



Enterprise and Regulatory Reform Act 2013

2013 CHAPTER 24

PART 6

MISCELLANEOUS AND GENERAL

Supply of customer data

89 Supply of customer data

- (1) The Secretary of State may by regulations require a regulated person to provide customer data—
 - (a) to a customer, at the customer's request;
 - (b) to a person who is authorised by a customer to receive the data, at the customer's request or, if the regulations so provide, at the authorised person's request.
- (2) "Regulated person" means—
 - (a) a person who, in the course of a business, supplies gas or electricity to any premises;
 - (b) a person who, in the course of a business, provides a mobile phone service;
 - (c) a person who, in the course of a business, provides financial services consisting of the provision of current account or credit card facilities;
 - (d) any other person who, in the course of a business, supplies or provides goods or services of a description specified in the regulations.
- (3) "Customer data" means information which—
 - (a) is held in electronic form by or on behalf of the regulated person, and
 - (b) relates to transactions between the regulated person and the customer.

Status: This is the original version (as it was originally enacted).

- (4) Regulations under subsection (1) may make provision as to the form in which customer data is to be provided and when it is to be provided (and any such provision may differ depending on the form in which a request for the data is made).
- (5) Regulations under subsection (1)—
- (a) may authorise the making of charges by a regulated person for complying with requests for customer data, and
 - (b) if they do so, must provide that the amount of any such charge—
 - (i) is to be determined by the regulated person, but
 - (ii) may not exceed the cost to that person of complying with the request.
- (6) Regulations under subsection (1)(b) may provide that the requirement applies only if the authorised person satisfies any conditions specified in the regulations.
- (7) In deciding whether to specify a description of goods or services for the purposes of subsection (2)(d), the Secretary of State must (among other things) have regard to the following—
- (a) the typical duration of the period during which transactions between suppliers or providers of the goods or services and their customers take place;
 - (b) the typical volume and frequency of the transactions;
 - (c) the typical significance for customers of the costs incurred by them through the transactions;
 - (d) the effect that specifying the goods or services might have on the ability of customers to make an informed choice about which supplier or provider of the goods or services, or which particular goods or services, to use;
 - (e) the effect that specifying the goods or services might have on competition between suppliers or providers of the goods or services.
- (8) The power to make regulations under this section may be exercised—
- (a) so as to make provision generally, only in relation to particular descriptions of regulated persons, customers or customer data or only in relation to England, Wales, Scotland or Northern Ireland;
 - (b) so as to make different provision for different descriptions of regulated persons, customers or customer data;
 - (c) so as to make different provision in relation to England, Wales, Scotland and Northern Ireland;
 - (d) so as to provide for exceptions or exemptions from any requirement imposed by the regulations, including doing so by reference to the costs to the regulated person of complying with the requirement (whether generally or in particular cases).
- (9) For the purposes of this section, a person (“C”) is a customer of another person (“R”) if—
- (a) C has at any time, including a time before the commencement of this section, purchased (whether for the use of C or another person) goods or services supplied or provided by R or received such goods or services free of charge, and
 - (b) the purchase or receipt occurred—
 - (i) otherwise than in the course of a business, or
 - (ii) in the course of a business of a description specified in the regulations.

- (10) In this section, “mobile phone service” means an electronic communications service which is provided wholly or mainly so as to be available to members of the public for the purpose of communicating with others, or accessing data, by mobile phone.

90 Supply of customer data: enforcement

- (1) Regulations may make provision for the enforcement of regulations under section 89 (“customer data regulations”) by the Information Commissioner or any other person specified in the regulations (and, in this section, “enforcer” means a person on whom functions of enforcement are conferred by the regulations).
- (2) The provision that may be made under subsection (1) includes provision—
- (a) for applications for orders requiring compliance with the customer data regulations to be made by an enforcer to a court or tribunal;
 - (b) for notices requiring compliance with the customer data regulations to be issued by an enforcer and for the enforcement of such notices (including provision for their enforcement as if they were orders of a court or tribunal).
- (3) The provision that may be made under subsection (1) also includes provision—
- (a) as to the powers of an enforcer for the purposes of investigating whether there has been, or is likely to be, a breach of the customer data regulations or of orders or notices of a kind mentioned in subsection (2)(a) or (b) (which may include powers to require the provision of information and powers of entry, search, inspection and seizure);
 - (b) for the enforcement of requirements imposed by an enforcer in the exercise of such powers (which may include provision comparable to any provision that is, or could be, included in the regulations for the purposes of enforcing the customer data regulations).
- (4) Regulations under subsection (1) may—
- (a) require an enforcer (if not the Information Commissioner) to inform the Information Commissioner if the enforcer intends to exercise functions under the regulations in a particular case;
 - (b) provide for functions under the regulations to be exercisable by more than one enforcer (whether concurrently or jointly);
 - (c) where such functions are exercisable concurrently by more than one enforcer—
 - (i) designate one of the enforcers as the lead enforcer;
 - (ii) require the other enforcers to consult the lead enforcer before exercising the functions in a particular case;
 - (iii) authorise the lead enforcer to give directions as to which of the enforcers is to exercise the functions in a particular case.
- (5) Regulations may make provision for applications for orders requiring compliance with the customer data regulations to be made to a court or tribunal by a customer who has made a request under those regulations or in respect of whom such a request has been made.
- (6) Subsection (8)(a) to (c) of section 89 applies for the purposes of this section as it applies for the purposes of that section.

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

- (7) The Secretary of State may make payments out of money provided by Parliament to an enforcer.
- (8) In this section, “customer” and “regulated person” have the same meaning as in section 89.

91 Supply of customer data: supplemental

- (1) The power to make regulations under section 89 or 90 includes—
 - (a) power to make incidental, supplementary, consequential, transitional or saving provision;
 - (b) power to provide for a person to exercise a discretion in a matter.
- (2) Regulations under either of those sections must be made by statutory instrument.
- (3) A statutory instrument containing (whether alone or with other provision)—
 - (a) regulations under section 89 which make provision by virtue of section 89(2)(d), or
 - (b) regulations under section 90,may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (4) A statutory instrument which—
 - (a) contains regulations under section 89, and
 - (b) is not an instrument to which subsection (3) applies,is subject to annulment in pursuance of a resolution of either House of Parliament.