

SCHEDULES

SCHEDULE 20

TRANSITIONAL PROVISION ETC

PART 7

ENFORCEMENT ETC UNDER THE 1998 ACT

Interpretation of this Part

- 29 (1) In this Part of this Schedule, references to contravention of the sixth data protection principle sections are to relevant contravention of any of sections 7, 10, 11 or 12 of the 1998 Act, as they continue to have effect by virtue of this Schedule after their repeal (and references to compliance with the sixth data protection principle sections are to be read accordingly).
- (2) In sub-paragraph (1), “relevant contravention” means contravention in a manner described in paragraph 8 of Part 2 of Schedule 1 to the 1998 Act (sixth data protection principle).

Information notices

- 30 (1) The repeal of section 43 of the 1998 Act (information notices) does not affect the application of that section after the relevant time in a case in which—
- (a) the Commissioner served a notice under that section before the relevant time (and did not cancel it before that time), or
 - (b) the Commissioner requires information after the relevant time for the purposes of—
 - (i) responding to a request made under section 42 of the 1998 Act before that time,
 - (ii) determining whether a data controller complied with the old data protection principles before that time, or
 - (iii) determining whether a data controller complied with the sixth data protection principle sections after that time.
- (2) In section 43 of the 1998 Act, as it has effect by virtue of this paragraph—
- (a) the reference to an offence under section 47 of the 1998 Act includes an offence under section 144 of this Act, and
 - (b) the references to an offence under the 1998 Act include an offence under this Act.
- (3) In this paragraph, “the relevant time” means the time when the repeal of section 43 of the 1998 Act comes into force.

Status: This is the original version (as it was originally enacted).

Special information notices

- 31 (1) The repeal of section 44 of the 1998 Act (special information notices) does not affect the application of that section after the relevant time in a case in which—
- (a) the Commissioner served a notice under that section before the relevant time (and did not cancel it before that time), or
 - (b) the Commissioner requires information after the relevant time for the purposes of—
 - (i) responding to a request made under section 42 of the 1998 Act before that time, or
 - (ii) ascertaining whether section 44(2)(a) or (b) of the 1998 Act was satisfied before that time.
- (2) In section 44 of the 1998 Act, as it has effect by virtue of this paragraph—
- (a) the reference to an offence under section 47 of the 1998 Act includes an offence under section 144 of this Act, and
 - (b) the references to an offence under the 1998 Act include an offence under this Act.
- (3) In this paragraph, “the relevant time” means the time when the repeal of section 44 of the 1998 Act comes into force.

Assessment notices

- 32 (1) The repeal of sections 41A and 41B of the 1998 Act (assessment notices) does not affect the application of those sections after the relevant time in a case in which—
- (a) the Commissioner served a notice under section 41A of the 1998 Act before the relevant time (and did not cancel it before that time), or
 - (b) the Commissioner considers it appropriate, after the relevant time, to investigate—
 - (i) whether a data controller complied with the old data protection principles before that time, or
 - (ii) whether a data controller complied with the sixth data protection principle sections after that time.
- (2) The revocation of the Data Protection (Assessment Notices) (Designation of National Health Service Bodies) Order 2014 (S.I. 2014/3282), and the repeals mentioned in sub-paragraph (1), do not affect the application of that Order in a case described in sub-paragraph (1).
- (3) Sub-paragraph (1) does not enable the Secretary of State, after the relevant time, to make an order under section 41A(2)(b) or (c) of the 1998 Act (data controllers on whom an assessment notice may be served) designating a public authority or person for the purposes of that section.
- (4) Section 41A of the 1998 Act, as it has effect by virtue of sub-paragraph (1), has effect as if subsections (8) and (11) (duty to review designation orders) were omitted.
- (5) The repeal of section 41C of the 1998 Act (code of practice about assessment notice) does not affect the application, after the relevant time, of the code issued under that section and in force immediately before the relevant time in relation to the exercise of the Commissioner’s functions under and in connection with section 41A of the 1998 Act, as it has effect by virtue of sub-paragraph (1).

- (6) In this paragraph, “the relevant time” means the time when the repeal of section 41A of the 1998 Act comes into force.

Enforcement notices

- 33 (1) The repeal of sections 40 and 41 of the 1998 Act (enforcement notices) does not affect the application of those sections after the relevant time in a case in which—
- (a) the Commissioner served a notice under section 40 of the 1998 Act before the relevant time (and did not cancel it before that time), or
 - (b) the Commissioner is satisfied, after that time, that a data controller —
 - (i) contravened the old data protection principles before that time, or
 - (ii) contravened the sixth data protection principle sections after that time.
- (2) In this paragraph, “the relevant time” means the time when the repeal of section 40 of the 1998 Act comes into force.

Determination by Commissioner as to the special purposes

- 34 (1) The repeal of section 45 of the 1998 Act (determination by Commissioner as to the special purposes) does not affect the application of that section after the relevant time in a case in which—
- (a) the Commissioner made a determination under that section before the relevant time, or
 - (b) the Commissioner considers it appropriate, after the relevant time, to make a determination under that section.
- (2) In this paragraph, “the relevant time” means the time when the repeal of section 45 of the 1998 Act comes into force.

Restriction on enforcement in case of processing for the special purposes

- 35 (1) The repeal of section 46 of the 1998 Act (restriction on enforcement in case of processing for the special purposes) does not affect the application of that section after the relevant time in relation to an enforcement notice or information notice served under the 1998 Act—
- (a) before the relevant time, or
 - (b) after the relevant time in reliance on this Schedule.
- (2) In this paragraph, “the relevant time” means the time when the repeal of section 46 of the 1998 Act comes into force.

Offences

- 36 (1) The repeal of sections 47, 60 and 61 of the 1998 Act (offences of failing to comply with certain notices and of providing false information etc in response to a notice) does not affect the application of those sections after the relevant time in connection with an information notice, special information notice or enforcement notice served under Part 5 of the 1998 Act—
- (a) before the relevant time, or
 - (b) after that time in reliance on this Schedule.

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- (2) In this paragraph, “the relevant time” means the time when the repeal of section 47 of the 1998 Act comes into force.

Powers of entry

- 37 (1) The repeal of sections 50, 60 and 61 of, and Schedule 9 to, the 1998 Act (powers of entry) does not affect the application of those provisions after the relevant time in a case in which—
- (a) a warrant issued under that Schedule was in force immediately before the relevant time,
 - (b) before the relevant time, the Commissioner supplied information on oath for the purposes of obtaining a warrant under that Schedule but that had not been considered by a circuit judge or a District Judge (Magistrates’ Courts), or
 - (c) after the relevant time, the Commissioner supplies information on oath to a circuit judge or a District Judge (Magistrates’ Courts) in respect of—
 - (i) a contravention of the old data protection principles before the relevant time;
 - (ii) a contravention of the sixth data protection principle sections after the relevant time;
 - (iii) the commission of an offence under a provision of the 1998 Act (including as the provision has effect by virtue of this Schedule);
 - (iv) a failure to comply with a requirement imposed by an assessment notice issued under section 41A the 1998 Act (including as it has effect by virtue of this Schedule).
- (2) In paragraph 16 of Schedule 9 to the 1998 Act, as it has effect by virtue of this paragraph, the reference to an offence under paragraph 12 of that Schedule includes an offence under paragraph 15 of Schedule 15 to this Act.
- (3) In this paragraph, “the relevant time” means the time when the repeal of Schedule 9 to the 1998 Act comes into force.
- (4) Paragraphs 14 and 15 of Schedule 9 to the 1998 Act (application of that Schedule to Scotland and Northern Ireland) apply for the purposes of this paragraph as they apply for the purposes of that Schedule.

Monetary penalties

- 38 (1) The repeal of sections 55A, 55B, 55D and 55E of the 1998 Act (monetary penalties) does not affect the application of those provisions after the relevant time in a case in which—
- (a) the Commissioner served a monetary penalty notice under section 55A of the 1998 Act before the relevant time,
 - (b) the Commissioner served a notice of intent under section 55B of the 1998 Act before the relevant time, or
 - (c) the Commissioner considers it appropriate, after the relevant time, to serve a notice mentioned in paragraph (a) or (b) in respect of—
 - (i) a contravention of section 4(4) of the 1998 Act before the relevant time, or
 - (ii) a contravention of the sixth data protection principle sections after the relevant time.

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- (2) The revocation of the relevant subordinate legislation, and the repeals mentioned in sub-paragraph (1), do not affect the application of the relevant subordinate legislation (or of provisions of the 1998 Act applied by them) after the relevant time in a case described in sub-paragraph (1).
- (3) Guidance issued under section 55C of the 1998 Act (guidance about monetary penalty notices) which is in force immediately before the relevant time continues in force after that time for the purposes of the Commissioner’s exercise of functions under sections 55A and 55B of the 1998 Act as they have effect by virtue of this paragraph.
- (4) In this paragraph—
 - “the relevant subordinate legislation” means—
 - (a) the Data Protection (Monetary Penalties) (Maximum Penalty and Notices) Regulations 2010 (S.I. 2010/31);
 - (b) the Data Protection (Monetary Penalties) Order 2010 (S.I. 2010/910);
 - “the relevant time” means the time when the repeal of section 55A of the 1998 Act comes into force.

Appeals

- 39 (1) The repeal of sections 48 and 49 of the 1998 Act (appeals) does not affect the application of those sections after the relevant time in relation to a notice served under the 1998 Act or a determination made under section 45 of that Act—
 - (a) before the relevant time, or
 - (b) after that time in reliance on this Schedule.
- (2) In this paragraph, “the relevant time” means the time when the repeal of section 48 of the 1998 Act comes into force.

Exemptions

- 40 (1) The repeal of section 28 of the 1998 Act (national security) does not affect the application of that section after the relevant time for the purposes of a provision of Part 5 of the 1998 Act as it has effect after that time by virtue of the preceding paragraphs of this Part of this Schedule.
- (2) In this paragraph, “the relevant time” means the time when the repeal of the provision of Part 5 of the 1998 Act in question comes into force.
- (3) As regards certificates issued under section 28(2) of the 1998 Act, see Part 5 of this Schedule.

Tribunal Procedure Rules

- 41 (1) The repeal of paragraph 7 of Schedule 6 to the 1998 Act (Tribunal Procedure Rules) does not affect the application of that paragraph, or of rules made under that paragraph, after the relevant time in relation to the exercise of rights of appeal conferred by section 28 or 48 of the 1998 Act, as they have effect by virtue of this Schedule.
- (2) Part 3 of Schedule 19 to this Act does not apply for the purposes of Tribunal Procedure Rules made under paragraph 7(1)(a) of Schedule 6 to the 1998 Act as they

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apply, after the relevant time, in relation to the exercise of rights of appeal described in sub-paragraph (1).

- (3) In this paragraph, “the relevant time” means the time when the repeal of paragraph 7 of Schedule 6 to the 1998 Act comes into force.

Obstruction etc

- 42 (1) The repeal of paragraph 8 of Schedule 6 to the 1998 Act (obstruction etc in proceedings before the Tribunal) does not affect the application of that paragraph after the relevant time in relation to an act or omission in relation to proceedings under the 1998 Act (including as it has effect by virtue of this Schedule).
- (2) In this paragraph, “the relevant time” means the time when the repeal of paragraph 8 of Schedule 6 to the 1998 Act comes into force.

Enforcement etc under the 2014 Regulations

- 43 (1) The references in the preceding paragraphs of this Part of this Schedule to provisions of the 1998 Act include those provisions as applied, with modifications, by regulation 51 of the 2014 Regulations (other functions of the Commissioner).
- (2) The revocation of regulation 51 of the 2014 Regulations does not affect the application of those provisions of the 1998 Act (as so applied) as described in those paragraphs.