This document provides detailed analysis of the Data Protection and Digital Information Bill that informs our summary briefing.

a) Clauses relevant to healthcare data

(numbers and wording that identify the Clauses in red)

Explanations:

1 Information relating to an identifiable living individual

Section 3A, a definition, is inserted in 2018 Act after section 3 with the following consequences:
Despite the fact that de-identified data, especially that linked to a number of different databases, can be-re identified, (so much so that Professor Ben Goldacre opted out of the recent attempt to seize GP data) our data will only receive any of the (reduced) protections of this Bill if the means of re-identifying our data can be done, at the time of processing, in a 'reasonable' time, with a 'reasonable' amount of effort, for a 'reasonable' cost, and those involved have the necessary technology and other resources to hand. If not, then it will be treated as 'anonymous data'. What is 'unreasonable' will determine a lot about our data protection.

2 Meaning of research and statistical purposes

In Article 4 of the UK GDPR (definitions), after paragraph 2 (inserted by section 1 of this Act) insert
As far as processing of personal data for the purposes of scientific research is concerned, this includes any research that can reasonably be described as scientific, whether publicly or privately funded that is technological development or demonstration, fundamental or applied as long as it is in the public interest. Historical research includes processing for the purposes of genealogical research.

3 Consent to processing for the purposes of scientific research

Insert into Article 4 UK GDPR- Clarifies how data controllers in scientific research can 'assume' consent in some cases for further processing. Such an 'assumed' consent will meet the necessary criteria defined in point (11)[1] of paragraph 1 of UK GDPR if— it is for an area of scientific research and at the time of consent it was not possible to identify fully how the data was to be processed, and the consent 'assumed' would be appropriate for the identified area of research, and if it was because of the inability to identify the future processing needs that the data subject was only given the opportunity to consent to processing for part of the research…..

5 Lawfulness of processing

[1] Para 1 (11) 'consent' of the data subject means any freely given, specific, informed and unambiguous indication of the data subject's wishes by which he or she, by a statement or by a clear affirmative action, signifies agreement to the processing of personal data relating to him or her.

Individuals' consent is not always required to enable processing of their personal data. Currently data processing can be carried out on the basis of 'legitimate interests' provided a balancing test is performed to ensure the legitimate interest is not overridden by the individual's rights, interests and freedoms. However, the Bill proposes the possibility of scrapping the balancing test for some activities.[2]

The Bill introduces a new lawful ground for processing[3] personal data- by inserting Article 6(1) ea 'processing is necessary for the purposes of a 'recognised' legitimate interest if it meets a condition in Annex 1' -but this shall not apply to processing of personal data carried out by public authorities. The Secretary of State may by regulations amend Annex 1 by—(a) adding or varying provisions, or (b) omitting provisions added by regulations made under this paragraph.

In Annex 1 relevant to healthcare is 'recognised' legitimate interest that 'the processing is necessary for the purposes of making a disclosure of personal data to another person in response to a request from the other person, and the request states that the other person needs the personal data for the purposes of carrying out processing described in Article 6(1)(e)

6 The purpose limitation

Having changed GDPR Article 5(1)(b) so that personal data cannot be processed further by or on behalf of a controller in a manner that is incompatible with the purposes for which the controller collected the data, paragraph 4[4] of Article 6 (lawfulness of processing) is removed and after Article 8 is inserted *Article 8A* Purpose **limitation: further processing**. This is to determine for Article 5(1)(b) whether further (new purpose) processing by or on behalf of a controller is in a manner compatible with the original purpose. There is a list of things to take into account to help with the determination and then it is stated that new processing is to be treated as compatible where i) the data subject consents; ii) the processing is carried out in accordance with Article 84B[5]; iii) the process is carried out for the purposes of ensuring that processing

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[2] https://www.pinsentmasons.com/out-law/analysis/uk-data-protection-digital-information-bill

[3] Article 6(1)e Processing is necessary for the performance of a task of the controller carried out in the public interest or a task carried out in the exercise of official authority vested in the controller, and 'ea' processing is necessary for the purposes of a recognised legitimate interest

[4] where the processing for a purpose other than that for which the personal data have been collected is not
based on the data subject's consent or on a Union or Member State law which constitutes a necessary and proportionate measure in a democratic society to safeguard the objectives referred to in Article 23(1), the controller shall, in order to ascertain whether processing for another purpose is compatible with the purpose for which the personal data are initially collected, take into account…… (list of checks)

[5] *Article 84A 15* **Research, archives and statistics** This Chapter makes provision about the processing of personal data— (a) for the purposes of scientific research or historical research, b) for the purposes of archiving in the public interest, or (c) for statistical purposes. Those purposes are referred to in this Chapter as "RAS purposes". *Article 84B* **Additional requirements when processing for RAS purposes** 1. Processing of personal data for RAS purposes must be carried out subject to appropriate safeguards for the rights and freedoms of the data subject 2. Processing of personal data for RAS purposes must be carried out in a manner which does not permit the identification of a living individual. 3. Paragraph 2 does not apply— (a) to the collection of personal data (whether from the data subject or otherwise), or (b) to cases in which the RAS purposes cannot be fulfilled by further processing in the manner described in that

of personal data complies with Article 5(1)[6] or demonstrating that it does so; the processing meets a condition in Annex 2[7]; the processing is necessary to safeguard an objective listed in Article 23(1)(c) to (j) (excludes National security or defence) and is authorised by an enactment or rule of law.

The Secretary of State may by regulations amend Annex 2 by-(a) adding or varying provisions, or (b) omitting provisions added by regulations made under this paragraph.

7 Vexatious or excessive requests by data subjects

Refusal to deal with a request is allowed under Article 12A where the controller may claim that the request is vexatious or excessive. One of the reasons may be that the controller has a lack of resources, another that there is an intention to 'cause distress', or that they are not 'made in good faith' or that there is 'an abuse of the process'.

9 Information to be provided to data subjects

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paragraph.4. For the purposes of para 2 processing permits a living individual only in cases described in section 3A(2) and (3) of the 2018 Act (information relating to an identifiable living individual-MB extension of anonymisation by virtue of unreasonableness of ability to identify).

[6] 5(1) Personal data shall be: a)processed lawfully, fairly and in a transparent manner in relation to the data subject ('lawfulness, fairness and transparency'); b)collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes; **further processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes shall, in accordance with Article 89(1), not be considered to be incompatible with the initial purposes ('purpose limitation');** c) adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ('data minimisation'); d) accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay ('accuracy'); e) kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed; personal data may be stored for longer periods insofar as the personal data will be processed solely for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes in accordance with Article 84B subject to implementation of the appropriate technical and organisational measures required by this Regulation in order to safeguard the rights and freedoms of the data subject ('storage limitation'); f) processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures ('integrity and confidentiality').

[7] *ANNEX 2* PURPOSE LIMITATION: PROCESSING TO BE TREATED AS COMPATIBLE WITH ORIGINAL PURPOSE ***Disclosure for purposes of processing described in Article 6(1)(e)*** This condition is met where—
(a) the processing is necessary for the purposes of making a disclosure of personal data to another person in response to a request from the other person, (b) the request states that the other person needs the personal data for the purposes of carrying out processing that (i) is described in Article 6(1)(e)-as in text above, (ii) has a legal basis that satisfies Article 6(3)-as amended in text above, and (iii) is necessary to safeguard an objective listed in Article 23(1)(c) to (j), and (c) **the processing is not carried out by a public authority in the performance of its tasks.** Includes Public security, Emergencies, Crime, Protecting vital interests of data subjects, Safeguarding vulnerable individuals (see Annex 1 below), Taxation, Legal Obligations.

Article 13 (3) of the UK GDPR provides that with further processing for a separate purpose the controller should provide additional information to the data subject. Clause 9 (1) creates an exemption for this for Research, Archiving and Statistical purposes where there would be disproportionate effort required to provide the extra information and where research is in line with Article 84 B.

10 Data subjects' rights to information: legal professional privilege exemption

GDPR Articles 44 and 45 are lists of information the controller must make available to data subjects and their right of access to information about 'what, why and how' of the use of their data. 45A 'Exemption from sections 44 and 45: legal professional privilege' is inserted into the DPA 2018 so that the controller is not required to give the data subject (a) information in respect of which a claim to legal professional privilege or, in Scotland, confidentiality of communications could be maintained in legal proceedings, or (b) information in respect of which a duty of confidentiality is owed by a professional legal adviser to a client of the adviser[8].

14 Senior responsible individuals

Clause 14 replaces Data Protection Officers, independent informed individuals, with 'senior responsible individuals' who are senior members of organisations where data is being processed who agree to act to monitor compliance by the controller with data protection legislation.

There is a duty to keep records for organisations employing more than 250 people or who carry out high risk processing, but the organisation may decide what is an appropriate according to their assessment of what they do, the risks it carries for the rights and freedoms of individuals, and the level of resources they have.

17 Assessment of high-risk processing and 18 Consulting the Commissioner prior to processing

'Data Impact assessments' are to become 'Assessments of high-risk processing' and will include a summary of the purposes, the need to process, the risks involved and the mitigations to be made. The suggestion that 'the controller seeks the views of data subjects or their representatives on the intended processing, without prejudice to the protection of commercial or public interests or the security of processing operations' is removed. The requirement to consult with the ICO prior to carrying out high risk processing in the absence of mitigation becomes optional.

21 Transfers of personal data to third countries and international organisations

[8] https://www.burges-salmon.com/news-and-insight/legal-updates/the-gdpr-trustees-lawyers-and-the-right-to-resist-subject-access-requests-from-beneficiaries

Schedule 5 amends Chapter 5 of the UK GDPR (general processing and transfers of personal data to third countries and international organisations). Article 44 [9] is removed and the following inserted

*"**Article 44A*** **General principles for transfers** A controller or processor may transfer personal data to a third country or an international organisation only if it is approved by regulations under Article 45A that are in force at the time of the transfer and it is made subject to appropriate safeguards (see Article 46), or it is made in reliance on a derogation for special situations (see Article 49). A transfer may not be made if it would breach a restriction under Article 49A. (SoS restriction of transfer)

Article 45 (transfers based on an adequacy decision) is removed and inserted is:

Article 45A **Transfers approved by regulations.** For the purposes of Article 44A, the Secretary of State may by regulations approve transfers of personal data to a third country, or an international organisation and in making regulations under this Article, the Secretary of State may have regard to any matter which the Secretary of State considers relevant, including the desirability of facilitating transfers of personal data to and from the United Kingdom. Regulations under this Article may, among other things make provision in relation to a third country or international organisation specified in the regulations or a description of country or organisation; approve all transfers of personal data to a third country or international organisation or only transfers specified or described in the regulations; identify a transfer of personal data by any means, including by reference to a sector or geographic area within a third country, the controller or processor, the recipient of the personal data, the personal data transferred, the means by which the transfer is made, or relevant legislation, schemes, lists or other arrangements or documents, as they have effect from time to time. Regulations under this Article are subject to the negative resolution procedure.

Article 45B **The data protection test.** For the purposes of Article 45A, the data protection test is met in relation to transfers of personal data to a third country or international organisation if the standard of the protection provided for data subjects with regard to general processing of personal data in the country or by the organisation **is not materially lower** than the standard of the protection provided for data subjects by or under this Regulation, Part 2 of the 2018 Act, and Parts 5 to 7 of that Act, so far as relevant to general processing.

In considering whether the data protection test is met in relation to transfers of personal data to a third country or international organisation, the Secretary of State must consider, among other things respect for the rule of law and for human rights in the country or by the organisation, the existence, and powers, of an authority responsible for enforcing the protection of data subjects with regard to the processing of personal data in the country or by the organisation, arrangements for judicial or non-judicial redress for data subjects in connection with such processing, rules about the transfer of personal data from the country or by the organisation to other countries or

[9] 44 Any transfer of personal data which are undergoing processing or are intended for processing after transfer to a third country or to an international organisation shall take place only if, subject to the other provisions of this Regulation, the conditions laid down in this Chapter are complied with by the controller and processor, including for onward transfers of personal data from the third country or an international organisation to another third country or to another international organisation. All provisions in this Chapter shall be applied in order to ensure that the level of protection of natural persons guaranteed by this Regulation is not undermined.

international organisations, relevant international obligations of the country or organisation, and the constitution, traditions and culture of the country or organisation.

"Article 47A **Transfers subject to appropriate safeguards: further provision** The Secretary of State may by regulations specify standard data protection clauses which the Secretary of State considers are capable of securing that the data protection test set out in Article 46[10] is met in relation to transfers of personal data generally or in relation to a type of transfer specified in the regulations, and may by regulations make provision about further safeguards that may be relied on for the purposes of Article 46(1A)(a)[11] Regulations may (among other things) make provision by adopting safeguards prepared or published by another person; make provision about ways of providing safeguards which require authorisation from the Commissioner; amend Article 46 by—adding ways of providing safeguards, or varying or omitting ways of providing safeguards which were added by regulations under this Article

Derogations for specific circumstances Article 49 (derogations for specific situations) is amended as follows. After paragraph 4 insert— "4A. The Secretary of State may by regulations specify for the purposes of point (d) of paragraph 1[12]—circumstances in which a transfer of personal data to a third country or international organisation is to be taken to be necessary for important reasons of public interest, and circumstances in which a transfer of personal data to a third country or international organisation which is not required by an enactment is not to be taken to be necessary for important reasons of public interest." Regulations under this Article are subject to the 'made affirmative'[13] resolution procedure where the Secretary of State has made an urgency statement in respect of them; otherwise, are subject to the affirmative resolution procedure. For the purposes of this article an urgency statement is a reasoned statement that the Secretary of State considers it desirable for the regulations to come into force without delay."

22 Safeguards for processing for research etc purposes #

The UK GDPR is amended and After Chapter 8 insert- *CHAPTER 8A* ***Safeguards for processing for research, archiving or statistical purposes***

Article 84A 15 **Research, archives and statistics** This Chapter makes provision about the processing of personal data for the purposes of scientific research or historical (including genealogical) research, for the purposes of archiving in the public interest, or for statistical purposes. Those purposes are referred to in this Chapter as "RAS purposes".

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[10] Article 46 GDPR Transfers subject to appropriate safeguards

[11] 1A. A transfer of personal data to a third country or an international organisation by a controller or processor is made subject to appropriate safeguards only—(a) in a case in which-(i) safeguards are provided in connection with the transfer as described in paragraph 2 or 3 or regulations made under Article 47A (4), and 5
(ii) the controller or processor, acting reasonably and proportionately, considers that the data protection test is met in relation to the transfer or that type of transfer (see paragraph 6), or (b) in a case in which—(i) safeguards are provided in accordance with paragraph 2(a) by an instrument that is intended to be relied on in connection with the transfer or that type of transfer, and (ii) each public body that is a party to the instrument, acting reasonably and proportionately, considers that the data protection test is met in relation to the transfers, or types of transfer, intended to be made in reliance on the instrument (see paragraph 6)."

[12] Article 49 para 1 (d) the transfer is necessary for important reasons of public interest;

[13] 'made affirmative' is easiest: signed into law and then 40 days for HoP to consider

Article 84B **Additional requirements when processing for RAS purposes.**1. Processing of personal data for RAS purposes must be carried out subject to appropriate safeguards for the rights and freedoms of the data subject. 2.Processing of personal data for RAS purposes must be carried out in a manner which does not permit the identification of a living individual 3. but this does not apply— to the collection of personal data (whether from the data subject or otherwise), or to cases in which the RAS purposes cannot be fulfilled by further processing in the manner described in point 2. 4. For the purposes of point 2 processing permits the identification of a living individual only in cases described in section 3A (2) and (3) of the 2018 Act (information relating to an identifiable living individual) as amended in Clause 1 of this Bill. (The numbering of this article is important for Article 84D)

Article 84C **Appropriate safeguards 1.** This Article makes provision about when the requirement under Article 84B for processing to be carried out subject to appropriate safeguards is satisfied. 2. The requirement is not satisfied if the processing is likely **to cause substantial damage or substantial distress to a data subject. 3.** The requirement is not satisfied if the processing is carried out for the purposes of measures or decisions with respect to a particular data subject, except where the purposes for which the processing is carried out include the purposes of approved medical research. 4. The requirement is only satisfied if the safeguards include technical and organisational measures for the purpose of ensuring respect for the principle of data minimisation (see Article 5(1)(c)), such as, for example, pseudonymisation. 5. In this Article— "approved medical research" means medical research carried out by a person who has approval to carry out that research from— (a) a research ethics committee recognised or established by the Health Research Authority under Chapter 2 of Part 3 of the Care Act 2014, or (b) a body appointed by any of the following for the purpose of assessing the ethics of research involving individuals—(i) the Secretary of State, the Scottish Ministers, the Welsh Ministers or a Northern Ireland department; (ii) a relevant NHS body; (iii) United Kingdom Research and Innovation or a body that is a Research Council for the purposes of the Science and Technology Act 1965; (iv) an institution that is a research institution for the purposes of Chapter 4A of Part 7 of the Income Tax (Earnings and Pensions) Act 2003 (see section 457 of that Act);

("relevant NHS body" means— a) an NHS trust or NHS foundation trust in England, (b) an NHS trust or Local Health Board in Wales, (c) a Health Board or Special Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978, (d) the Common Services Agency for the Scottish Health Service, or (e) any of the health and social care bodies in Northern Ireland falling within paragraphs (b) to (e) of section 1(5) of the Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1 (N.I.)).

Article 84D **Appropriate safeguards: further provision** The Secretary of State may by regulations make further provision about when the requirement for appropriate safeguards under Article 84B (1) is satisfied. The power under this article includes power to amend Article 84C by adding, varying or omitting except that it does not include power to vary or omit paragraph 1 of that Article, or to omit any of paragraphs 2 to 4 of that Article.

(3) In the heading of Chapter 9 after "relating to" insert "other"[14]

[14] Reads: Provisions relating to 'other' specific processing situations

Remove Article 89 (safeguards and derogations relating to processing for archiving purposes in the public interest, **scientific or historical research** purposes or statistical purposes)[15].

27 Duties of the Commissioner in carrying out functions

The 2018 Act is amended as follows. Omit section 2(2) (duty of Commissioner when carrying out functions). After section 120 insert— **120A Principal objective** It is the principal objective of the Commissioner, in carrying out functions under the data protection legislation— (a) to secure an appropriate level of protection for personal data, having regard to the interests of data subjects, controllers and others and matters of general public interest, and (b) to promote public trust and confidence in the processing of personal data.

120B Duties in relation to functions under the data protection legislation In carrying out functions under the data protection legislation, the Commissioner must have regard to such of the following as appear to the Commissioner to be relevant in the circumstances— (a) the desirability of promoting innovation; b) the desirability of promoting competition; (c) the importance of the prevention, investigation, detection and prosecution of criminal offences; 1(d) the need to safeguard public security and national security

120C Strategy The Commissioner must prepare a strategy for carrying out the Commissioner's functions under the data protection legislation in accordance with the Commissioner's duties under-(a) sections 120A and 120B, (b) section 108 of the Deregulation Act 2015 (exercise of regulatory functions: economic growth), and (c) section 21 of the Legislative and Regulatory Reform Act 2006 (exercise of regulatory functions: principles). The Commissioner must—(a) review the strategy from time to time, and (b) revise the strategy as appropriate.

120D Duty to consult other regulators (1) The Commissioner must, at such times as the Commissioner considers appropriate, consult the persons mentioned in subsection (2) (see below) about how the way the Commissioner exercises functions under the data protection legislation may affect economic growth, innovation and competition. The persons are (a) such persons exercising regulatory functions as the Commissioner considers appropriate; (b) such other persons as the Commissioner considers appropriate. In this section "regulatory function" has the meaning given by section 111 of the Deregulation Act 2015."

(4) In section 139 (reporting to Parliament), after subsection (1) insert— "(1A) In connection with the Commissioner's functions under the data protection legislation, the report must contain (among other things)— (a) a review of what the Commissioner has done during the reporting period to comply with the duties under—(i) sections 120A and 120B, (ii) section 108 of the Deregulation Act 2015, and (iii) section 21 of the Legislative and Regulatory Reform Act 2006, including a review of the operation of the strategy prepared and published under section 120C; (b) a review of what the Commissioner has done during the reporting period to comply with the duty under section 120D.

[15] https://gdpr-info.eu/art-89-gdpr/

(5) The Commissioner must prepare and publish a strategy in accordance with section 120C of the 2018 Act before the end of the period of 18 months beginning with the day on which this section comes into force.

28 Strategic priorities

The 2018 Act is amended as follows.
After section 120D (inserted by section 27 of this Act) insert— *"Strategic priorities*
120E Designation of statement of strategic priorities (1) The Secretary of State may designate a statement as the statement of strategic priorities for the purposes of this Part if the requirements set out in section 120H are satisfied. (2) The statement of strategic priorities is a statement prepared by the Secretary of State that sets out the strategic priorities of Her Majesty's government relating to data protection. (3) The Secretary of State must publish the statement of strategic priorities (including any amended statement following a review under section 120G) in whatever manner the Secretary of State considers appropriate. (4) In this Part, "the statement of strategic priorities" means the statement for the time being designated under subsection (1).

120F Duties of the Commissioner in relation to strategic priorities (1) The Commissioner must have regard to the statement of strategic priorities when carrying out functions under the data protection legislation. (2) But the duty in subsection (1) does not apply when the Commissioner is carrying out functions in relation to a particular person, case or investigation. (3) Where the Secretary of State designates a statement as the statement of strategic priorities (including any amended statement following a review under section 120G), the Commissioner must— (a) explain in writing how the Commissioner will have regard to the statement when carrying out functions under the data protection legislation, and (b) publish a copy of that explanation. (4) The duty in subsection (3) must be complied with—(a) within the period of 40 days beginning with the day of the designation, or (b) within whatever longer period the Secretary of State may allow. (5) In calculating the period of 40 days mentioned in subsection (4)(a), no *35* account is to be taken of— (a) Saturdays or Sundays, (b) Christmas Day or Good Friday, or (c) a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom. (6) For a further duty of the Commissioner in relation to the statement of strategic priorities, see section 139(1A) (c).

120G Review of designated statement (1) The Secretary of State must review the statement of strategic priorities if a period of 3 years has elapsed since the relevant time…….

120H Parliamentary procedure (1) Before the Secretary of State designates a statement as the statement of strategic priorities, the Secretary of State must lay the statement before Parliament. (2) The Secretary of State must then wait until the end of the 40-day period and may not designate the statement if, within that period, either House of Parliament resolves not to approve it……(3) In section 139 (reporting to Parliament), in subsection (1A) (inserted by section 27 of this Act), at the end insert— "(c) a review of how the Commissioner has had regard to the statement of strategic priorities during the reporting period."

29 Codes of practice as to the processing of personal data

(1) The 2018 Act is amended in accordance with subsections (2) to (6). After section 124 insert—**"124A Other codes of practice** (1) The Commissioner must prepare

appropriate codes of practice giving guidance as to good practice in the processing of personal data if required to do so by regulations made by the Secretary of State……(4) Before preparing a code or amendments under this section, the Commissioner must consult the Secretary of State and such of the following as the Commissioner considers appropriate-(a) trade associations; (b) data subjects; (c) persons who appear to the Commissioner to represent the interests of data subjects.

30 Codes of practice: panels and impact assessments #; 31 Codes of practice: approval by the Secretary of State

The 2018 Act is amended as follows. After section 124A (inserted by section 29 of this Act) insert—**"124B Panels to consider codes of practice….** The Commissioner must establish a panel of individuals to consider the code. (3) The panel must consist of— (a) individuals the Commissioner considers have expertise in the subject matter of the code, and (b) individuals the Commissioner considers—(i) are likely to be affected by the code, or (ii) represent persons likely to be affected by the code…..(7) the Commissioner must make arrangements-(a) for the members of the panel to consider the code with one another (whether in person or otherwise), and (b) for the panel to prepare and submit to the Commissioner a report on the code within such reasonable period as is determined by the Commissioner…… (8) the Commissioner must as soon as reasonably practicable—(a) make any alterations to the code that the Commissioner considers appropriate in the light of the report, and publish…..(iii) including where a recommendation in the report to alter the code has not been accepted by the Commissioner, and an explanation of why it has not been accepted……(11) The Secretary of State may by regulations provide that this section does not apply, or applies with modifications, in the case of a code or amendments of a code that-(a) is prepared under section 124A, and (b) is specified in the regulations.

In the 2018 Act after section 124C (inserted by section 30 of this Act) insert—**"124D Approval by Secretary of State of codes of practice……** (2) Within the period of 40 days beginning with the day on which the code is submitted to the Secretary of State, the Secretary of State must decide whether to approve the code…….(3) If the Secretary of State approves the code, the Secretary of State must lay the code before Parliament……. (5) If the Secretary of State does not approve the code, the Commissioner must— (a) revise the code in the light of the statement given by the Secretary of State, and (b) submit the revised code to the Secretary of State.

32. Vexatious or excessive requests made to the Information Commissioner; 40 Power of the Commissioner to refuse to act on certain complaints

The 2018 Act is amended in accordance with subsections (2) and (3). In section 135 (manifestly unfounded or excessive requests made to the Commissioner)— (a) in the heading, for "Manifestly unfounded" substitute "Vexatious" (b) in subsection (1) -(i) for "manifestly unfounded" substitute "vexatious", and (ii) after "excessive" insert "(see section 204A[16])",

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[16] After section 204 insert—
"204A Vexatious or excessive (1) For the purposes of this Act, whether a request is vexatious or excessive must be determined having regard to the circumstances of the request, including (so far as relevant)—(a) the nature of the request,(b) the relationship between the person making the request (the "sender") and the person receiving it (the "recipient"), (c) the resources available to the recipient, (d) the extent to which the request repeats a previous request made by

The 2018 Act is amended as follows. After section 165 insert—

"165A Power of Commissioner to refuse to act on certain complaints (1) The Commissioner may refuse to act on a complaint under section 165 if condition A, B or C is met. (2) **Condition A** is that—(a) the complaint concerns an infringement of the UK GDPR or Part 3 of this Act, and (b) the complaint has not been made to the controller under section 164A. (3) **Condition B** is that—(a) the complaint has been made to the controller under section 164A, (b) the controller has not finished handling the complaint in accordance with subsection (4) of that section, and (c) the period of 45 days beginning with the day the complaint was made to the controller under that section has not expired. (4) **Condition C** is that the complaint is vexatious or excessive (see section *40* 204A). (5) In any proceedings where there is an issue as to whether a complaint is vexatious or excessive, it is for the Commissioner to show that it is……

165B Guidance about responding to complaints and refusing to act (1) The Commissioner must produce and publish guidance about-(a) how the Commissioner proposes to respond to complaints made under section 165, and (b) how the Commissioner proposes to exercise the discretion conferred by section 165A to refuse to act on a complaint. (2) The Commissioner— (a) may alter or replace guidance produced under this section, and (b) must publish any altered or replacement guidance. (3) Before producing guidance under this section (including any altered or replacement guidance), the Commissioner must consult-(a) the Secretary of State, and (b) such other persons as the Commissioner considers appropriate. (4) The Commissioner must arrange for any guidance under this section (including any altered or replacement guidance) to be laid before Parliament."

"166A Appeals against refusal of Commissioner to act on complaint (1) Where the Commissioner refuses to act on a complaint in reliance on section 165A, the person who made the complaint may appeal to the Tribunal. (2) The Tribunal may review any determination of fact on which the refusal to act was based. (3) If the Tribunal considers— (a) that the refusal to act is not in accordance with the law, or (b) that the Commissioner ought not to have exercised the discretion to refuse to act, the Tribunal must allow the appeal. (4) Otherwise, the Tribunal must dismiss the appeal

SCHEDULE 13 The Information Commission Section 100 #

In the 2018 Act, after Schedule 12 insert— "SCHEDULE 12A THE INFORMATION COMMISSION

The Commission is not to be regarded—(a) as a servant or agent of the Crown, or (b) as enjoying any status, immunity or privilege of the Crown……

The number of members of the Commission is to be determined by the Secretary of State. (2) That number must not be—(a) less than 3, or *5* (b) more than 14. (3) The Secretary of State may by regulations substitute a different number for the number for the time being specified in sub- paragraph (2)(b) …….

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the sender to the recipient, (e) how long ago any previous request was made, and (f) whether the request overlaps with other requests made by the sender to the recipient.
(2) For the purposes of this Act, examples of requests that may be vexatious include requests that—
(a) are intended to cause distress, (b) are not made in good faith, or (c) are an abuse of process."

Membership…. (2) The non-executive members are—(a) a chair appointed by Her Majesty by Letters Patent on the recommendation of the Secretary of State, and (b) such other members as the Secretary of State may appoint. (3) The executive members are- (a) a chief executive appointed by the non-executive members, and (b) such other members, if any, as the non-executive members may appoint. (4) The non-executive members must consult the Secretary of State before appointing the chief executive. (5) The non-executive members must consult the chief executive about whether there should be any executive members within sub-paragraph (3) (b) and, if so, how many there should be. (4) The Secretary of State must exercise the powers conferred on the Secretary of State by paragraphs 2 and 3 to secure that **the number of non-executive members of the Commission is, so far as practicable, always greater than the number of executive members**. (5) (1) The Secretary of State may not recommend a person for appointment as the chair of the Commission unless the person has been selected on merit based on fair and open competition. (2) A person may not be appointed as a member of the Commission unless the person has been selected on merit based on fair and open competition.

Before— (a) recommending a person for appointment as the chair of the Commission, or (b) appointing a person **as a non-executive member** of the Commission, the Secretary of State must be satisfied that the person does not have a conflict of interest.

In this Schedule, "conflict of interest", in relation to a person, means a financial or other interest which is likely to affect prejudicially the discharge by the person of the person's functions as a member of the Commission.

The executive members of the Commission are to be employees of the Commission.

(2) The executive members are to be employed by the Commission on such terms and conditions, including those as to remuneration, as the non-executive members of the Commission may determine.

The Commission may establish committees.

The Commission may delegate any of its functions to—(a) a member of the Commission, (b) an employee of the Commission, or (c) a committee of the Commission.

A function is delegated under sub-paragraph (1) to the extent and on the terms that the Commission determines.

The power of a committee of the Commission to delegate a function, and to determine the extent and terms of the delegation, is subject to the Commission's power to direct what a committee established by it may and may not do.

The Commission may require a committee of the Commission to give the Commission advice about matters relating to the discharge of the Commission's functions.

The Commission may make arrangements for regulating—(a) its own procedure, and (b) the procedure of a committee of the Commission.

The non-executive members of the Commission may by majority make arrangements for regulating the procedure for the carrying out of the separate functions which are conferred on them under this Schedule.

Dealing with Declared Interests: The member with the interest may not take part in a discussion or decision at the meeting relating to the matter, unless— (a) in the case of a meeting of the Commission, the other members of the Commission who are present have resolved unanimously that the interest is to be disregarded. In the case of a meeting of the non-executive members, the other non-executive members who are present have so resolved, or (c) in the case of a meeting of a committee, the other members of the committee who are present have so resolved in the manner authorised by the Commission-and is not less than two thirds of those who are both present and entitled to vote on the resolution, and (b) is not less than its quorum.

b) Other clauses of general concern

11 Automated decision-making

A computer programme, without meaningful human involvement, can make what appear to be significant decisions about people without their consent if the Secretary of State decides that the decisions are not significant, or indeed that the process does not need any safeguards.

Clause 11 substitutes Article 22 of the UK GDPR with a new Article 22A
A decision is based solely on automated processing if there is no meaningful human involvement in the taking of the decision, and a decision is a significant decision, in relation to a data subject, if it produces a legal effect for the data subject or has a similarly significant effect for the data subject

If the decision is based entirely or partly on processing of special categories of personal data referred to in Article 9(1)[17] but to which the data subject has given explicit consent or if the decision is necessary for entering into, or performing, a contract between the data subject and a controller, or required or authorised by law, and (b) point (g) of Article 9(2)[18] applies then a significant decision may be taken based solely on automated processing.

Article 22C describes safeguards for automated decision-making by referring to the need for compliance with regulations under Article 22D concerning the provision of information about decisions for the data subject, the possibility of representations, the ability to obtain human intervention on the part of the controller and the ability to contest.

[17] 9.1 Processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation shall be prohibited.
[18] 9 (2) (g) processing is necessary for reasons of substantial public interest, based on Union or Member State law which shall be proportionate to the aim pursued, respect the essence of the right to data protection and provide for suitable and specific measures to safeguard the fundamental rights and the interests of the data subject.

Article 22D enables the secretary of state to make regulations about what constitutes a 'similarly significant effect' for the data subject, when safeguards are required and whether the level of safeguard needs to be varied.

24 National security exemption

The 2018 Act is amended: In section 26[19](2)(f) (national security and defence exemption), before sub- paragraph (i) insert— "(zi) Article 77[20] (right to lodge a complaint with the Commissioner);".

Then make changes to Section 44 (controller's general duties to provide information to data subject)— to use subsection 4[21] to restrict access to information in subsection 2[22]

In section 48 (requests by data subject for rectification or erasure of personal data)— (a) in subsection (3), **omit paragraph (d) (grounds for restricting information provided: national security),**

In section 68 (7) (communication of a personal data breach to the data subject: grounds for restricting information provided), **omit paragraph (d) (national *5* security).**

In Chapter 6 of Part 3 (law enforcement processing: supplementary), before section 79 insert—

"78A National security exemption (1) A provision mentioned in subsection (2) does not apply to personal data processed for law enforcement purposes **if exemption from the provision is required for the purposes of safeguarding national security.**

Then all the provisions are listed and relating to that list 78A (2) 3A 'Subject to subsection (5), a certificate signed by a Minister of the Crown certifying that exemption

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[19] **National security and defence exempt (**1)A provision of the applied GDPR or this Act mentioned in subsection (2) does not apply to personal data to which this Chapter applies if exemption from the provision is required for—**(a)the purpose of safeguarding national security, or (b)defence purposes.**

[20] 77 Without prejudice to any other administrative or judicial remedy, every data subject shall have the right to lodge a complaint with a supervisory authority, in the Member State of his or her habitual residence, place of work or place of the alleged infringement if the data subject considers that the processing of personal data relating to him or her infringes this Regulation.

[21] The controller may restrict, wholly or partly, the provision of information to the data subject under subsection (2) to the extent that and for so long as the restriction is, having regard to the fundamental rights and legitimate interests of the data subject, a necessary and proportionate measure to (a) avoid obstructing an official or legal inquiry, investigation or procedure; (b) avoid prejudicing the prevention, detection, investigation or prosecution of criminal offences or the execution of criminal penalties; (c) protect public security; (d) protect national security;(e) protect the rights and freedoms of others.

[22] The controller must also, in specific cases for the purpose of enabling the exercise of a data subject's rights under this Part, give the data subject the following—(a) Information about the legal basis for the processing; (b) information about the period for which the personal data will be stored or, where that is not possible, about the criteria used to determine that period; (c)where applicable, information about the categories of recipients of the personal data (including recipients in third countries or international organisations); (d)such further information as is necessary to enable the exercise of the data subject's rights under this Part.

from all or any of the provisions listed in section 78A(2) is, or at any time was, required in relation to any personal data for the purposes of safeguarding national security is conclusive evidence of that fact."

58 Power of Secretary of State to require information

(1) The Secretary of State may by written notice require—(a) an accredited conformity assessment body, or (b) a person registered in the DVS register, to provide the Secretary of State with information that the Secretary of State reasonably requires for the purposes of the exercise of the Secretary of State's functions under this Part. (2) A notice under this section must state why the information is required for the purposes of the exercise of those functions. (3) A notice under this section—(a) may specify or describe particular information or a category of information; (b) may specify the form in which the information must be provided; (c) may specify the time at which, or the period within which, the information must be provided; (d) may specify the place where the information must be provided…….(6) A disclosure of information required by a notice under this section does not breach—(a) any obligation of confidence owed by the person making the disclosure, or (b) any other restriction on the disclosure of information (however imposed). … (8) **A notice under this section does not require a person to provide the Secretary of State with information in respect of a communication which is made— (a) between a professional legal adviser and the adviser's client, and (b) in connection with the giving of legal advice to the client with respect to obligations, liabilities or rights under this Part.**

43 Protection of prohibitions and restrictions on processing personal data

Stated to provide the power to reflect changes to the Data Protection Convention - signed by the UK 2018).

In the 2018 Act, after section 183[23] insert— *"Prohibitions and restrictions on processing personal data*

183A Protection of prohibitions and restrictions on processing personal data (1) An enactment imposing a duty, or conferring a power, to process personal data (however expressed) does not override a prohibition or restriction on processing personal data imposed by the data protection legislation. (2) **Subsection (1) does not apply where express provision to the contrary is made referring to this section or to the data protection legislation (or a provision of that legislation).**
(3) Subsection (1) does not prevent a duty or power to process personal data from being taken into account for the purpose of determining whether it is possible to rely on an exception to a prohibition or restriction in the data protection legislation that is available where there is such a duty or power.
(4) Subsection (1) does not apply— a) to an enactment so far as passed or made before the day on which section 43 of the Data Protection and Digital Information

[23] 183 Power to reflect changes to the Data Protection Convention (1) The Secretary of State may by regulations make such provision as the Secretary of State considers necessary or appropriate in connection with an amendment of, or an instrument replacing, the Data Protection Convention which has effect, or is expected to have effect, in the United Kingdom.

Act 2022 comes into force, or (b) to **an enactment forming part of the data protection legislation**."