

SCHEDULES

SCHEDULE 14

Section 73.

TRANSITIONAL PROVISIONS AND SAVINGS

Interpretation

- 1 In this Schedule—
- “the 1984 Act” means the Data Protection Act 1984;
 - “the old principles” means the data protection principles within the meaning of the 1984 Act;
 - “the new principles” means the data protection principles within the meaning of this Act.

Effect of registration under Part II of 1984 Act

- 2 (1) Subject to sub-paragraphs (4) and (5) any person who, immediately before the commencement of Part III of this Act—
- (a) is registered as a data user under Part II of the 1984 Act, or
 - (b) is treated by virtue of section 7(6) of the 1984 Act as so registered,
- is exempt from section 17(1) of this Act until the end of the registration period or, if earlier, 24th October 2001.
- (2) In sub-paragraph (1) “the registration period”, in relation to a person, means—
- (a) where there is a single entry in respect of that person as a data user, the period at the end of which, if section 8 of the 1984 Act had remained in force, that entry would have fallen to be removed unless renewed, and
 - (b) where there are two or more entries in respect of that person as a data user, the period at the end of which, if that section had remained in force, the last of those entries to expire would have fallen to be removed unless renewed.
- (3) Any application for registration as a data user under Part II of the 1984 Act which is received by the Commissioner before the commencement of Part III of this Act (including any appeal against a refusal of registration) shall be determined in accordance with the old principles and the provisions of the 1984 Act.
- (4) If a person falling within paragraph (b) of sub-paragraph (1) receives a notification under section 7(1) of the 1984 Act of the refusal of his application, sub-paragraph (1) shall cease to apply to him—
- (a) if no appeal is brought, at the end of the period within which an appeal can be brought against the refusal, or
 - (b) on the withdrawal or dismissal of the appeal.
- (5) If a data controller gives a notification under section 18(1) at a time when he is exempt from section 17(1) by virtue of sub-paragraph (1), he shall cease to be so exempt.

Status: This is the original version (as it was originally enacted).

- (6) The Commissioner shall include in the register maintained under section 19 an entry in respect of each person who is exempt from section 17(1) by virtue of sub-paragraph (1); and each entry shall consist of the particulars which, immediately before the commencement of Part III of this Act, were included (or treated as included) in respect of that person in the register maintained under section 4 of the 1984 Act.
- (7) Notification regulations under Part III of this Act may make provision modifying the duty referred to in section 20(1) in its application to any person in respect of whom an entry in the register maintained under section 19 has been made under sub-paragraph (6).
- (8) Notification regulations under Part III of this Act may make further transitional provision in connection with the substitution of Part III of this Act for Part II of the 1984 Act (registration), including provision modifying the application of provisions of Part III in transitional cases.

Rights of data subjects

- 3 (1) The repeal of section 21 of the 1984 Act (right of access to personal data) does not affect the application of that section in any case in which the request (together with the information referred to in paragraph (a) of subsection (4) of that section and, in a case where it is required, the consent referred to in paragraph (b) of that subsection) was received before the day on which the repeal comes into force.
- (2) Sub-paragraph (1) does not apply where the request is made by reference to this Act.
- (3) Any fee paid for the purposes of section 21 of the 1984 Act before the commencement of section 7 in a case not falling within sub-paragraph (1) shall be taken to have been paid for the purposes of section 7.
- 4 The repeal of section 22 of the 1984 Act (compensation for inaccuracy) and the repeal of section 23 of that Act (compensation for loss or unauthorised disclosure) do not affect the application of those sections in relation to damage or distress suffered at any time by reason of anything done or omitted to be done before the commencement of the repeals.
- 5 The repeal of section 24 of the 1984 Act (rectification and erasure) does not affect any case in which the application to the court was made before the day on which the repeal comes into force.
- 6 Subsection (3)(b) of section 14 does not apply where the rectification, blocking, erasure or destruction occurred before the commencement of that section.

Enforcement and transfer prohibition notices served under Part V of 1984 Act

- 7 (1) If, immediately before the commencement of section 40—
 - (a) an enforcement notice under section 10 of the 1984 Act has effect, and
 - (b) either the time for appealing against the notice has expired or any appeal has been determined,
 then, after that commencement, to the extent mentioned in sub-paragraph (3), the notice shall have effect for the purposes of sections 41 and 47 as if it were an enforcement notice under section 40.

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- (2) Where an enforcement notice has been served under section 10 of the 1984 Act before the commencement of section 40 and immediately before that commencement either—
- (a) the time for appealing against the notice has not expired, or
 - (b) an appeal has not been determined,
- the appeal shall be determined in accordance with the provisions of the 1984 Act and the old principles and, unless the notice is quashed on appeal, to the extent mentioned in sub-paragraph (3) the notice shall have effect for the purposes of sections 41 and 47 as if it were an enforcement notice under section 40.
- (3) An enforcement notice under section 10 of the 1984 Act has the effect described in sub-paragraph (1) or (2) only to the extent that the steps specified in the notice for complying with the old principle or principles in question are steps which the data controller could be required by an enforcement notice under section 40 to take for complying with the new principles or any of them.
- 8 (1) If, immediately before the commencement of section 40—
- (a) a transfer prohibition notice under section 12 of the 1984 Act has effect, and
 - (b) either the time for appealing against the notice has expired or any appeal has been determined,
- then, on and after that commencement, to the extent specified in sub-paragraph (3), the notice shall have effect for the purposes of sections 41 and 47 as if it were an enforcement notice under section 40.
- (2) Where a transfer prohibition notice has been served under section 12 of the 1984 Act and immediately before the commencement of section 40 either—
- (a) the time for appealing against the notice has not expired, or
 - (b) an appeal has not been determined,
- the appeal shall be determined in accordance with the provisions of the 1984 Act and the old principles and, unless the notice is quashed on appeal, to the extent mentioned in sub-paragraph (3) the notice shall have effect for the purposes of sections 41 and 47 as if it were an enforcement notice under section 40.
- (3) A transfer prohibition notice under section 12 of the 1984 Act has the effect described in sub-paragraph (1) or (2) only to the extent that the prohibition imposed by the notice is one which could be imposed by an enforcement notice under section 40 for complying with the new principles or any of them.

Notices under new law relating to matters in relation to which 1984 Act had effect

- 9 The Commissioner may serve an enforcement notice under section 40 on or after the day on which that section comes into force if he is satisfied that, before that day, the data controller contravened the old principles by reason of any act or omission which would also have constituted a contravention of the new principles if they had applied before that day.
- 10 Subsection (5)(b) of section 40 does not apply where the rectification, blocking, erasure or destruction occurred before the commencement of that section.
- 11 The Commissioner may serve an information notice under section 43 on or after the day on which that section comes into force if he has reasonable grounds for suspecting that, before that day, the data controller contravened the old principles

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by reason of any act or omission which would also have constituted a contravention of the new principles if they had applied before that day.

- 12 Where by virtue of paragraph 11 an information notice is served on the basis of anything done or omitted to be done before the day on which section 43 comes into force, subsection (2)(b) of that section shall have effect as if the reference to the data controller having complied, or complying, with the new principles were a reference to the data controller having contravened the old principles by reason of any such act or omission as is mentioned in paragraph 11.

Self-incrimination, etc.

- 13 (1) In section 43(8), section 44(9) and paragraph 11 of Schedule 7, any reference to an offence under this Act includes a reference to an offence under the 1984 Act.
- (2) In section 34(9) of the 1984 Act, any reference to an offence under that Act includes a reference to an offence under this Act.

Warrants issued under 1984 Act

- 14 The repeal of Schedule 4 to the 1984 Act does not affect the application of that Schedule in any case where a warrant was issued under that Schedule before the commencement of the repeal.

Complaints under section 36(2) of 1984 Act and requests for assessment under section 42

- 15 The repeal of section 36(2) of the 1984 Act does not affect the application of that provision in any case where the complaint was received by the Commissioner before the commencement of the repeal.
- 16 In dealing with a complaint under section 36(2) of the 1984 Act or a request for an assessment under section 42 of this Act, the Commissioner shall have regard to the provisions from time to time applicable to the processing, and accordingly—
- (a) in section 36(2) of the 1984 Act, the reference to the old principles and the provisions of that Act includes, in relation to any time when the new principles and the provisions of this Act have effect, those principles and provisions, and
 - (b) in section 42 of this Act, the reference to the provisions of this Act includes, in relation to any time when the old principles and the provisions of the 1984 Act had effect, those principles and provisions.

*Applications under Access to Health Records Act
 1990 or corresponding Northern Ireland legislation*

- 17 (1) The repeal of any provision of the Access to Health Records Act 1990 does not affect—
- (a) the application of section 3 or 6 of that Act in any case in which the application under that section was received before the day on which the repeal comes into force, or
 - (b) the application of section 8 of that Act in any case in which the application to the court was made before the day on which the repeal comes into force.
- (2) Sub-paragraph (1)(a) does not apply in relation to an application for access to information which was made by reference to this Act.

- 18 (1) The revocation of any provision of the Access to Health Records (Northern Ireland) Order 1993 does not affect—
- (a) the application of Article 5 or 8 of that Order in any case in which the application under that Article was received before the day on which the repeal comes into force, or
 - (b) the application of Article 10 of that Order in any case in which the application to the court was made before the day on which the repeal comes into force.
- (2) Sub-paragraph (1)(a) does not apply in relation to an application for access to information which was made by reference to this Act.

Applications under regulations under Access to Personal Files Act 1987 or corresponding Northern Ireland legislation

- 19 (1) The repeal of the personal files enactments does not affect the application of regulations under those enactments in relation to—
- (a) any request for information,
 - (b) any application for rectification or erasure, or
 - (c) any application for review of a decision,
- which was made before the day on which the repeal comes into force.
- (2) Sub-paragraph (1)(a) does not apply in relation to a request for information which was made by reference to this Act.
- (3) In sub-paragraph (1) “the personal files enactments” means—
- (a) in relation to Great Britain, the Access to Personal Files Act 1987, and
 - (b) in relation to Northern Ireland, Part II of the Access to Personal Files and Medical Reports (Northern Ireland) Order 1991.

Applications under section 158 of Consumer Credit Act 1974

- 20 Section 62 does not affect the application of section 158 of the Consumer Credit Act 1974 in any case where the request was received before the commencement of section 62, unless the request is made by reference to this Act.