 182).
- (2) The Commissioner—
- (a) must keep under review the working of regulations under section 137(1) or (6), and
 - (b) may from time to time submit proposals to the Secretary of State for amendments to be made to the regulations.
- (3) The Secretary of State must review the working of regulations under section 137(1) or (6)—
- (a) at the end of the period of 5 years beginning with the making of the first set of regulations under section 108 of the Digital Economy Act 2017, and
 - (b) at the end of each subsequent 5 year period.
- (4) Regulations under section 137(1) are subject to the negative resolution procedure if—
- (a) they only make provision increasing a charge for which provision is made by previous regulations under section 137(1) or section 108(1) of the Digital Economy Act 2017, and

- (b) they do so to take account of an increase in the retail prices index since the previous regulations were made.
- (5) Subject to subsection (4), regulations under section 137(1) or (6) are subject to the affirmative resolution procedure.
- (6) In subsection (4), “the retail prices index” means—
 - (a) the general index of retail prices (for all items) published by the Statistics Board, or
 - (b) where that index is not published for a month, any substitute index or figures published by the Board.
- (7) Regulations under section 137(1) or (6) may not apply to—
 - (a) Her Majesty in her private capacity,
 - (b) Her Majesty in right of the Duchy of Lancaster, or
 - (c) the Duke of Cornwall.