

LOCAL AUDIT AND ACCOUNTABILITY ACT 2014

EXPLANATORY NOTES

COMMENTARY

Part 6 – Data Matching

Section 33 and Schedule 9: Data matching

113. Apart from transferring the power to conduct data matching exercises from the Audit Commission to the Secretary of State or the Minister for the Cabinet Office, and inserting the prevention and detection of errors and inaccuracies as a further *potential* purpose for which data matching exercises may be undertaken, the data matching powers set out in Schedule 9 and given effect to by section 33, are largely the same as the provisions inserted into the Audit Commission Act 1998 by the Serious Crime Act 2007.

Paragraph 1: Power to conduct data matching exercises

114. This paragraph provides for the Secretary of State or the Minister for the Cabinet Office (“a relevant minister”) to carry out data matching exercises or to arrange for them to be done on his or her behalf. Sub-paragraph (3) explains how a data matching exercise works. It involves the comparison of sets of data, for example, taking two local authority payroll databases and matching them. If matches occur, it may indicate an inconsistency that requires investigation. Sub-paragraph (4) defines the purposes for which the data matching powers can be exercised. These purposes are assisting in the prevention and detection of fraud. Sub-paragraph (5) provides that data matching may not be used to identify patterns and trends in an individual’s characteristics or behaviour which suggest nothing more than his or her potential to commit fraud in future and is designed to prevent the creation of individual profiles of potential fraudsters.

Paragraph 2: Mandatory provision of data

115. This paragraph enables a relevant minister to require the provision of data to conduct a data matching exercise. Sub-paragraph (2) sets out persons who may be required to provide data under this section. They are (a) relevant authorities (i.e. those authorities subject to audit), (b) English best value authorities (not subject to audit, for example a waste disposal authority) and (c) an NHS foundation trust.

Paragraph 3: Voluntary provision of data

116. This paragraph provides that where a relevant minister thinks it appropriate, he or she may conduct a data matching exercise using data held by or on behalf of persons not required to provide data under paragraph 2. It also provides that such a person may disclose data to the Minister for those purposes. Sub-paragraph (2) clarifies that bodies required to provide data under paragraph 2 may also provide data voluntarily. Sub-paragraph (3) provides that nothing relating to the voluntary provision of data authorises

any disclosure which (a) contravenes the Data Protection Act 1998 or (b) is prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000. Sub-paragraphs (4) and (5) make clear that “patient data” – i.e. data held for medical purposes from which an individual can be identified – may not be disclosed. Sub-paragraph (6) provides that the disclosure of information 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. Sub-paragraph (8) provides that data matching exercises may include data provided by a body or person outside England.

Paragraph 4: Disclosure of results of data matching etc

117. This paragraph sets out the circumstances under which information (obtained for a data matching exercise and the result of any such exercise) may be disclosed by or on behalf of a Minister– see sub-paragraph (2). These circumstances are different to those under which disclosures can be made in relation to the rest of the Act (see sub-paragraph (9), and section 36 and Schedule 11). Sub-paragraph (7) places restrictions on the further disclosure of information disclosed under sub- paragraphs (2) and (3). Sub-paragraph (8) creates an offence of disclosing information (except as authorised by sub-paragraphs (2), (3) and (6)) and sets out the penalty. Those committing the offence are liable on summary conviction to a fine not exceeding level 5 on the standard scale. Paragraph 4(9) provides that if section 85(1) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 comes into force on or before the day on which the Act is passed, this will remove the limit on the fine on conviction. This provision is of no effect because that section did not come into force before the Act was passed on [30th January 2014]. Section 85 will nevertheless apply to this offence when that section comes into force.

Paragraph 5: Publication

118. This paragraph enables a relevant minister to publish a report on data matching exercises, notwithstanding the limits on disclosure under paragraph 4. Sub-paragraph (2) provides that a report that is published 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; and (b) the body or person can be identified from the information; and (c) the information is not otherwise in the public domain. Sub-paragraph (3) provides that a report may be published in such a manner as the minister considers appropriate for bringing it to the attention of those who may be interested.

Paragraph 6: Fees for data matching

119. This paragraph requires a relevant minister to prescribe a scale (or scales) of fees in respect of the data matching exercises he or she conducts. Sub-paragraph (2) provides that a person required to provide data in accordance with paragraph 2 must pay the minister according to the fee scales provided for in sub-paragraph (1). Sub-paragraph (3) provides for circumstances where the work involved in a data matching exercise is substantially more or less than originally envisaged. The minister can charge the body a fee which can be larger or smaller than that referred to in sub-paragraph (2). Sub-paragraph (4) requires the minister to consult those persons required to provide data in accordance with paragraph 2 or other persons as he thinks appropriate before he prescribes a scale of fees. Sub-paragraphs (5) and (6) provide that the minister may charge a fee to other bodies providing information or receiving results for data matching and the terms under which such a fee is payable.

Paragraph 7: Code of Data matching practice

120. This paragraph requires a relevant minister to prepare and keep under review a code of data matching practice. Sub-paragraph (2) provides that all those bodies and other persons involved in data matching must have regard to the code of data matching practice. Sub-paragraph (3) requires the minister to consult those persons required to

provide data in accordance with paragraph 2, such representatives of those persons (for example, the Local Government Association with regard to local authorities), the Information Commissioner, and such other bodies as he or she thinks appropriate before preparing or altering the code of data matching practice. Sub-paragraph (4) places a duty on a minister to: (a) lay the code before Parliament; and (b) publish the code from time to time.

Paragraph 8: Powers to amend this Schedule

121. Sub-paragraph (1) of paragraph 8 provides for a relevant minister to extend by regulations the purposes of data matching exercises and to modify the application of this Schedule accordingly. Sub-paragraph (2) defines the extent of the purposes which may be added. Sub-paragraph (4) provides for the minister to add or remove public bodies to those listed in paragraph 2(2)(a) and (b), and to modify the application of this Schedule to those bodies. Sub-paragraphs (3) and (5) require the minister to consult certain persons before making any regulations under sub-paragraph (4). Sub-paragraph 6 defines the meaning of public body in this paragraph.