

APPENDIX A

**THE EUROPEAN CONVENTION ON HUMAN RIGHTS (extracts)**

---

**The European Convention on Human Rights**

The Governments signatory hereto, being Members of the Council of Europe,

Considering the Universal Declaration of Human Rights proclaimed by the General Assembly of the United Nations on 10 December 1948;

Considering that this Declaration aims at securing the universal and effective recognition and observance of the Rights therein declared;

Considering that the aim of the Council of Europe is the achievement of greater unity between its Members and that one of the methods by which the aim is to be pursued is the maintenance and further realization of Human Rights and Fundamental Freedoms;

Reaffirming their profound belief in those Fundamental Freedoms which are the foundation of justice and peace in the world and are best maintained on the one hand by an effective political democracy and on the other by a common understanding and observance of the Human Rights upon which they depend;

Being resolved, as the Governments of European countries which are like-minded and have a common heritage of political traditions, ideals, freedom and the rule of law to take the first steps for the collective enforcement of certain of the Rights stated in the Universal Declaration;

Have agreed as follows:

**ARTICLE 1**

The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.

....

**ARTICLE 8**

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

....

**ARTICLE 10**

1. Everyone has the right to freedom of expression. this right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

## APPENDIX B

### **Human Rights Act 1998 (Extracts)**

#### 1998 CHAPTER 42

#### ARRANGEMENT OF SECTIONS

##### *Introduction*

##### Section

1. The Convention rights
2. Interpretation of Convention rights

##### *Legislation*

3. Interpretation of legislation
4. Declaration of incompatibility
5. Right of Crown to intervene

##### *Public authorities*

6. Acts of public authorities
7. Proceedings
8. Judicial remedies
9. Judicial acts

##### *Remedial action*

10. Power to take remedial action

##### *Other rights and proceedings*

11. Safeguard for existing human rights
12. Freedom of expression
13. Freedom of thought, conscience and religion

##### *Derogations and reservations*

14. Derogations
15. Reservations
16. Period for which designated derogations have effect
17. Periodic review of designated reservations

##### *Judges of the European Court of Human Rights*

18. Appointment to European Court of Human Rights

##### *Parliamentary procedure*

19. Statements of compatibility

## *Supplemental*

- 20. Orders etc. under this Act
- 21. Interpretation, etc.
- 22. Short title, commencement, application and extent

## SCHEDULES

### Schedule 1—The Articles

Part I—The Convention Rights and Freedoms

Part II—The First Protocol

Part III—The Thirteenth Protocol

### Schedule 2—Remedial orders

### Schedule 3—Derogation and reservation

Part I—Derogation

Part II—Reservation

An Act to give further effect to rights and freedoms guaranteed under the European Convention on Human Rights; to make provision with respect to holders of certain judicial offices who become judges of the European Court of Human Rights; and for connected purposes.

[9th November 1998]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

## *Introduction*

### **The Convention rights**

1.—(1) In this Act 'the Convention rights' means the rights and fundamental freedoms set out in—

- (a) Articles 2 to 12 and 14 of the Convention,
- (b) Articles 1 to 3 of the First Protocol, and
- (c) Article 1 of the Thirteenth Protocol,

as read with Articles 16 to 18 of the Convention.

(2) Those Articles are to have effect for the purposes of this Act subject to any designated derogation or reservation (as to which see sections 14 and 15).

(3) The Articles are set out in Schedule 1.

(4) The Secretary of State may by order make such amendments to this Act as he considers appropriate to reflect the effect, in relation to the United Kingdom, of a protocol.

(5) In subsection (4) 'protocol' means a protocol to the Convention—

- (a) which the United Kingdom has ratified; or
- (b) which the United Kingdom has signed with a view to ratification.

(6) No amendment may be made by an order under subsection (4) so as to come into force before the protocol concerned is in force in relation to the United Kingdom.

### **Interpretation of Convention rights**

2.—(1) A court or tribunal determining a question which has arisen in connection with a

Convention right must take into account any—

- (a) judgment, decision, declaration or advisory opinion of the European Court of Human Rights,
- (b) opinion of the Commission given in a report adopted under Article 31 of the Convention,
- (c) decision of the Commission in connection with Article 26 or 27(2) of the Convention, or
- (d) decision of the Committee of Ministers taken under Article 46 of the Convention,

whenever made or given, so far as, in the opinion of the court or tribunal, it is relevant to the proceedings in which that question has arisen.

(2) Evidence of any judgment, decision, declaration or opinion of which account may have to be taken under this section is to be given in proceedings before any court or tribunal in such manner as may be provided by rules.

(3) In this section ‘rules’ means rules of court or, in the case of proceedings before a tribunal, rules made for the purposes of this section—

- (a) by the Lord Chancellor or the Secretary of State, in relation to any proceedings outside Scotland;
- (b) by the Secretary of State, in relation to proceedings in Scotland; or
- (c) by a Northern Ireland department, in relation to proceedings before a tribunal in Northern Ireland—
  - (i) which deals with transferred matters; and
  - (ii) for which no rules made under paragraph (a) are in force.

### *Legislation*

#### **Interpretation of legislation**

**3.—**(1) So far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights.

(2) This section—

- (a) applies to primary legislation and subordinate legislation whenever enacted;
- (b) does not affect the validity, continuing operation or enforcement of any incompatible primary legislation; and
- (c) does not affect the validity, continuing operation or enforcement of any incompatible subordinate legislation if (disregarding any possibility of revocation) primary legislation prevents removal of the incompatibility.

#### **Declaration of incompatibility**

**4.—**(1) Subsection (2) applies in any proceedings in which a court determines whether a provision of primary legislation is compatible with a Convention right.

(2) If the court is satisfied that the provision is incompatible with a Convention right, it may make a declaration of that incompatibility.

(3) Subsection (4) applies in any proceedings in which a court determines whether a provision of subordinate legislation, made in the exercise of a power conferred by primary legislation, is compatible with a Convention right.

(4) If the court is satisfied—

(a) that the provision is incompatible with a Convention right, and  
(b) that (disregarding any possibility of revocation) the primary legislation concerned prevents removal of the incompatibility,  
it may make a declaration of that incompatibility.

(5) In this section ‘court’ means—

- (a) the Supreme Court;
- (b) the Judicial Committee of the Privy Council;
- (c) the Court-Martial Appeal Court;
- (d) in Scotland, the High Court of Justiciary sitting otherwise than as a trial court or the Court of Session;
- (e) in England and Wales or Northern Ireland, the High Court or the Court of Appeal.
- (f) the Court of Protection, in any matter being dealt with by the President of the Family Division, the Vice-Chancellor or a puisne judge of the High Court.

(6) A declaration under this section (‘a declaration of incompatibility’)—

- (a) does not affect the validity, continuing operation or enforcement of the provision in respect of which it is given; and
- (b) is not binding on the parties to the proceedings in which it is made.

### **Right of Crown to intervene**

**5.**—(1) Where a court is considering whether to make a declaration of incompatibility, the Crown is entitled to notice in accordance with rules of court.

(2) In any case to which subsection (1) applies—

- (a) a Minister of the Crown (or a person nominated by him),
- (b) a member of the Scottish Executive,
- (c) a Northern Ireland Minister,
- (d) a Northern Ireland department,

is entitled, on giving notice in accordance with rules of court, to be joined as a party to the proceedings.

(3) Notice under subsection (2) may be given at any time during the proceedings.

(4) A person who has been made a party to criminal proceedings (other than in Scotland) as the result of a notice under subsection (2) may, with leave, appeal to the Supreme Court against any declaration of incompatibility made in the proceedings.

(5) In subsection (4)—

‘criminal proceedings’ includes all proceedings before the Court-Martial Appeal Court; and  
‘leave’ means leave granted by the court making the declaration of incompatibility or by the Supreme Court.

### *Public authorities*

### **Acts of public authorities**

**6.**—(1) It is unlawful for a public authority to act in a way which is incompatible with a Convention right.

(2) Subsection (1) does not apply to an act if—

- (a) as the result of one or more provisions of primary legislation, the authority could not have acted differently; or

- (b) in the case of one or more provisions of, or made under, primary legislation which cannot be read or given effect in a way which is compatible with the Convention rights, the authority was acting so as to give effect to or enforce those provisions.

(3) In this section ‘public authority’ includes—

- (a) a court or tribunal, and

- (b) any person certain of whose functions are functions of a public nature,

but does not include either House of Parliament or a person exercising functions in connection with proceedings in Parliament.

...

(5) In relation to a particular act, a person is not a public authority by virtue only of subsection (3)(b) if the nature of the act is private.

(6) ‘An act’ includes a failure to act but does not include a failure to—

- (a) introduce in, or lay before, Parliament a proposal for legislation; or

- (b) make any primary legislation or remedial order.

### **Proceedings**

**7.—**(1) A person who claims that a public authority has acted (or proposes to act) in a way which is made unlawful by section 6(1) may—

- (a) bring proceedings against the authority under this Act in the appropriate court or tribunal, or

- (b) rely on the Convention right or rights concerned in any legal proceedings,

but only if he is (or would be) a victim of the unlawful act.

(2) In subsection (1)(a) ‘appropriate court or tribunal’ means such court or tribunal as may be determined in accordance with rules; and proceedings against an authority include a counterclaim or similar proceeding.

(3) If the proceedings are brought on an application for judicial review, the applicant is to be taken to have a sufficient interest in relation to the unlawful act only if he is, or would be, a victim of that act.

(4) If the proceedings are made by way of a petition for judicial review in Scotland, the applicant shall be taken to have title and interest to sue in relation to the unlawful act only if he is, or would be, a victim of that act.

(5) Proceedings under subsection (1)(a) must be brought before the end of—

- (a) the period of one year beginning with the date on which the act complained of took place; or

- (b) such longer period as the court or tribunal considers equitable having regard to all the circumstances,

but that is subject to any rule imposing a stricter time limit in relation to the procedure in question.

(6) In subsection (1)(b) ‘legal proceedings’ includes—

- (a) proceedings brought by or at the instigation of a public authority; and

- (b) an appeal against the decision of a court or tribunal.

(7) For the purposes of this section, a person is a victim of an unlawful act only if he would be a victim for the purposes of Article 34 of the Convention if proceedings were brought in the European Court of Human Rights in respect of that act.

(8) Nothing in this Act creates a criminal offence.

having regard to a finding of the European Court of Human Rights made after the coming into force of this section in proceedings against the United Kingdom, a provision of legislation is incompatible with an obligation of the United Kingdom arising from the Convention.

(2) If a Minister of the Crown considers that there are compelling reasons for proceeding under this section, he may by order make such amendments to the legislation as he considers necessary to remove the incompatibility.

(3) If, in the case of subordinate legislation, a Minister of the Crown considers—

(a) that it is necessary to amend the primary legislation under which the subordinate legislation in question was made, in order to enable the incompatibility to be removed, and

(b) that there are compelling reasons for proceeding under this section, he may by order make such amendments to the primary legislation as he considers necessary.

(4) This section also applies where the provision in question is in subordinate legislation and has been quashed, or declared invalid, by reason of incompatibility with a Convention right and the Minister proposes to proceed under paragraph 2(b) of Schedule 2.

(5) If the legislation is an Order in Council, the power conferred by subsection (2) or (3) is exercisable by Her Majesty in Council.

(6) In this section ‘legislation’ does not include a Measure of the Church Assembly or of the General Synod of the Church of England.

(7) Schedule 2 makes further provision about remedial orders.

#### *Other rights and proceedings*

#### **Safeguard for existing human rights**

**11.** A person’s reliance on a Convention right does not restrict—

(a) any other right or freedom conferred on him by or under any law having effect in any part of the United Kingdom; or

(b) his right to make any claim or bring any proceedings which he could make or bring apart from sections 7 to 9.

#### **Freedom of expression**

**12.—**(1) This section applies if a court is considering whether to grant any relief which, if granted, might affect the exercise of the Convention right to freedom of expression.

(2) If the person against whom the application for relief is made (‘the respondent’) is neither present nor represented, no such relief is to be granted unless the court is satisfied—

(a) that the applicant has taken all practicable steps to notify the respondent; or

(b) that there are compelling reasons why the respondent should not be notified.

(3) No such relief is to be granted so as to restrain publication before trial unless the court is satisfied that the applicant is likely to establish that publication should not be allowed.

(4) The court must have particular regard to the importance of the Convention

right to freedom of expression and, where the proceedings relate to material which the respondent claims, or which appears to the court, to be journalistic, literary or artistic material (or to conduct connected with such material), to—

- (a) the extent to which—
    - (i) the material has, or is about to, become available to the public; or
    - (ii) it is, or would be, in the public interest for the material to be published;
  - (b) any relevant privacy code.
- (5) In this section—
- ‘court’ includes a tribunal; and
  - ‘relief’ includes any remedy or order (other than in criminal proceedings).

### **Freedom of thought, conscience and religion**

**13.**—(1) If a court’s determination of any question arising under this Act might affect the exercise by a religious organisation (itself or its members collectively) of the Convention right to freedom of thought, conscience and religion, it must have particular regard to the importance of that right.

- (2) In this section ‘court’ includes a tribunal.

### *Derogations and reservations*

#### **Derogations**

**14.**—(1) In this Act ‘designated derogation’ means—

...

any derogation by the United Kingdom from an Article of the Convention, or of any protocol to the Convention, which is designated for the purposes of this Act in an order made by the Secretary of State.

...

(3) If a designated derogation is amended or replaced it ceases to be a designated derogation.

(4) But subsection (3) does not prevent the Secretary of State from exercising his power under subsection (1) to make a fresh designation order in respect of the Article concerned.

(5) The Secretary of State must by order make such amendments to Schedule 3 as he considers appropriate to reflect—

- (a) any designation order; or
- (b) the effect of subsection (3).

(6) A designation order may be made in anticipation of the making by the United Kingdom of a proposed derogation.

#### **Reservations**

**15.**—(1) In this Act ‘designated reservation’ means—

- (a) the United Kingdom’s reservation to Article 2 of the First Protocol to the Convention; and
- (b) any other reservation by the United Kingdom to an Article of the Convention, or of any protocol to the Convention, which is designated for the purposes of this Act in an order made by the Secretary of State.

(2) The text of the reservation referred to in subsection (1)(a) is set out in Part II



which are exercisable by such a person on behalf of Her Majesty;  
'transferred matters' has the same meaning as in the Northern Ireland Act 1998; and  
'tribunal' means any tribunal in which legal proceedings may be brought.

(2) The references in paragraphs (b) and (c) of section 2(1) to Articles are to Articles of the Convention as they had effect immediately before the coming into force of the Eleventh Protocol.

(3) The reference in paragraph (d) of section 2(1) to Article 46 includes a reference to Articles 32 and 54 of the Convention as they had effect immediately before the coming into force of the Eleventh Protocol.

(4) The references in section 2(1) to a report or decision of the Commission or a decision of the Committee of Ministers include references to a report or decision made as provided by paragraphs 3, 4 and 6 of Article 5 of the Eleventh Protocol (transitional provisions).

(5) ....

### **Short title, commencement, application and extent**

**22.**—(1) This Act may be cited as the Human Rights Act 1998.

(2) Sections 18, 20 and 21(5) and this section come into force on the passing of this Act.

(3) The other provisions of this Act come into force on such day as the Secretary of State may by order appoint; and different days may be appointed for different purposes.

(4) Paragraph (b) of subsection (1) of section 7 applies to proceedings brought by or at the instigation of a public authority whenever the act in question took place; but otherwise that subsection does not apply to an act taking place before the coming into force of that section.

(5) This Act binds the Crown.

(6) This Act extends to Northern Ireland.

(7) ....

## **SCHEDULES**

### **SCHEDULE 1 THE ARTICLES**

#### **PART I THE CONVENTION RIGHTS AND FREEDOMS**

#### **ARTICLE 2 RIGHT TO LIFE**

- 1.** Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
- 2.** Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely

necessary:

- (a) in defence of any person from unlawful violence;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) in action lawfully taken for the purpose of quelling a riot or insurrection.

### ARTICLE 3 PROHIBITION OF TORTURE

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

### ARTICLE 4 PROHIBITION OF SLAVERY AND FORCED LABOUR

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. For the purpose of this Article the term 'forced or compulsory labour' shall not include:
  - (a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;
  - (b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;
  - (c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;
  - (d) any work or service which forms part of normal civic obligations.

### ARTICLE 5 RIGHT TO LIBERTY AND SECURITY

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
  - (a) the lawful detention of a person after conviction by a competent court;
  - (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
  - (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
  - (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

- (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;
  - (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.
2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.
  3. Everyone arrested or detained in accordance with the provisions of paragraph 1(c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.
  4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.
  5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.

#### ARTICLE 6 RIGHT TO A FAIR TRIAL

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
3. Everyone charged with a criminal offence has the following minimum rights:
  - (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
  - (b) to have adequate time and facilities for the preparation of his defence;
  - (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
  - (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
  - (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

ARTICLE 7  
NO PUNISHMENT WITHOUT LAW

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.
2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.

ARTICLE 8  
RIGHT TO RESPECT FOR PRIVATE AND FAMILY LIFE

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

ARTICLE 9  
FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

ARTICLE 10  
FREEDOM OF EXPRESSION

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of

national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

#### ARTICLE 11 FREEDOM OF ASSEMBLY AND ASSOCIATION

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

#### ARTICLE 12 RIGHT TO MARRY

Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right.

#### ARTICLE 14 PROHIBITION OF DISCRIMINATION

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

#### ARTICLE 16 RESTRICTIONS ON POLITICAL ACTIVITY OF ALIENS

Nothing in Articles 10, 11 and 14 shall be regarded as preventing the High Contracting Parties from imposing restrictions on the political activity of aliens.

#### ARTICLE 17 PROHIBITION OF ABUSE OF RIGHTS

Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is ...

## APPENDIX C

### Protection from Harassment Act 1997

1997 CHAPTER 40

#### ARRANGEMENT OF SECTIONS

##### *England and Wales*

##### Section

1. Prohibition of harassment.
2. Offence of harassment.
3. Civil remedy.
- 3A. Injunctions to protect persons from harassment within section 1(1A).
4. Putting people in fear of violence.
5. Restraining orders.
6. Limitation.
7. Interpretation of this group of sections.

##### *Scotland*

8. Harassment.
9. Breach of non-harassment order.
10. Limitation.
11. Non-harassment order following criminal offence.

##### *General*

12. National security, etc.
13. Corresponding provision for Northern Ireland.
14. Extent.
15. Commencement.
16. Short title.

An Act to make provision for protecting persons from harassment and similar conduct.

[21st March 1997]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

##### *England and Wales*

#### **Prohibition of harassment**

- 1.—(1) A person must not pursue a course of conduct—
- (a) which amounts to harassment of another, and
  - (b) which he knows or ought to know amounts to harassment of the other.

(1A) A person must not pursue a course of conduct —

- (a) which involves harassment of two or more persons, and
- (b) which he knows or ought to know involves harassment of those persons, and
- (c) by which he intends to persuade any person (whether or not one of those mentioned above)— (i) not to do something that he is entitled or required to do, or (ii) to do something that he is not under any obligation to do.

(2) For the purposes of this section, the person whose course of conduct is in question ought to know that it amounts to or involves harassment of another if a reasonable person in possession of the same information would think the course of conduct amounted to or involved harassment of the other.

(3) Subsection (1) or (1A) does not apply to a course of conduct if the person who pursued it shows—

- (a) that it was pursued for the purpose of preventing or detecting crime,
- (b) that it was pursued under any enactment or rule of law or to comply with any condition or requirement imposed by any person under any enactment, or
- (c) that in the particular circumstances the pursuit of the course of conduct was reasonable.

### **Offence of harassment**

**2.—**(1) A person who pursues a course of conduct in breach of section 1(1) or (1A) is guilty of an offence.

(2) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding six months, or a fine not exceeding level 5 on the standard scale, or both.

(3) ....

### **Civil remedy**

**3.—**(1) An actual or apprehended breach of section 1(1) may be the subject of a claim in civil proceedings by the person who is or may be the victim of the course of conduct in question.

(2) On such a claim, damages may be awarded for (among other things) any anxiety caused by the harassment and any financial loss resulting from the harassment.

(3) Where—

- (a) in such proceedings the High Court or a county court grants an injunction for the purpose of restraining the defendant from pursuing any conduct which amounts to harassment, and
- (b) the plaintiff considers that the defendant has done anything which he is prohibited from doing by the injunction,

the plaintiff may apply for the issue of a warrant for the arrest of the defendant.

(4) An application under subsection (3) may be made—

- (a) where the injunction was granted by the High Court, to a judge of that court, and
- (b) where the injunction was granted by a county court, to a judge or district judge of that or any other county court.

(5) The judge or district judge to whom an application under subsection (3) is made may only issue a warrant if—

- (a) the application is substantiated on oath, and
- (b) the judge or district judge has reasonable grounds for believing that the defendant has done anything which he is prohibited from doing by the injunction.

(6) Where—

- (a) the High Court or a county court grants an injunction for the purpose mentioned in subsection (3)(a), and
- (b) without reasonable excuse the defendant does anything which he is prohibited from doing by the injunction,

he is guilty of an offence.

(7) Where a person is convicted of an offence under subsection (6) in respect of any conduct, that conduct is not punishable as a contempt of court.

(8) A person cannot be convicted of an offence under subsection (6) in respect of any conduct which has been punished as a contempt of court.

(9) A person guilty of an offence under subsection (6) is liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding five years, or a fine, or both, or
- (b) on summary conviction, to imprisonment for a term not exceeding six months, or a fine not exceeding the statutory maximum, or both.

### **Injunctions to protect persons from harassment within section 1(1A)**

**3A.**—(1) This section applies where there is an actual or apprehended breach of section 1(1A) by any person (“the relevant person”).

(2) In such a case—

- (a) any person who is or may be a victim of the course of conduct in question, or
- (b) any person who is or may be a person falling within section 1(1A)(c),

may apply to the High Court or a county court for an injunction restraining the relevant person from pursuing any conduct which amounts to harassment in relation to any person or persons mentioned or described in the injunction.

(3) Section 3(3) to (9) apply in relation to an injunction granted under subsection (2) above as they apply in relation to an injunction granted as mentioned in section 3(3)(a).

### **Putting people in fear of violence**

**4.**—(1) A person whose course of conduct causes another to fear, on at least two occasions, that violence will be used against him is guilty of an offence if he knows or ought to know that his course of conduct will cause the other so to fear on each of those occasions.

(2) For the purposes of this section, the person whose course of conduct is in question ought to know that it will cause another to fear that violence will be used against him on any occasion if a reasonable person in possession of the same information would think the course of conduct would cause the other so to fear on that occasion.

(3) It is a defence for a person charged with an offence under this section to show



that—

- (a) his course of conduct was pursued for the purpose of preventing or detecting crime,
- (b) his course of conduct was pursued under any enactment or rule of law or to comply with any condition or requirement imposed by any person under any enactment, or
- (c) the pursuit of his course of conduct was reasonable for the protection of himself or another or for the protection of his or another's property.

(4) A person guilty of an offence under this section is liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding five years, or a fine, or both, or
- (b) on summary conviction, to imprisonment for a term not exceeding six months, or a fine not exceeding the statutory maximum, or both.

(5) If on the trial on indictment of a person charged with an offence under this section the jury find him not guilty of the offence charged, they may find him guilty of an offence under section 2.

(6) The Crown Court has the same powers and duties in relation to a person who is by virtue of subsection (5) convicted before it of an offence under section 2 as a magistrates' court would have on convicting him of the offence.

### **Restraining orders**

**5.**—(1) A court sentencing or otherwise dealing with a person ('the defendant') convicted of an offence under section 2 or 4 may (as well as sentencing him or dealing with him in any other way) make an order under this section.

(2) The order may, for the purpose of protecting the victim or victims of the offence, or any other person mentioned in the order, from further conduct which—

- (a) amounts to harassment, or
- (b) will cause a fear of violence,

prohibit the defendant from doing anything described in the order.

(3) The order may have effect for a specified period or until further order.

(4) The prosecutor, the defendant or any other person mentioned in the order may apply to the court which made the order for it to be varied or discharged by a further order.

(5) If without reasonable excuse the defendant does anything which he is prohibited from doing by an order under this section, he is guilty of an offence.

(6) A person guilty of an offence under this section is liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding five years, or a fine, or both, or
- (b) on summary conviction, to imprisonment for a term not exceeding six months, or a fine not exceeding the statutory maximum, or both.

### **Limitation**

**6.** In section 11 of the Limitation Act 1980 (special time limit for actions in respect of personal injuries), after subsection (1) there is inserted—

(1A) This section does not apply to any action brought for damages under section 3 of the Protection from Harassment Act 1997.

### **Interpretation of this group of sections**

**7.—**(1) This section applies for the interpretation of sections 1 to 5.

(2) References to harassing a person include alarming the person or causing the person distress.

(3) A ‘course of conduct’ must involve—

(a) in the case of conduct in relation to a single person (see section 1(1)), conduct on at least two occasions in relation to that person, or

(b) in the case of conduct in relation to two or more persons (see section 1(1A)), conduct on at least one occasion in relation to each of those persons.

(3A) A person’s conduct on any occasion shall be taken, if aided, abetted, counselled or procured by another -

(a) to be conduct on that occasion of the other (as well as conduct of the person whose conduct it is); and

(b) to be conduct in relation to which the other’s knowledge and purpose, and what he ought to have known, are the same as they were in relation to what was contemplated or reasonably foreseeable at the time of the aiding, abetting, counselling or procuring.

(4) ‘Conduct’ includes speech.

(5) References to a person, in the context of the harassment of a person, are references to a person who is an individual.

### *Scotland*

### **Harassment**

**8.—**(1) Every individual has a right to be free from harassment and, accordingly, a person must not pursue a course of conduct which amounts to harassment of another and—

(a) is intended to amount to harassment of that person; or

(b) occurs in circumstances where it would appear to a reasonable person that it would amount to harassment of that person.

(2) An actual or apprehended breach of subsection (1) may be the subject of a claim in civil proceedings by the person who is or may be the victim of the course of conduct in question; and any such claim shall be known as an action of harassment.

(3) For the purposes of this section—

‘conduct’ includes speech;

‘harassment’ of a person includes causing the person alarm or distress; and

a course of conduct must involve conduct on at least two occasions.

(4) It shall be a defence to any action of harassment to show that the course of conduct complained of—

(a) was authorised by, under or by virtue of any enactment or rule of law;

(b) was pursued for the purpose of preventing or detecting crime; or

(c) was, in the particular circumstances, reasonable.

(5) In an action of harassment the court may, without prejudice to any other remedies which it may grant—

(a) award damages;

## APPENDIX D

### Computer Misuse Act 1990

#### 1.— Unauthorised access to computer material.

(1) A person is guilty of an offence if—

- (a) he causes a computer to perform any function with intent to secure access to any program or data held in any computer [, or to enable any such access to be secured]<sup>1</sup>;
- (b) the access he intends to secure [, or to enable to be secured,]<sup>1</sup> is unauthorised; and
- (c) he knows at the time when he causes the computer to perform the function that that is the case.

(2) The intent a person has to have to commit an offence under this section need not be directed at—

- (a) any particular program or data;
- (b) a program or data of any particular kind; or
- (c) a program or data held in any particular computer.

[(3) A person guilty of an offence under this section shall be liable—

- (a) on summary conviction in England and Wales, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum or to both;
- (b) on summary conviction in Scotland, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both;
- (c) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.]<sup>1</sup>

---

<sup>1</sup>.

Modified by Police and Justice Act 2006 c. 48 Pt 5 s 35 (October 1, 2008: modification has effect as SI 2008/2503 subject to transitional provisions specified in 2006 c.48 s.38(1) and (2))

## APPENDIX E

### Data Protection Act 1998 (Extracts)

1998 CHAPTER 29

An Act to make new provision for the regulation of the processing of information relating to individuals, including the obtaining, holding, use or disclosure of such information.

[16th July 1998]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

#### PART I PRELIMINARY

##### Basic interpretative provisions

1.—(1) In this Act, unless the context otherwise requires—  
'data' means information which—

- (a) is being processed by means of equipment operating automatically in response to instructions given for that purpose,
- (b) is recorded with the intention that it should be processed by means of such equipment,
- (c) is recorded as part of a relevant filing system or with the intention that it should form part of a relevant filing system,
- (d) does not fall within paragraph (a), (b) or (c) but forms part of an accessible record as defined by section 68; or
- (e) is recorded information held by a public authority and does not fall within any of paragraphs (a) to (d);

'data controller' means, subject to subsection (4), a person who (either alone or jointly or in common with other persons) determines the purposes for which and the manner in which any personal data are, or are to be, processed;

'data processor', in relation to personal data, means any person (other than an employee of the data controller) who processes the data on behalf of the data controller;

'data subject' means an individual who is the subject of personal data;

'personal data' means data which relate to a living individual who can be identified—

- (a) from those data, or
- (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,

and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual;

'processing', in relation to information or data, means obtaining, recording or holding the information or data or carrying out any operation or set of operations on the information or data, including—

- (a) organisation, adaptation or alteration of the information or data,

- (b) retrieval, consultation or use of the information or data,
- (c) disclosure of the information or data by transmission, dissemination or otherwise making available, or

- (d) alignment, combination, blocking, erasure or destruction of the information or data;

‘public authority’ means a public authority as defined by the Freedom of Information Act 2000 or a Scottish public authority as defined by the Freedom of Information (Scotland) Act 2002;

‘relevant filing system’ means any set of information relating to individuals to the extent that, although the information is not processed by means of equipment operating automatically in response to instructions given for that purpose, the set is structured, either by reference to individuals or by reference to criteria relating to individuals, in such a way that specific information relating to a particular individual is readily accessible.

- (2) In this Act, unless the context otherwise requires—

- (a) ‘obtaining’ or ‘recording’, in relation to personal data, includes obtaining or recording the information to be contained in the data, and
- (b) ‘using’ or ‘disclosing’, in relation to personal data, includes using or disclosing the information contained in the data.

- (3) In determining for the purposes of this Act whether any information is recorded with the intention—

- (a) that it should be processed by means of equipment operating automatically in response to instructions given for that purpose, or
- (b) that it should form part of a relevant filing system,

it is immaterial that it is intended to be so processed or to form part of such a system only after being transferred to a country or territory outside the European Economic Area.

- (4) Where personal data are processed only for purposes for which they are required by or under any enactment to be processed, the person on whom the obligation to process the data is imposed by or under that enactment is for the purposes of this Act the data controller.

- (5) In paragraph (e) of the definition of “data” in subsection (1), the reference to information “held” by a public authority shall be construed in accordance with section 3(2) of the Freedom of Information Act 2000 or section 3(2), (4) and (5) of the Freedom of Information (Scotland) Act 2002.

- (6) Where

- (a) section 7 of the Freedom of Information Act 2000 prevents Parts I to V of that Act or
- (b) section 7(1) of the Freedom of Information (Scotland) Act 2002 prevents that Act,

from applying to certain information held by a public authority, that information is not to be treated for the purposes of paragraph (e) of the definition of “data” in subsection (1) as held by a public authority.

### **Sensitive personal data**

2.—In this Act ‘sensitive personal data’ means personal data consisting of information as

to—

- (a) the racial or ethnic origin of the data subject,
- (b) his political opinions,
- (c) his religious beliefs or other beliefs of a similar nature,
- (d) whether he is a member of a trade union (within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992),
- (e) his physical or mental health or condition,
- (f) his sexual life,
- (g) the commission or alleged commission by him of any offence, or
- (h) any proceedings for any offence committed or alleged to have been committed by him, the disposal of such proceedings or the sentence of any court in such proceedings.

### **The special purposes**

**3.** In this Act ‘the special purposes’ means any one or more of the following—

- (a) the purposes of journalism,
- (b) artistic purposes, and
- (c) literary purposes.

### **The data protection principles**

**4.**—(1) References in this Act to the data protection principles are to the principles set out in Part I of Schedule 1.

(2) Those principles are to be interpreted in accordance with Part II of Schedule 1.

(3) Schedule 2 (which applies to all personal data) and Schedule 3 (which applies only to sensitive personal data) set out conditions applying for the purposes of the first principle; and Schedule 4 sets out cases in which the eighth principle does not apply.

(4) Subject to section 27(1), it shall be the duty of a data controller to comply with the data protection principles in relation to all personal data with respect to which he is the data controller.

### **Application of Act**

**5.**—(1) Except as otherwise provided by or under section 54, this Act applies to a data controller in respect of any data only if—

- (a) the data controller is established in the United Kingdom and the data are processed in the context of that establishment, or
- (b) the data controller is established neither in the United Kingdom nor in any other EEA State but uses equipment in the United Kingdom for processing the data otherwise than for the purposes of transit through the United Kingdom.

(2) A data controller falling within subsection (1)(b) must nominate for the purposes of this Act a representative established in the United Kingdom.

(3) For the purposes of subsections (1) and (2), each of the following is to be treated as established in the United Kingdom—

- (a) an individual who is ordinarily resident in the United Kingdom,
- (b) a body incorporated under the law of, or of any part of, the United Kingdom,

### **Provisions supplementary to section 7**

**8.**—(1) The Secretary of State may by regulations provide that, in such cases as may be prescribed, a request for information under any provision of subsection (1) of section 7 is to be treated as extending also to information under other provisions of that subsection.

(2) The obligation imposed by section 7(1)(c)(i) must be complied with by supplying the data subject with a copy of the information in permanent form unless—

- (a) the supply of such a copy is not possible or would involve disproportionate effort, or
- (b) the data subject agrees otherwise;

and where any of the information referred to in section 7(1)(c)(i) is expressed in terms which are not intelligible without explanation the copy must be accompanied by an explanation of those terms.

(3) Where a data controller has previously complied with a request made under section 7 by an individual, the data controller is not obliged to comply with a subsequent identical or similar request under that section by that individual unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request.

(4) In determining for the purposes of subsection (3) whether requests under section 7 are made at reasonable intervals, regard shall be had to the nature of the data, the purpose for which the data are processed and the frequency with which the data are altered.

(5) Section 7(1)(d) is not to be regarded as requiring the provision of information as to the logic involved in any decision-taking if, and to the extent that, the information constitutes a trade secret.

(6) The information to be supplied pursuant to a request under section 7 must be supplied by reference to the data in question at the time when the request is received, except that it may take account of any amendment or deletion made between that time and the time when the information is supplied, being an amendment or deletion that would have been made regardless of the receipt of the request.

(7) For the purposes of section 7(4) and (5) another individual can be identified from the information being disclosed if he can be identified from that information, or from that and any other information which, in the reasonable belief of the data controller, is likely to be in, or to come into, the possession of the data subject making the request.

...

### **Right to prevent processing likely to cause damage or distress**

**10.**—(1) Subject to subsection (2), an individual is entitled at any time by notice in writing to a data controller to require the data controller at the end of such period as is reasonable in the circumstances to cease, or not to begin, processing, or processing for a specified purpose or in a specified manner, any personal data in respect of which he is the data subject, on the ground that, for specified reasons—

- (a) the processing of those data or their processing for that purpose or in that manner is causing or is likely to cause substantial damage or substantial distress to him or to another, and
- (b) that damage or distress is or would be unwarranted.

(2) Subsection (1) does not apply—

- (a) in a case where any of the conditions in paragraphs 1 to 4 of Schedule 2 is met, or
- (b) in such other cases as may be prescribed by the Secretary of State by order.
- (3) The data controller must within twenty-one days of receiving a notice under subsection (1) ('the data subject notice') give the individual who gave it a written notice—
  - (a) stating that he has complied or intends to comply with the data subject notice, or
  - (b) stating his reasons for regarding the data subject notice as to any extent unjustified and the extent (if any) to which he has complied or intends to comply with it.
- (4) If a court is satisfied, on the application of any person who has given a notice under subsection (1) which appears to the court to be justified (or to be justified to any extent), that the data controller in question has failed to comply with the notice, the court may order him to take such steps for complying with the notice (or for complying with it to that extent) as the court thinks fit.
- (5) The failure by a data subject to exercise the right conferred by subsection (1) or section 11(1) does not affect any other right conferred on him by this Part.

...

### **Compensation for failure to comply with certain requirements**

**13.**—(1) An individual who suffers damage by reason of any contravention by a data controller of any of the requirements of this Act is entitled to compensation from the data controller for that damage.

(2) An individual who suffers distress by reason of any contravention by a data controller of any of the requirements of this Act is entitled to compensation from the data controller for that distress if—

- (a) the individual also suffers damage by reason of the contravention, or
- (b) the contravention relates to the processing of personal data for the special purposes.

(3) In proceedings brought against a person by virtue of this section it is a defence to prove that he had taken such care as in all the circumstances was reasonably required to comply with the requirement concerned.

### **Rectification, blocking, erasure and destruction**

**14.**—(1) If a court is satisfied on the application of a data subject that personal data of which the applicant is the subject are inaccurate, the court may order the data controller to rectify, block, erase or destroy those data and any other personal data in respect of which he is the data controller and which contain an expression of opinion which appears to the court to be based on the inaccurate data.

(2) Subsection (1) applies whether or not the data accurately record information received or obtained by the data controller from the data subject or a third party but where the data accurately record such information, then—

- (a) if the requirements mentioned in paragraph 7 of Part II of Schedule 1 have been complied with, the court may, instead of making an order under



subsection (1), make an order requiring the data to be supplemented by such statement of the true facts relating to the matters dealt with by the data as the court may approve, and

- (b) if all or any of those requirements have not been complied with, the court may, instead of making an order under that subsection, make such order as it thinks fit for securing compliance with those requirements with or without a further order requiring the data to be supplemented by such a statement as is mentioned in paragraph (a).

(3) Where the court—

- (a) makes an order under subsection (1), or
- (b) is satisfied on the application of a data subject that personal data of which he was the data subject and which have been rectified, blocked, erased or destroyed were inaccurate,

it may, where it considers it reasonably practicable, order the data controller to notify third parties to whom the data have been disclosed of the rectification, blocking, erasure or destruction.

(4) If a court is satisfied on the application of a data subject—

- (a) that he has suffered damage by reason of any contravention by a data controller of any of the requirements of this Act in respect of any personal data, in circumstances entitling him to compensation under section 13, and
- (b) that there is a substantial risk of further contravention in respect of those data in such circumstances,

the court may order the rectification, blocking, erasure or destruction of any of those data.

(5) Where the court makes an order under subsection (4) it may, where it considers it reasonably practicable, order the data controller to notify third parties to whom the data have been disclosed of the rectification, blocking, erasure or destruction.

(6) In determining whether it is reasonably practicable to require such notification as is mentioned in subsection (3) or (5) the court shall have regard, in particular, to the number of persons who would have to be notified.

### **Jurisdiction and procedure**

**15.**—(1) The jurisdiction conferred by sections 7 to 14 is exercisable by the High Court or a county court or, in Scotland, by the Court of Session or the sheriff.

(2) For the purpose of determining any question whether an applicant under subsection (9) of section 7 is entitled to the information which he seeks (including any question whether any relevant data are exempt from that section by virtue of Part IV) a court may require the information constituting any data processed by or on behalf of the data controller and any information as to the logic involved in any decision-taking as mentioned in section 7(1)(d) to be made available for its own inspection but shall not, pending the determination of that question in the applicant's favour, require the information sought by the applicant to be disclosed to him or his representatives whether by discovery (or, in Scotland, recovery) or otherwise.

## **PART III**

### **NOTIFICATION BY DATA CONTROLLERS**

#### **Preliminary**

in relation to different cases.

(6) The Commissioner—

(a) shall provide facilities for making the information contained in the entries in the register available for inspection (in visible and legible form) by members of the public at all reasonable hours and free of charge, and

(b) may provide such other facilities for making the information contained in those entries available to the public free of charge as he considers appropriate.

(7) The Commissioner shall, on payment of such fee, if any, as may be prescribed by fees regulations, supply any member of the public with a duly certified copy in writing of the particulars contained in any entry made in the register.

### **Duty to notify changes**

**20.**—(1) For the purpose specified in subsection (2), notification regulations shall include provision imposing on every person in respect of whom an entry as a data controller is for the time being included in the register maintained under section 19 a duty to notify to the Commissioner, in such circumstances and at such time or times and in such form as may be prescribed, such matters relating to the registrable particulars and measures taken as mentioned in section 18(2)(b) as may be prescribed.

(2) The purpose referred to in subsection (1) is that of ensuring, so far as practicable, that at any time—

(a) the entries in the register maintained under section 19 contain current names and addresses and describe the current practice or intentions of the data controller with respect to the processing of personal data, and

(b) the Commissioner is provided with a general description of measures currently being taken as mentioned in section 18(2)(b).

(3) Subsection (3) of section 18 has effect in relation to notification regulations made by virtue of subsection (1) as it has effect in relation to notification regulations made by virtue of subsection (2) of that section.

(4) On receiving any notification under notification regulations made by virtue of subsection (1), the Commissioner shall make such amendments of the relevant entry in the register maintained under section 19 as are necessary to take account of the notification.

### **Offences**

**21.**—(1) If section 17(1) is contravened, the data controller is guilty of an offence.

(2) Any person who fails to comply with the duty imposed by notification regulations made by virtue of section 20(1) is guilty of an offence.

(3) It shall be a defence for a person charged with an offence under subsection (2) to show that he exercised all due diligence to comply with the duty.

### **Preliminary assessment by Commissioner**

**22.**—(1) In this section ‘assessable processing’ means processing which is of a description specified in an order made by the Secretary of State as appearing to him to be particularly likely—

(a) to cause substantial damage or substantial distress to data subjects, or

- (b) otherwise significantly to prejudice the rights and freedoms of data subjects.
  - (2) On receiving notification from any data controller under section 18 or under notification regulations made by virtue of section 20 the Commissioner shall consider—
    - (a) whether any of the processing to which the notification relates is assessable processing, and
    - (b) if so, whether the assessable processing is likely to comply with the provisions of this Act.
  - (3) Subject to subsection (4), the Commissioner shall, within the period of twenty-eight days beginning with the day on which he receives a notification which relates to assessable processing, give a notice to the data controller stating the extent to which the Commissioner is of the opinion that the processing is likely or unlikely to comply with the provisions of this Act.
  - (4) Before the end of the period referred to in subsection (3) the Commissioner may, by reason of special circumstances, extend that period on one occasion only by notice to the data controller by such further period not exceeding fourteen days as the Commissioner may specify in the notice.
  - (5) No assessable processing in respect of which a notification has been given to the Commissioner as mentioned in subsection (2) shall be carried on unless either—
    - (a) the period of twenty-eight days beginning with the day on which the notification is received by the Commissioner (or, in a case falling within subsection (4), that period as extended under that subsection) has elapsed, or
    - (b) before the end of that period (or that period as so extended) the data controller has received a notice from the Commissioner under subsection (3) in respect of the processing.
  - (6) Where subsection (5) is contravened, the data controller is guilty of an offence.
  - (7) The Secretary of State may by order amend subsections (3), (4) and (5) by substituting for the number of days for the time being specified there a different number specified in the order.
- ...

## PART IV EXEMPTIONS

### Preliminary

- 27.**—(1) References in any of the data protection principles or any provision of Parts II and III to personal data or to the processing of personal data do not include references to data or processing which by virtue of this Part are exempt from that principle or other provision.
- (2) In this Part ‘the subject information provisions’ means—
    - (a) the first data protection principle to the extent to which it requires compliance with paragraph 2 of Part II of Schedule 1, and
    - (b) section 7.
  - (3) In this Part ‘the non-disclosure provisions’ means the provisions specified in subsection (4) to the extent to which they are inconsistent with the disclosure in question.

(4) The provisions referred to in subsection (3) are—

- (a) the first data protection principle, except to the extent to which it requires compliance with the conditions in Schedules 2 and 3,
- (b) the second, third, fourth and fifth data protection principles, and
- (c) sections 10 and 14(1) to (3).

(5) Except as provided by this Part, the subject information provisions shall have effect notwithstanding any enactment or rule of law prohibiting or restricting the disclosure, or authorising the withholding, of information.

...

### **Journalism, literature and art**

**32.**—(1) Personal data which are processed only for the special purposes are exempt from any provision to which this subsection relates if—

- (a) the processing is undertaken with a view to the publication by any person of any journalistic, literary or artistic material,
- (b) the data controller reasonably believes that, having regard in particular to the special importance of the public interest in freedom of expression, publication would be in the public interest, and
- (c) the data controller reasonably believes that, in all the circumstances, compliance with that provision is incompatible with the special purposes.

(2) Subsection (1) relates to the provisions of—

- (a) the data protection principles except the seventh data protection principle,
- (b) section 7,
- (c) section 10,
- (d) section 12, and
- (e) section 14(1) to (3).

(3) In considering for the purposes of subsection (1)(b) whether the belief of a data controller that publication would be in the public interest was or is a reasonable one, regard may be had to his compliance with any code of practice which—

- (a) is relevant to the publication in question, and
- (b) is designated by the Secretary of State by order for the purposes of this subsection.

(4) Where at any time ('the relevant time') in any proceedings against a data controller under section 7(9), 10(4), 12(8) or 14 or by virtue of section 13 the data controller claims, or it appears to the court, that any personal data to which the proceedings relate are being processed—

- (a) only for the special purposes, and
- (b) with a view to the publication by any person of any journalistic, literary or artistic material which, at the time twenty-four hours immediately before the relevant time, had not previously been published by the data controller, the court shall stay the proceedings until either of the conditions in subsection (5) is met.

(5) Those conditions are—

- (a) that a determination of the Commissioner under section 45 with respect to the data in question takes effect, or
- (b) in a case where the proceedings were stayed on the making of a claim, that

the claim is withdrawn.

(6) For the purposes of this Act ‘publish’, in relation to journalistic, literary or artistic material, means make available to the public or any section of the public.

### **Research, history and statistics**

**33.**—(1) In this section—

‘research purposes’ includes statistical or historical purposes;

‘the relevant conditions’, in relation to any processing of personal data, means the conditions—

- (a) that the data are not processed to support measures or decisions with respect to particular individuals, and
- (b) that the data are not processed in such a way that substantial damage or substantial distress is, or is likely to be, caused to any data subject.

(2) For the purposes of the second data protection principle, the further processing of personal data only for research purposes in compliance with the relevant conditions is not to be regarded as incompatible with the purposes for which they were obtained.

(3) Personal data which are processed only for research purposes in compliance with the relevant conditions may, notwithstanding the fifth data protection principle, be kept indefinitely.

(4) Personal data which are processed only for research purposes are exempt from section 7 if—

- (a) they are processed in compliance with the relevant conditions, and
- (b) the results of the research or any resulting statistics are not made available in a form which identifies data subjects or any of them.

(5) For the purposes of subsections (2) to (4) personal data are not to be treated as processed otherwise than for research purposes merely because the data are disclosed—

- (a) to any person, for research purposes only,
- (b) to the data subject or a person acting on his behalf,
- (c) at the request, or with the consent, of the data subject or a person acting on his behalf, or
- (d) in circumstances in which the person making the disclosure has reasonable grounds for believing that the disclosure falls within paragraph (a), (b) or (c).

### **Manual data held by public authorities**

**33A.**—(1) Personal data falling within paragraph (e) of the definition of “data” in section 1(1) are exempt from—

- (a) the first, second, third, fifth, seventh and eighth data protection principles,
- (b) the sixth data protection principle except so far as it relates to the rights conferred on data subjects by sections 7 and 14,
- (c) sections 10 to 12,
- (d) section 13, except so far as it relates to damage caused by a contravention of section 7 or of the fourth data protection principle and to any distress which is also suffered by reason of that contravention,
- (e) Part III, and
- (f) section 55.

of either House of Parliament.

### **Domestic purposes**

**36.** Personal data processed by an individual only for the purposes of that individual's personal, family or household affairs (including recreational purposes) are exempt from the data protection principles and the provisions of Parts II and III.

### **Miscellaneous exemptions**

**37.** Schedule 7 (which confers further miscellaneous exemptions) has effect.

...

## **PART V ENFORCEMENT**

### **Request for assessment**

**42.**—(1) A request may be made to the Commissioner by or on behalf of any person who is, or believes himself to be, directly affected by any processing of personal data for an assessment as to whether it is likely or unlikely that the processing has been or is being carried out in compliance with the provisions of this Act.

(2) On receiving a request under this section, the Commissioner shall make an assessment in such manner as appears to him to be appropriate, unless he has not been supplied with such information as he may reasonably require in order to—

- (a) satisfy himself as to the identity of the person making the request, and
- (b) enable him to identify the processing in question.

(3) The matters to which the Commissioner may have regard in determining in what manner it is appropriate to make an assessment include—

- (a) the extent to which the request appears to him to raise a matter of substance,
- (b) any undue delay in making the request, and
- (c) whether or not the person making the request is entitled to make an application under section 7 in respect of the personal data in question.

(4) Where the Commissioner has received a request under this section he shall notify the person who made the request—

- (a) whether he has made an assessment as a result of the request, and
- (b) to the extent that he considers appropriate, having regard in particular to any exemption from section 7 applying in relation to the personal data concerned, of any view formed or action taken as a result of the request.

### **Information notices**

**43.**—(1) If the Commissioner—

- (a) has received a request under section 42 in respect of any processing of personal data, or
- (b) reasonably requires any information for the purpose of determining whether the data controller has complied or is complying with the data protection principles,

he may serve the data controller with a notice (in this Act referred to as 'an information notice') requiring the data controller, within such time as is specified in the notice, to

furnish the Commissioner, in such form as may be so specified, with such information relating to the request or to compliance with the principles as is so specified.

(2) An information notice must contain—

- (a) in a case falling within subsection (1)(a), a statement that the Commissioner has received a request under section 42 in relation to the specified processing, or
- (b) in a case falling within subsection (1)(b), a statement that the Commissioner regards the specified information as relevant for the purpose of determining whether the data controller has complied, or is complying, with the data protection principles and his reasons for regarding it as relevant for that purpose.

(3) An information notice must also contain particulars of the rights of appeal conferred by section 48.

(4) Subject to subsection (5), the time specified in an information notice shall not expire before the end of the period within which an appeal can be brought against the notice and, if such an appeal is brought, the information need not be furnished pending the determination or withdrawal of the appeal.

(5) If by reason of special circumstances the Commissioner considers that the information is required as a matter of urgency, he may include in the notice a statement to that effect and a statement of his reasons for reaching that conclusion; and in that event subsection (4) shall not apply, but the notice shall not require the information to be furnished before the end of the period of seven days beginning with the day on which the notice is served.

(6) A person shall not be required by virtue of this section to furnish the Commissioner with any information in respect of—

- (a) any communication between a professional legal adviser and his client in connection with the giving of legal advice to the client with respect to his obligations, liabilities or rights under this Act, or
- (b) any communication between a professional legal adviser and his client, or between such an adviser or his client and any other person, made in connection with or in contemplation of proceedings under or arising out of this Act (including proceedings before the Tribunal) and for the purposes of such proceedings.

(7) In subsection (6) references to the client of a professional legal adviser include references to any person representing such a client.

(8) A person shall not be required by virtue of this section to furnish the Commissioner with any information if the furnishing of that information would, by revealing evidence of the commission of any offence other than an offence under this Act, expose him to proceedings for that offence.

(9) The Commissioner may cancel an information notice by written notice to the person on whom it was served.

(10) This section has effect subject to section 46(3).

### **Special information notices**

**44.**—(1) If the Commissioner—

- (a) has received a request under section 42 in respect of any processing of

personal data, or

(b) has reasonable grounds for suspecting that, in a case in which proceedings have been stayed under section 32, the personal data to which the proceedings relate—

(i) are not being processed only for the special purposes, or

(ii) are not being processed with a view to the publication by any person of any journalistic, literary or artistic material which has not previously been published by the data controller, he may serve the data controller with a notice (in this Act referred to as a ‘special information notice’) requiring the data controller, within such time as is specified in the notice, to furnish the Commissioner, in such form as may be so specified, with such information as is so specified for the purpose specified in subsection (2).

(2) That purpose is the purpose of ascertaining—

(a) whether the personal data are being processed only for the special purposes, or

(b) whether they are being processed with a view to the publication by any person of any journalistic, literary or artistic material which has not previously been published by the data controller.

(3) A special information notice must contain—

(a) in a case falling within paragraph (a) of subsection (1), a statement that the Commissioner has received a request under section 42 in relation to the specified processing, or

(b) in a case falling within paragraph (b) of that subsection, a statement of the Commissioner’s grounds for suspecting that the personal data are not being processed as mentioned in that paragraph.

(4) A special information notice must also contain particulars of the rights of appeal conferred by section 48.

(5) Subject to subsection (6), the time specified in a special information notice shall not expire before the end of the period within which an appeal can be brought against the notice and, if such an appeal is brought, the information need not be furnished pending the determination or withdrawal of the appeal.

(6) If by reason of special circumstances the Commissioner considers that the information is required as a matter of urgency, he may include in the notice a statement to that effect and a statement of his reasons for reaching that conclusion; and in that event subsection (5) shall not apply, but the notice shall not require the information to be furnished before the end of the period of seven days beginning with the day on which the notice is served.

(7) A person shall not be required by virtue of this section to furnish the Commissioner with any information in respect of—

(a) any communication between a professional legal adviser and his client in connection with the giving of legal advice to the client with respect to his obligations, liabilities or rights under this Act, or

(b) any communication between a professional legal adviser and his client, or between such an adviser or his client and any other person, made in connection with or in contemplation of proceedings under or arising out of



this Act (including proceedings before the Tribunal) and for the purposes of such proceedings.

(8) In subsection (7) references to the client of a professional legal adviser include references to any person representing such a client.

(9) A person shall not be required by virtue of this section to furnish the Commissioner with any information if the furnishing of that information would, by revealing evidence of the commission of any offence other than an offence under this Act, expose him to proceedings for that offence.

(10) The Commissioner may cancel a special information notice by written notice to the person on whom it was served.

### **Determination by Commissioner as to the special purposes**

**45.**—(1) Where at any time it appears to the Commissioner (whether as a result of the service of a special information notice or otherwise) that any personal data—

- (a) are not being processed only for the special purposes, or
- (b) are not being processed with a view to the publication by any person of any journalistic, literary or artistic material which has not previously been published by the data controller,

he may make a determination in writing to that effect.

(2) Notice of the determination shall be given to the data controller; and the notice must contain particulars of the right of appeal conferred by section 48.

(3) A determination under subsection (1) shall not take effect until the end of the period within which an appeal can be brought and, where an appeal is brought, shall not take effect pending the determination or withdrawal of the appeal.

### **Restriction on enforcement in case of processing for the special purposes**

**46.**—(1) The Commissioner may not at any time serve an enforcement notice on a data controller with respect to the processing of personal data for the special purposes unless—

- (a) a determination under section 45(1) with respect to those data has taken effect, and
- (b) the court has granted leave for the notice to be served.

(2) The court shall not grant leave for the purposes of subsection (1)(b) unless it is satisfied—

- (a) that the Commissioner has reason to suspect a contravention of the data protection principles which is of substantial public importance, and
- (b) except where the case is one of urgency, that the data controller has been given notice, in accordance with rules of court, of the application for leave.

(3) The Commissioner may not serve an information notice on a data controller with respect to the processing of personal data for the special purposes unless a determination under section 45(1) with respect to those data has taken effect.

### **Failure to comply with notice**

**47.**—(1) A person who fails to comply with an enforcement notice, an information notice or a special information notice is guilty of an offence.

(2) A person who, in purported compliance with an information notice or a special information notice—

(a) makes a statement which he knows to be false in a material respect, or

(b) recklessly makes a statement which is false in a material respect,  
is guilty of an offence.

(3) It is a defence for a person charged with an offence under subsection (1) to prove that he exercised all due diligence to comply with the notice in question.

...

## PART VI MISCELLANEOUS AND GENERAL

### *Unlawful obtaining etc. of personal data*

#### **Unlawful obtaining etc. of personal data**

**55.**—(1) A person must not knowingly or recklessly, without the consent of the data controller—

(a) obtain or disclose personal data or the information contained in personal data, or

(b) procure the disclosure to another person of the information contained in personal data.

(2) Subsection (1) does not apply to a person who shows—

(a) that the obtaining, disclosing or procuring—

(i) was necessary for the purpose of preventing or detecting crime, or

(ii) was required or authorised by or under any enactment, by any rule of law or by the order of a court,

(b) that he acted in the reasonable belief that he had in law the right to obtain or disclose the data or information or, as the case may be, to procure the disclosure of the information to the other person,

(c) that he acted in the reasonable belief that he would have had the consent of the data controller if the data controller had known of the obtaining, disclosing or procuring and the circumstances of it, or

(d) that in the particular circumstances the obtaining, disclosing or procuring was justified as being in the public interest.

(3) A person who contravenes subsection (1) is guilty of an offence.

(4) A person who sells personal data is guilty of an offence if he has obtained the data in contravention of subsection (1).

(5) A person who offers to sell personal data is guilty of an offence if—

(a) he has obtained the data in contravention of subsection (1), or

(b) he subsequently obtains the data in contravention of that subsection.

(6) For the purposes of subsection (5), an advertisement indicating that personal data are or may be for sale is an offer to sell the data.

(7) Section 1(2) does not apply for the purposes of this section; and for the purposes of subsections (4) to (6), ‘personal data’ includes information extracted from personal data.

(8) References in this section to personal data do not include references to personal data which by virtue of section 28 or 33A are exempt from this section.

...

### **Confidentiality of information**

**59.**—(1) No person who is or has been the Commissioner, a member of the Commissioner’s staff or an agent of the Commissioner shall disclose any information which—

- (a) has been obtained by, or furnished to, the Commissioner under or for the purposes of the information Acts,
- (b) relates to an identified or identifiable individual or business, and
- (c) is not at the time of the disclosure, and has not previously been, available to the public from other sources,

unless the disclosure is made with lawful authority.

(2) For the purposes of subsection (1) a disclosure of information is made with lawful authority only if, and to the extent that—

- (a) the disclosure is made with the consent of the individual or of the person for the time being carrying on the business,
- (b) the information was provided for the purpose of its being made available to the public (in whatever manner) under any provision of the information Acts,
- (c) the disclosure is made for the purposes of, and is necessary for, the discharge of—
  - (i) any functions under the information Acts, or
  - (ii) any Community obligation,
- (d) the disclosure is made for the purposes of any proceedings, whether criminal or civil and whether arising under, or by virtue of, the information Acts or otherwise, or
- (e) having regard to the rights and freedoms or legitimate interests of any person, the disclosure is necessary in the public interest.

(3) Any person who knowingly or recklessly discloses information in contravention of subsection (1) is guilty of an offence.

(4) In this section “the information Acts” means this Act and the Freedom of Information Act 2000.

### *General provisions relating to offences*

#### **Prosecutions and penalties**

**60.**—(1) No proceedings for an offence under this Act shall be instituted—

- (a) in England or Wales, except by the Commissioner or by or with the consent of the Director of Public Prosecutions;
- (b) in Northern Ireland, except by the Commissioner or by or with the consent of the Director of Public Prosecutions for Northern Ireland.

(2) A person guilty of an offence under any provision of this Act other than section 54A and paragraph 12 of Schedule 9 is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum, or
- (b) on conviction on indictment, to a fine.

(3) A person guilty of an offence under section 54A and paragraph 12 of Schedule 9 is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) Subject to subsection (5), the court by or before which a person is convicted of—

(a) an offence under section 21(1), 22(6), 55 or 56,

(b) an offence under section 21(2) relating to processing which is assessable processing for the purposes of section 22, or

(c) an offence under section 47(1) relating to an enforcement notice,

may order any document or other material used in connection with the processing of personal data and appearing to the court to be connected with the commission of the offence to be forfeited, destroyed or erased.

(5) The court shall not make an order under subsection (4) in relation to any material where a person (other than the offender) claiming to be the owner of or otherwise interested in the material applies to be heard by the court, unless an opportunity is given to him to show cause why the order should not be made.

...

## **SCHEDULES**

### **SCHEDULE 1**

#### **THE DATA PROTECTION PRINCIPLES**

##### **PART I**

##### **THE PRINCIPLES**

**1.** Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless—

(a) at least one of the conditions in Schedule 2 is met, and

(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.

**2.** Personal data shall be obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes.

**3.** Personal data shall be adequate, relevant and not excessive in relation to the purpose or purposes for which they are processed.

**4.** Personal data shall be accurate and, where necessary, kept up to date.

**5.** Personal data processed for any purpose or purposes shall not be kept for longer than is necessary for that purpose or those purposes.

**6.** Personal data shall be processed in accordance with the rights of data subjects under this Act.

**7.** Appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.

**8.** Personal data shall not be transferred to a country or territory outside the European Economic Area unless that country or territory ensures an adequate level of protection for the rights and freedoms of data subjects in relation to the processing of personal data.

**PART II**  
**INTERPRETATION OF THE PRINCIPLES IN PART I**

*The first principle*

**1.—**(1) In determining for the purposes of the first principle whether personal data are processed fairly, regard is to be had to the method by which they are obtained, including in particular whether any person from whom they are obtained is deceived or misled as to the purpose or purposes for which they are to be processed.

(2) Subject to paragraph 2, for the purposes of the first principle data are to be treated as obtained fairly if they consist of information obtained from a person who—

- (a) is authorised by or under any enactment to supply it, or
- (b) is required to supply it by or under any enactment or by any convention or other instrument imposing an international obligation on the United Kingdom.

**2.—**(1) Subject to paragraph 3, for the purposes of the first principle personal data are not to be treated as processed fairly unless—

- (a) in the case of data obtained from the data subject, the data controller ensures so far as practicable that the data subject has, is provided with, or has made readily available to him, the information specified in sub-paragraph (3), and
- (b) in any other case, the data controller ensures so far as practicable that, before the relevant time or as soon as practicable after that time, the data subject has, is provided with, or has made readily available to him, the information specified in sub-paragraph (3).

(2) In sub-paragraph (1)(b) ‘the relevant time’ means—

- (a) the time when the data controller first processes the data, or
- (b) in a case where at that time disclosure to a third party within a reasonable period is envisaged—
  - (i) if the data are in fact disclosed to such a person within that period, the time when the data are first disclosed,
  - (ii) if within that period the data controller becomes, or ought to become, aware that the data are unlikely to be disclosed to such a person within that period, the time when the data controller does become, or ought to become, so aware, or
  - (iii) in any other case, the end of that period.

(3) The information referred to in sub-paragraph (1) is as follows, namely—

- (a) the identity of the data controller,
- (b) if he has nominated a representative for the purposes of this Act, the identity of that representative,
- (c) the purpose or purposes for which the data are intended to be processed, and
- (d) any further information which is necessary, having regard to the specific circumstances in which the data are or are to be processed, to enable processing in respect of the data subject to be fair.

**3.—**(1) Paragraph 2(1)(b) does not apply where either of the primary conditions in sub-paragraph (2), together with such further conditions as may be prescribed by the

Secretary of State by order, are met.

(2) The primary conditions referred to in sub-paragraph (1) are—

- (a) that the provision of that information would involve a disproportionate effort, or
- (b) that the recording of the information to be contained in the data by, or the disclosure of the data by, the data controller is necessary for compliance with any legal obligation to which the data controller is subject, other than an obligation imposed by contract.

4.—(1) Personal data which contain a general identifier falling within a description prescribed by the Secretary of State by order are not to be treated as processed fairly and lawfully unless they are processed in compliance with any conditions so prescribed in relation to general identifiers of that description.

(2) In sub-paragraph (1) ‘a general identifier’ means any identifier (such as, for example, a number or code used for identification purposes) which—

- (a) relates to an individual, and
- (b) forms part of a set of similar identifiers which is of general application.

#### *The second principle*

5. The purpose or purposes for which personal data are obtained may in particular be specified—

- (a) in a notice given for the purposes of paragraph 2 by the data controller to the data subject, or
- (b) in a notification given to the Commissioner under Part III of this Act.

6. In determining whether any disclosure of personal data is compatible with the purpose or purposes for which the data were obtained, regard is to be had to the purpose or purposes for which the personal data are intended to be processed by any person to whom they are disclosed.

#### *The fourth principle*

7. The fourth principle is not to be regarded as being contravened by reason of any inaccuracy in personal data which accurately record information obtained by the data controller from the data subject or a third party in a case where—

- (a) having regard to the purpose or purposes for which the data were obtained and further processed, the data controller has taken reasonable steps to ensure the accuracy of the data, and
- (b) if the data subject has notified the data controller of the data subject’s view that the data are inaccurate, the data indicate that fact.

#### *The sixth principle*

8. A person is to be regarded as contravening the sixth principle if, but only if—

- (a) he contravenes section 7 by failing to supply information in accordance with that section,
- (b) he contravenes section 10 by failing to comply with a notice given under subsection (1) of that section to the extent that the notice is justified or by failing to give a notice under subsection (3) of that section,
- (c) he contravenes section 11 by failing to comply with a notice given under

- subsection (1) of that section, or
- (d) he contravenes section 12 by failing to comply with a notice given under subsection (1) or (2)(b) of that section or by failing to give a notification under subsection (2)(a) of that section or a notice under subsection (3) of that section.

*The seventh principle*

- 9.** Having regard to the state of technological development and the cost of implementing any measures, the measures must ensure a level of security appropriate to—
- (a) the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage as are mentioned in the seventh principle, and
  - (b) the nature of the data to be protected.
- 10.** The data controller must take reasonable steps to ensure the reliability of any employees of his who have access to the personal data.
- 11.** Where processing of personal data is carried out by a data processor on behalf of a data controller, the data controller must in order to comply with the seventh principle—
- (a) choose a data processor providing sufficient guarantees in respect of the technical and organisational security measures governing the processing to be carried out, and
  - (b) take reasonable steps to ensure compliance with those measures.
- 12.** Where processing of personal data is carried out by a data processor on behalf of a data controller, the data controller is not to be regarded as complying with the seventh principle unless—
- (a) the processing is carried out under a contract—
    - (i) which is made or evidenced in writing, and
    - (ii) under which the data processor is to act only on instructions from the data controller, and
  - (b) the contract requires the data processor to comply with obligations equivalent to those imposed on a data controller by the seventh principle.

*The eighth principle*

- 13.** An adequate level of protection is one which is adequate in all the circumstances of the case, having regard in particular to—
- (a) the nature of the personal data,
  - (b) the country or territory of origin of the information contained in the data,
  - (c) the country or territory of final destination of that information,
  - (d) the purposes for which and period during which the data are intended to be processed,
  - (e) the law in force in the country or territory in question,
  - (f) the international obligations of that country or territory,
  - (g) any relevant codes of conduct or other rules which are enforceable in that country or territory (whether generally or by arrangement in particular cases), and
  - (h) any security measures taken in respect of the data in that country or territory.

14. The eighth principle does not apply to a transfer falling within any paragraph of Schedule 4, except in such circumstances and to such extent as the Secretary of State may by order provide.

15.—(1) Where—

(a) in any proceedings under this Act any question arises as to whether the requirement of the eighth principle as to an adequate level of protection is met in relation to the transfer of any personal data to a country or territory outside the European Economic Area, and

(b) a Community finding has been made in relation to transfers of the kind in question, that question is to be determined in accordance with that finding.

(2) In sub-paragraph (1) ‘Community finding’ means a finding of the European Commission, under the procedure provided for in Article 31(2) of the Data Protection Directive, that a country or territory outside the European Economic Area does, or does not, ensure an adequate level of protection within the meaning of Article 25(2) of the Directive.

## **SCHEDULE 2**

### **CONDITIONS RELEVANT FOR PURPOSES OF THE FIRST PRINCIPLE: PROCESSING OF ANY PERSONAL DATA**

1. The data subject has given his consent to the processing.

2. The processing is necessary—

(a) for the performance of a contract to which the data subject is a party, or

(b) for the taking of steps at the request of the data subject with a view to entering into a contract.

3. The processing is necessary for compliance with any legal obligation to which the data controller is subject, other than an obligation imposed by contract.

4. The processing is necessary in order to protect the vital interests of the data subject.

5. The processing is necessary—

(a) for the administration of justice,

(aa) for the exercise of any functions of either House of Parliament,

(b) for the exercise of any functions conferred on any person by or under any enactment,

(c) for the exercise of any functions of the Crown, a Minister of the Crown or a government department, or

(d) for the exercise of any other functions of a public nature exercised in the public interest by any person.

6.—(1) The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.

(2) The Secretary of State may by order specify particular circumstances in which this condition is, or is not, to be taken to be satisfied.

## **SCHEDULE 3**

### **CONDITIONS RELEVANT FOR PURPOSES OF THE FIRST PRINCIPLE: PROCESSING OF**



### **SENSITIVE PERSONAL DATA**

1. The data subject has given his explicit consent to the processing of the personal data.
- 2.—(1) The processing is necessary for the purposes of exercising or performing any right or obligation which is conferred or imposed by law on the data controller in connection with employment.
  - (2) The Secretary of State may by order—
    - (a) exclude the application of sub-paragraph (1) in such cases as may be specified, or
    - (b) provide that, in such cases as may be specified, the condition in sub-paragraph (1) is not to be regarded as satisfied unless such further conditions as may be specified in the order are also satisfied.
3. The processing is necessary—
  - (a) in order to protect the vital interests of the data subject or another person, in a case where—
    - (i) consent cannot be given by or on behalf of the data subject, or
    - (ii) the data controller cannot reasonably be expected to obtain the consent of the data subject, or
  - (b) in order to protect the vital interests of another person, in a case where consent by or on behalf of the data subject has been unreasonably withheld.
4. The processing—
  - (a) is carried out in the course of its legitimate activities by any body or association which—
    - (i) is not established or conducted for profit, and
    - (ii) exists for political, philosophical, religious or trade-union purposes,
  - (b) is carried out with appropriate safeguards for the rights and freedoms of data subjects,
  - (c) relates only to individuals who either are members of the body or association or have regular contact with it in connection with its purposes, and
  - (d) does not involve disclosure of the personal data to a third party without the consent of the data subject.
5. The information contained in the personal data has been made public as a result of steps deliberately taken by the data subject.
6. The processing—
  - (a) is necessary for the purpose of, or in connection with, any legal proceedings (including prospective legal proceedings),
  - (b) is necessary for the purpose of obtaining legal advice, or
  - (c) is otherwise necessary for the purposes of establishing, exercising or defending legal rights.
- 7.—(1) The processing is necessary—
  - (a) for the administration of justice,
  - (aa) for the exercise of any functions of either House of Parliament,
  - (b) for the exercise of any functions conferred on any person by or under an enactment, or

- (c) for the exercise of any functions of the Crown, a Minister of the Crown or a government department.
- (2) The Secretary of State may by order—
  - (a) exclude the application of sub-paragraph (1) in such cases as may be specified, or
  - (b) provide that, in such cases as may be specified, the condition in sub-paragraph (1) is not to be regarded as satisfied unless such further conditions as may be specified in the order are also satisfied.

**7A.—** (1) The processing —

- (a) is either -
  - (i) the disclosure of sensitive personal data by a person as a member of an anti-fraud organisation or otherwise in accordance with any arrangements made by such an organisation; or
  - (ii) any other processing by that person or another person of sensitive personal data so disclosed; and
- (b) is necessary for the purposes of preventing fraud or a particular kind of fraud.

(2) In this paragraph “an anti-fraud organisation” means any unincorporated association, body corporate or other person which enables or facilitates any sharing of information to prevent fraud or a particular kind of fraud or which has any of these functions as its purpose or one of its purposes.

**8.—**(1) The processing is necessary for medical purposes and is undertaken by—

- (a) a health professional, or
- (b) a person who in the circumstances owes a duty of confidentiality which is equivalent to that which would arise if that person were a health professional.

(2) In this paragraph ‘medical purposes’ includes the purposes of preventative medicine, medical diagnosis, medical research, the provision of care and treatment and the management of healthcare services.

**9.—**(1) The processing—

- (a) is of sensitive personal data consisting of information as to racial or ethnic origin,
- (b) is necessary for the purpose of identifying or keeping under review the existence or absence of equality of opportunity or treatment between persons of different racial or ethnic origins, with a view to enabling such equality to be promoted or maintained, and
- (c) is carried out with appropriate safeguards for the rights and freedoms of data subjects.

(2) The Secretary of State may by order specify circumstances in which processing falling within subparagraph (1)(a) and (b) is, or is not, to be taken for the purposes of subparagraph (1)(c) to be carried out with appropriate safeguards for the rights and freedoms of data subjects.

**10.** The personal data are processed in circumstances specified in an order made by the Secretary of State for the purposes of this paragraph.

...

## APPENDIX F

### Regulation of Investigatory Powers Act 2000 c. 23

#### 1.— Unlawful interception.

(1) It shall be an offence for a person intentionally and without lawful authority to intercept, at any place in the United Kingdom, any communication in the course of its transmission by means of—

- (a) a public postal service; or
- (b) a public telecommunication system.

[(1A) The Interception of Communications Commissioner may serve a monetary penalty notice on a person if the Commissioner—

(a) considers that the person—

(i) has without lawful authority intercepted, at any place in the United Kingdom, any communication in the course of its transmission by means of a public telecommunication system, and

(ii) was not, at the time of the interception, making an attempt to act in accordance with an interception warrant which might, in the opinion of the Commissioner, explain the interception concerned, and

(b) does not consider that the person has committed an offence under subsection (1).

(1B) Schedule 1A (which makes further provision about monetary penalty notices) has effect.]<sup>1</sup>

(2) It shall be an offence for a person—

(a) intentionally and without lawful authority, and

(b) otherwise than in circumstances in which his conduct is excluded by subsection (6) from criminal liability under this subsection,

to intercept, at any place in the United Kingdom, any communication in the course of its transmission by means of a private telecommunication system.

(3) Any interception of a communication which is carried out at any place in the United Kingdom by, or with the express or implied consent of, a person having the right to control the operation or the use of a private telecommunication system shall be actionable at the suit or instance of the sender or recipient, or intended recipient, of the communication if it is without lawful authority and is either—

(a) an interception of that communication in the course of its transmission by means of that private system; or

(b) an interception of that communication in the course of its transmission, by means of a public telecommunication system, to or from apparatus comprised in that private telecommunication system.

...

(5) Conduct has lawful authority for the purposes of this section if, and only if—

(a) it is authorised by or under section 3 or 4;

(b) it takes place in accordance with a warrant under section 5 (“an interception warrant”); or

(c) it is in exercise, in relation to any stored communication, of any statutory power that is exercised (apart from this section) for the purpose of obtaining information or of taking possession of any document or other property; and conduct (whether or not prohibited by this section) which has lawful authority for the purposes of this section by virtue of paragraph (a) or (b) shall also be taken to be lawful for all other purposes.

...

(7) A person who is guilty of an offence under subsection (1) or (2) shall be liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both;

(b) on summary conviction, to a fine not exceeding the statutory maximum.

(8) No proceedings for any offence which is an offence by virtue of this section shall be instituted—

(a) in England and Wales, except by or with the consent of the Director of Public Prosecutions;

(b) in Northern Ireland, except by or with the consent of the Director of Public Prosecutions for Northern Ireland.

---

<sup>1</sup> These provisions in force from: **June 16, 2011**

## APPENDIX G

### Prevention of Corruption Act 1906 c. 34

#### 1.— Punishment of corrupt of transactions with agents.<sup>2</sup>

(1) If any agent corruptly accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gift or consideration as an inducement or reward for doing or for bearing to do, or for having after the passing of this Act done or forborne to do, any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business; or

If any person corruptly gives or agrees to given or offers any gift or consideration to any agent as an inducement or reward for doing or forbearing to do, or for having after the passing of this Act done or forborne to do, any act in relation to this principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business; or

If any person knowingly gives to any agent, or if any agent knowingly uses with intent to deceive his principal, any receipt, account, or other document in respect of which the principal is interested, and which contains any statement which is false or erroneous or defective in any material particular, and which to his knowledge is intended to mislead the principal:

he shall be guilty of a misdemeanour, and shall be liable

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum, or to both; and

(b) on conviction on indictment, to imprisonment for a term not exceeding 7 years or to a fine, or to both.<sup>2</sup>

(2) For the purposes of this Act the expression “consideration” includes valuable consideration of any kind; the expression “agent” includes any person employed by or acting for another; and the expression “principal” includes an employer

(3) A person serving under the Crown or under any corporation or any, borough, county, or district council, or any board of guardians, is an agent within the meaning of this Act.

(4) For the purposes of this Act it is immaterial if—

(a) the principal's affairs or business have no connection with the United Kingdom and are conducted in a country or territory outside the United Kingdom;

(b) the agent's functions have no connection with the United Kingdom and are carried out in a country or territory outside the United Kingdom.

---

<sup>2</sup> This version in force from: **February 14, 2002 to June 30, 2011**. Whole section repealed by Bribery Act 2010 c. 23 Sch 2 para 1 (July 1, 2011: repeal has effect subject to transitional provision specified in 2010 c.23 s.19(5)-(7))

## APPENDIX H

### **Bribery Act 2010<sup>3</sup>**

#### **1 Offences of bribing another person**

- (1) A person (“P”) is guilty of an offence if either of the following cases applies.
- (2) Case 1 is where—
  - (a) P offers, promises or gives a financial or other advantage to another person, and
  - (b) P intends the advantage—
    - (i) to induce a person to perform improperly a relevant function or activity, or
    - (ii) to reward a person for the improper performance of such a function or activity.
- (3) Case 2 is where—
  - (a) P offers, promises or gives a financial or other advantage to another person, and
  - (b) P knows or believes that the acceptance of the advantage would itself constitute the improper performance of a relevant function or activity.
- (4) In case 1 it does not matter whether the person to whom the advantage is offered, promised or given is the same person as the person who is to perform, or has performed, the function or activity concerned.
- (5) In cases 1 and 2 it does not matter whether the advantage is offered, promised or given by P directly or through a third party.

#### **2 Offences relating to being bribed**

- (1) A person (“R”) is guilty of an offence if any of the following cases applies.
- (2) Case 3 is where R requests, agrees to receive or accepts a financial or other advantage intending that, in consequence, a relevant function or activity should be performed improperly (whether by R or another person).
- (3) Case 4 is where—
  - (a) R requests, agrees to receive or accepts a financial or other advantage, and
  - (b) the request, agreement or acceptance itself constitutes the improper performance by R of a relevant function or activity.
- (4) Case 5 is where R requests, agrees to receive or accepts a financial or other advantage as a reward for the improper performance (whether by R or another person) of a relevant function or activity.
- (5) Case 6 is where, in anticipation of or in consequence of R requesting, agreeing to receive or accepting a financial or other advantage, a relevant function or activity is performed improperly—
  - (a) by R, or
  - (b) by another person at R's request or with R's assent or acquiescence.
- (6) In cases 3 to 6 it does not matter—
  - (a) whether R requests, agrees to receive or accepts (or is to request, agree to receive or accept) the advantage directly or through a third party,
  - (b) whether the advantage is (or is to be) for the benefit of R or another person.

---

<sup>3</sup> in force from: **July 1, 2011 to present**

(7) In cases 4 to 6 it does not matter whether R knows or believes that the performance of the function or activity is improper.

(8) In case 6, where a person other than R is performing the function or activity, it also does not matter whether that person knows or believes that the performance of the function or activity is improper.

...

## **7 Failure of commercial organisations to prevent bribery**

(1) A relevant commercial organisation (“C”) is guilty of an offence under this section if a person (“A”) associated with C bribes another person intending—

(a) to obtain or retain business for C, or

(b) to obtain or retain an advantage in the conduct of business for C.

(2) But it is a defence for C to prove that C had in place adequate procedures designed to prevent persons associated with C from undertaking such conduct.

(3) For the purposes of this section, A bribes another person if, and only if, A—

(a) is, or would be, guilty of an offence under [section 1](#) or [6](#) (whether or not A has been prosecuted for such an offence), or

(b) would be guilty of such an offence if [section 12\(2\)\(c\)](#) and [\(4\)](#) were omitted.

(4) See [section 8](#) for the meaning of a person associated with C and see [section 9](#) for a duty on the Secretary of State to publish guidance.

(5) In this section—

“partnership” means—

(a) a partnership within the [Partnership Act 1890](#), or

(b) a limited partnership registered under the [Limited Partnerships Act 1907](#),

or a firm or entity of a similar character formed under the law of a country or territory outside the United Kingdom,

“relevant commercial organisation” means—

(a) a body which is incorporated under the law of any part of the United Kingdom and which carries on a business (whether there or elsewhere),

(b) any other body corporate (wherever incorporated) which carries on a business, or part of a business, in any part of the United Kingdom,

(c) a partnership which is formed under the law of any part of the United Kingdom and which carries on a business (whether there or elsewhere), or

(d) any other partnership (wherever formed) which carries on a business, or part of a business, in any part of the United Kingdom,

and, for the purposes of this section, a trade or profession is a business.

...

## **10 Consent to prosecution**

(1) No proceedings for an offence under this Act may be instituted in England and Wales except by or with the consent of—

(a) the Director of Public Prosecutions,

(b) the Director of the Serious Fraud Office, or

(c) the Director of Revenue and Customs Prosecutions.

...

(4) The Director of Public Prosecutions, the Director of the Serious Fraud Office and the Director of Revenue and Customs Prosecutions must exercise personally any function under subsection (1), (2) or (3) of giving consent.

(5) The only exception is if—

(a) the Director concerned is unavailable, and

(b) there is another person who is designated in writing by the Director acting personally as the person who is authorised to exercise any such function when the Director is unavailable.

(6) In that case, the other person may exercise the function but must do so personally.

...

### **13 Defence for certain bribery offences etc.**

(1) It is a defence for a person charged with a relevant bribery offence to prove that the person's conduct was necessary for—

(a) the proper exercise of any function of an intelligence service, or

(b) the proper exercise of any function of the armed forces when engaged on active service.

(2) The head of each intelligence service must ensure that the service has in place arrangements designed to ensure that any conduct of a member of the service which would otherwise be a relevant bribery offence is necessary for a purpose falling within subsection (1)(a).

(3) The Defence Council must ensure that the armed forces have in place arrangements designed to ensure that any conduct of—

(a) a member of the armed forces who is engaged on active service, or

(b) a civilian subject to service discipline when working in support of any person falling within paragraph (a), which would otherwise be a relevant bribery offence is necessary for a purpose falling within subsection (1)(b).

(4) The arrangements which are in place by virtue of subsection (2) or (3) must be arrangements which the Secretary of State considers to be satisfactory.

(5) For the purposes of this section, the circumstances in which a person's conduct is necessary for a purpose falling within subsection (1)(a) or (b) are to be treated as including any circumstances in which the person's conduct—

(a) would otherwise be an offence under [section 2](#), and

(b) involves conduct by another person which, but for subsection (1)(a) or (b), would be an offence under [section 1](#).

(6) In this section—

“active service” means service in—

(a) an action or operation against an enemy,

(b) an operation outside the British Islands for the protection of life or property, or

(c) the military occupation of a foreign country or territory,

“armed forces” means Her Majesty's forces (within the meaning of the [Armed Forces Act 2006](#)),

“civilian subject to service discipline” and “enemy” have the same meaning as in the Act of 2006,

“GCHQ” has the meaning given by [section 3\(3\)](#) of the [Intelligence Services Act 1994](#),

“head” means—

- (a) in relation to the Security Service, the Director General of the Security Service,
- (b) in relation to the Secret Intelligence Service, the Chief of the Secret Intelligence Service, and
- (c) in relation to GCHQ, the Director of GCHQ,

“intelligence service” means the Security Service, the Secret Intelligence Service or GCHQ,

“relevant bribery offence” means—

- (a) an offence under [section 1](#) which would not also be an offence under [section 6](#),
- (b) an offence under [section 2](#),
- (c) an offence committed by aiding, abetting, counselling or procuring the commission of an offence falling within paragraph (a) or (b),
- (d) an offence of attempting or conspiring to commit, or of inciting the commission of, an offence falling within paragraph (a) or (b), or
- (e) an offence under [Part 2](#) of the [Serious Crime Act 2007](#) (encouraging or assisting crime) in relation to an offence falling within paragraph (a) or (b).