

**Ordinance 47 of 2020**

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An Ordinance to make provision for the protection of personal data.

R. Thomson  
**ADMINISTRATOR**

*18 December 2020*

**BE** it enacted by the Administrator of the Sovereign Base Areas of Akrotiri and Dhekelia as follows:—

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## PART 1

### Introductory

#### Short title

1. This Ordinance may be cited as the Data Protection Ordinance 2020.

#### Commencement

2. This Ordinance comes into force on 1 January 2021 at 1.00 a.m.

#### Interpretation – general

3. In this Ordinance—

“the 2018 Act” means the Data Protection Act 2018<sup>(a)</sup> of the United Kingdom;

“Commissioner” means an Information Commissioner of the Areas for Crown data or an Information Commissioner of the Areas for non-Crown data;

“controller” has the meaning given in Article 4(7) of the GDPR;

“the Crown” means Her Majesty in right of Her Administration of the Areas;

“identifiable living individual” means a living individual who can be identified, directly or indirectly, by reference to—

(a) an identifier such as a name, an identification number, location data or an online identifier, or

(b) one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual;

“Information Commissioner of the Areas for Crown data” means the holder of the office established by section 8(1);

“Information Commissioner of the Areas for non-Crown data” means the person exercising the functions referred to in section 8(4) and (5);

“Information Tribunal” means the tribunal established under section 17;

“personal data” means any information relating to an identified or identifiable living individual;

“processing” in relation to data, means an operation or set of operations which is performed on data, or on sets of data, such as—

(a) collection, recording, organisation, structuring or storage,

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(a) c.12.

- (b) adaptation or alteration,
- (c) retrieval, consultation or use,
- (d) disclosure by transmission, dissemination or otherwise making available,
- (e) alignment or combination, or
- (f) restriction, erasure or destruction;

“processor” has the meaning given in Article 4(8) of the GDPR;

“the Protocol” means the Protocol relating to the Sovereign Base Areas of the United Kingdom of Great Britain and Northern Ireland in Cyprus to the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community<sup>(a)</sup>;

“Schedule 2 provisions” has the meaning given in section 6(2);

“Schedule 3 provisions” has the meaning given in section 7(2).

### **Interpretation – GDPR**

#### **4. In this Ordinance—**

- (a) “GDPR” means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)<sup>(b)</sup>, and
- (b) references to the GDPR are to the GDPR as it has effect as part of the law of the Areas by virtue of—
  - (i) the European Union (Withdrawal and Implementation of Protocol) Ordinance 2020<sup>(c)</sup>, and
  - (ii) Part 2 of this Ordinance.

## **PART 2**

### **Application of General Data Protection Regulation**

#### **Provisions of the General Data Protection Regulation to have effect as part of the law of the Areas**

**5.—**(1) To the extent that the GDPR and delegated acts (within the meaning of the GDPR) made under it are not protocol measures for the purposes of the European Union (Withdrawal and Implementation of Protocol) Ordinance 2020, section 4 of that Ordinance applies to the GDPR and those delegated acts as if they were such measures, subject to subsection (2).

(2) The GDPR applies under subsection (1) subject to the modifications set out in Schedule 1.

(3) To the extent that it has effect as part of the law of the Areas under subsection (1), the GDPR is to be treated as if it was subordinate legislation made under this Ordinance.

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(a) OJ No. L29,31.10.2020, p.7  
 (b) OJ No. L119, 4.5.2016, p.89  
 (c) Ordinance 45/2020

## PART 3

### Application to data processing by the Crown

#### **Application to data processing by the Crown: provisions of the Data Protection Act 2018 of the United Kingdom to have effect as part of the law of the Areas**

**6.**—(1) This section applies to the processing of personal data in respect of which the Crown in right of the Areas is a data controller.

(2) All rights, powers, liabilities, obligations and restrictions created or arising in the United Kingdom by or under the provisions of the 2018 Act listed in Part 1 of Schedule 2 (“the Schedule 2 provisions”) and all remedies and procedures provided for in the United Kingdom by or under the Schedule 2 provisions are, in relation to the processing, and subject to the provisions of this section, to be applied and have effect as part of the law of the Areas.

(3) Notwithstanding section 54 (Imperial laws) of the Interpretation Ordinance 2012 (a), the Schedule 2 provisions have effect under subsection (2) subject to the modifications set out in—

- (a) subsections (4) to (10),
- (b) to the extent that Article 1(3) of the Protocol applies, Part 1 of Schedule 2, and
- (c) to the extent that Article 1(3) of the Protocol does not apply, Parts 1 and 2 of Schedule 2, with the modifications set out in the latter Part prevailing over those in Part 1.

(4) Notwithstanding section 9(2) (references to an Imperial law, a law of the Republic or a legislative instrument issued by an institution of the European Union) of the Interpretation Ordinance 2012—

- (a) the Schedule 2 provisions have effect in the Areas, subject to the modifications referred to in subsection (3), as they have effect in the United Kingdom immediately before this Ordinance comes into force, and
- (b) statutory instruments made under the Schedule 2 provisions, whether before or after this Ordinance came into force, have effect as amended from time to time.

(5) Subject to subsection (7), any function conferred by or under the Schedule 2 provisions in the United Kingdom on a public authority is conferred in the Areas on the Chief Officer or a person authorised by the Chief Officer.

(6) Where a Schedule 2 provision contains a reference to any Act of Parliament of the United Kingdom or a statutory instrument made under such an Act, then—

- (a) if there is an enactment in the Areas which has similar or substantially similar effect, the reference to the Act of Parliament of the United Kingdom or a statutory instrument must be construed as the reference to the corresponding enactment in the Areas, or
- (b) if there is no enactment in the Areas which has similar or substantially similar effect, the provision is to be treated as if not a Schedule 2 provision.

(7) Any reference in a Schedule 2 provision—

- (a) to the United Kingdom or a part of the United Kingdom, must be construed as a reference to the Areas;
- (b) to the Tribunal, must be construed as a reference to the Information Tribunal;
- (c) to a court or a tribunal, must be construed as a reference to the Information Tribunal;
- (d) to the Information Commissioner, must be construed as a reference to the Information Commissioner of the Areas for Crown data;
- (e) to a Minister of the Crown or Secretary of State, must be construed as a reference to the Administrator;

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(a) Ordinance 8/2012, as amended by Ordinance 26/2013 22/2014 and 9/2016

- (f) to the law of the United Kingdom or a part of the United Kingdom, must be construed as a reference to the law of the Areas;
  - (g) to regulations being subject to the affirmative or negative resolution procedure, must be construed as a requirement for them to be made as a public instrument;
  - (h) to national security, must be construed as a reference to security in the United Kingdom and in the Areas.
- (8) In this section “public authority” has the meaning given in section 7 of the 2018 Act.
- (9) The Administrator may, by order made as a public instrument, amend Schedule 2.
- (10) For the purposes of the GDPR or the Schedule 2 provisions, the Crown in right of the Areas is not the controller or processor of personal data by reason only of such data being processed by an officer of the Republic for the purpose of carrying out a delegated function within the meaning of the Delegation of Functions to the Republic Ordinance 2007 (a).

## PART 4

### Application to data processing by persons other than the Crown

#### **Application to data processing by persons other than the Crown: provisions of the Law of the Republic to have effect as part of the law of the Areas**

7.—(1) This section applies to the processing of personal data not falling under the provisions of section 6.

(2) All rights, powers, liabilities, obligations and restrictions created or arising in the Republic by or under the provisions set out in Schedule 3 (“Schedule 3 provisions”), as amended or substituted from time to time, and all remedies and procedures provided for in the Republic by or under the Schedule 3 provisions are, subject to the modifications set out in this section and Schedule 3, to be applied and have effect as part of the law of the Areas.

(3) The Schedule 3 provisions have effect under subsection (2) subject to the modifications set out in—

- (a) subsections (4) to (6), and
- (b) Schedule 3.

(4) Notwithstanding sections 9(2) of the Interpretation Ordinance 2012, the Schedule 3 provisions and any public instrument made under these have effect, under subsection (2), as amended from time to time.

(5) Where a Schedule 3 provision contains a reference to any other enactment in the Republic, then—

- (a) if there is an enactment in the Areas which has similar or substantially similar effect, the reference to the enactment of the Republic must be construed as the reference to the corresponding enactment in the Areas, or
- (b) if there is no enactment in the Areas which has similar or substantially similar effect, the provision is to be treated as if not a Schedule 3 provision.

(6) Any reference in a Schedule 3 provision—

- (a) to the Republic, must be construed as a reference to the Areas;
- (b) to the Administrative Court of the Republic, must be construed as a reference to the Information Tribunal;
- (c) to the Information Commissioner of the Republic, must be construed as a reference to the Information Commissioner of the Areas for non-Crown data;

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(a) Ordinance 17/2007

- (d) to the Attorney General of the Republic, must be construed as a reference to the Attorney General and Legal Adviser;
  - (e) to the Cyprus Police, must be construed as a reference to the Police Service;
  - (f) to the Cyprus Organisation for the Promotion of Quality, must be construed as a reference to the Information Commissioner of the Areas for non-Crown data.
- (7) The Administrator may, by order made as a public instrument, amend Schedule 3.

## PART 5

### Information Commissioners of the Areas

#### Information Commissioners of the Areas

- 8.**—(1) There is to be an Information Commissioner of the Areas for Crown data.
- (2) The Information Commissioner of the Areas for Crown data is to be a supervisory authority for the purposes of Article 51 of the GDPR in relation to processing to which section 6 applies.
- (3) Schedule 4 makes provision about the constitution of the Information Commissioner of the Areas for Crown Data.
- (4) In relation to processing to which Article 1(3) of the Protocol and section 7 apply, the functions of the supervisory authority for the purposes of Article 51 of the GDPR are conferred functions for the purposes of the Conferral of Protocol Functions on the Republic Ordinance 2020 **(a)**.
- (5) In relation to other processing to which section 7 applies, the functions of the supervisory authority for the purposes of Article 51 of the GDPR are deemed to be conferred functions for the purposes of the Conferral of Protocol Functions on the Republic Ordinance 2020**(b)**.
- (6) General functions are conferred on a Commissioner by—
- (a) Article 57 of the GDPR (tasks), and
  - (b) Article 58 of the GDPR (powers).

## PART 6

### Offences and Penalties

#### Unlawful obtaining etc of personal data

- 9.**—(1) This section applies only to persons in the service of the Crown.
- (2) It is an offence for a person knowingly or recklessly—
- (a) to obtain or disclose personal data without the consent of the controller,
  - (b) to procure the disclosure of personal data to another person without the consent of the controller, or
  - (c) after obtaining personal data, to retain it without the consent of the person who was the controller in relation to the personal data when it was obtained.
- (3) It is a defence for a person charged with an offence under subsection (2) to prove that the obtaining, disclosing, procuring or retaining—
- (a) was necessary for the purposes of preventing or detecting crime,

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(a) Ordinance 46/2020  
(b) Ordinance 46/2020

- (b) was required or authorised by an enactment, by a rule of law or by the order of a court or tribunal, or
  - (c) in the particular circumstances, was justified as being in the public interest.
- (4) It is also a defence for a person charged with an offence under subsection (2) to prove that—
- (a) the person acted in the reasonable belief that the person had a legal right to do the obtaining, disclosing, procuring or retaining,
  - (b) the person acted in the reasonable belief that the person would have had the consent of the controller if the controller had known about the obtaining, disclosing, procuring or retaining and the circumstances of it, or
  - (c) the person acted—
    - (i) for the special purposes,
    - (ii) with a view to the publication by a person of any journalistic, academic, artistic or literary material, and
    - (iii) in the reasonable belief that in the particular circumstances the obtaining, disclosing, procuring or retaining was justified as being in the public interest.
- (5) It is an offence for a person to sell personal data if the person obtained the data in circumstances in which an offence under subsection (2) was committed.
- (6) It is an offence for a person to offer to sell personal data if the person—
- (a) has obtained the data in circumstances in which an offence under subsection (2) was committed, or
  - (b) subsequently obtains the data in such circumstances.
- (7) For the purposes of subsection (6), an advertisement indicating that personal data is or may be for sale is an offer to sell the data.
- (8) In this section—
- (a) “special purposes” has the meaning given in section 174 of the 2018 Act;
  - (b) references to the consent of a controller do not include the consent of a person who is a controller by virtue of Article 28(10) of the GDPR or section 59(8) of the 2018 Act (processor to be treated as controller in certain circumstances);
  - (c) where there is more than one controller, such references are references to the consent of one or more of them.

### **Re-identification of de-identified personal data**

- 10.**—(1) This section applies only to persons in the service of the Crown.
- (2) It is an offence for a person knowingly or recklessly to re-identify information that is de-identified personal data without the consent of the controller responsible for de-identifying the personal data.
- (3) For the purposes of this section and section 11—
- (a) personal data is “de-identified” if it has been processed in such a manner that it can no longer be attributed, without more, to a specific data subject;
  - (b) a person “re-identifies” information if the person takes steps which result in the information no longer being de-identified within the meaning of paragraph (a).
- (4) It is a defence for a person charged with an offence under subsection (2) to prove that the re-identification—
- (a) was necessary for the purposes of preventing or detecting crime,
  - (b) was required or authorised by an enactment, by a rule of law or by the order of a court or tribunal, or
  - (c) in the particular circumstances, was justified as being in the public interest.
- (5) It is also a defence for a person charged with an offence under subsection (2) to prove that—

- (a) the person acted in the reasonable belief that the person—
    - (i) is the data subject to whom the information relates,
    - (ii) had the consent of that data subject, or
    - (iii) would have had such consent if the data subject had known about the re-identification and the circumstances of it,
  - (b) the person acted in the reasonable belief that the person—
    - (i) is the controller responsible for de-identifying the personal data,
    - (ii) had the consent of that controller, or
    - (iii) would have had such consent if that controller had known about the re-identification and the circumstances of it,
  - (c) the person acted—
    - (i) for the special purposes,
    - (ii) with a view to the publication by a person of any journalistic, academic, artistic or literary material, and
    - (iii) in the reasonable belief that in the particular circumstances the re-identification was justified as being in the public interest, or
  - (d) the effectiveness testing conditions were met (see section 11).
- (6) It is an offence for a person knowingly or recklessly to process personal data that is information that has been re-identified where the person does so—
- (a) without the consent of the controller responsible for de-identifying the personal data, and
  - (b) in circumstances in which the re-identification was an offence under subsection (2).
- (7) It is a defence for a person charged with an offence under subsection (6) to prove that the processing—
- (a) was necessary for the purposes of preventing or detecting crime,
  - (b) was required or authorised by an enactment, by a rule of law or by the order of a court or tribunal, or
  - (c) in the particular circumstances, was justified as being in the public interest.
- (8) It is also a defence for a person charged with an offence under subsection (6) to prove that—
- (a) the person acted in the reasonable belief that the processing was lawful,
  - (b) the person acted in the reasonable belief that the person—
    - (i) had the consent of the controller responsible for de-identifying the personal data, or
    - (ii) would have had such consent if that controller had known about the processing and the circumstances of it, or
  - (c) the person acted—
    - (i) for the special purposes,
    - (ii) with a view to the publication by a person of any journalistic, academic, artistic or literary material, and
    - (iii) in the reasonable belief that in the particular circumstances the processing was justified as being in the public interest.
- (9) In this section—
- (a) “special purposes” has the meaning given in section 174 of the 2018 Act;
  - (b) references to the consent of a controller do not include the consent of a person who is a controller by virtue of Article 28(10) of the GDPR or section 59(8) of the 2018 Act (processor to be treated as controller in certain circumstances);
  - (c) where there is more than one controller, such references are references to the consent of one or more of them.

### **Re-identification: effectiveness testing conditions**

**11.**—(1) For the purposes of section 10, in relation to a person who re-identifies information that is de-identified personal data, “the effectiveness testing conditions” means the conditions in subsections (2) and (3).

(2) The first condition is that the person acted—

- (a) with a view to testing the effectiveness of the de-identification of personal data,
- (b) without intending to cause, or threaten to cause, damage or distress to a person, and
- (c) in the reasonable belief that, in the particular circumstances, re-identifying the information was justified as being in the public interest.

(3) The second condition is that the person notified the Information Commissioner of the Areas for Crown data or the controller responsible for de-identifying the personal data about the re-identification—

- (a) without undue delay, and
- (b) where feasible, not later than 72 hours after becoming aware of it.

(4) Where there is more than one controller responsible for de-identifying personal data, the requirement in subsection (3) is satisfied if one or more of them is notified.

### **Alteration etc of personal data to prevent disclosure to data subject**

**12.**—(1) This section applies only to persons in the service of the Crown.

(2) Subsection (4) applies where—

- (a) a request has been made in exercise of a data subject access right, and
- (b) the person making the request would have been entitled to receive information in response to that request.

(3) In this section, “data subject access right” means a right under—

- (a) Article 15 of the GDPR (right of access by the data subject);
- (b) Article 20 of the GDPR (right to data portability);
- (c) section 45 of the 2018 Act (law enforcement processing: right of access by the data subject).

(4) It is an offence for a person listed in subsection (5) to alter, deface, block, erase, destroy or conceal information with the intention of preventing disclosure of all or part of the information that the person making the request would have been entitled to receive.

(5) Those persons are—

- (a) the controller, and
- (b) a person who is employed by the controller, an officer of the controller or subject to the direction of the controller.

(6) It is a defence for a person charged with an offence under subsection (4) to prove that—

- (a) the alteration, defacing, blocking, erasure, destruction or concealment of the information would have occurred in the absence of a request made in exercise of a data subject access right, or
- (b) the person acted in the reasonable belief that the person making the request was not entitled to receive the information in response to the request.

### **Obstructing a person in the execution of a warrant**

**13.**—(1) This section applies only to persons in the service of the Crown.

(2) It is an offence for a person—

- (a) intentionally to obstruct a person in the execution of a warrant issued under Schedule 2 provisions, or

- (b) to fail without reasonable excuse to give a person executing such a warrant such assistance as the person may reasonably require for the execution of the warrant.

### **Making a false statement in response to a request for information pursuant to a warrant**

- 14.**—(1) This section applies only to persons in the service of the Crown.
- (2) It is an offence for a person—
- (a) to make a statement in response to a request for information made pursuant to a warrant issued under Schedule 2 provisions, which the person knows to be false in a material respect, or
  - (b) recklessly to make a statement in response to such a request which is false in a material respect.

### **Regulatory offences**

- 15.**—(1) It is an offence for a controller or processor to—
- (a) fail to maintain a record of processing activities under Article 30 of the GDPR (records of processing activities);
  - (b) refuse to submit the record to the Commissioner for non-Crown data upon request;
  - (c) provide the Commissioner for non-Crown data with false, inaccurate, insufficient or misleading information in relation to the record.
- (2) It is an offence for a controller or processor not to cooperate with the Commissioner for non-Crown data as required by Article 31 of the GDPR (cooperation with the supervisory authority).
- (3) It is an offence for a controller to fail to notify the Commissioner for non-Crown data of a personal data breach as required by Article 33(1) of the GDPR (notification of a personal data breach to the supervisory authority by the controller);
- (4) It is an offence for a processor to fail to notify the data controller of a personal data breach as required by Article 33(2) of the GDPR (notification of a personal data breach to the data controller by the processor);
- (5) It is an offence for a controller to fail to communicate the personal data breach to the data subject as required by Article 34 of the GDPR (communication of a personal data breach to the data subject);
- (6) It is an offence for a controller to fail to carry out a data protection impact assessment as required by Article 35(1) of the GDPR (data protection impact assessment).
- (7) It is an offence for a controller or processor to obstruct a data protection officer, within the meaning of the GDPR, in the exercise of the officer’s duties.
- (8) It is an offence for a controller or processor to transfer personal data to a third country or an international organisation in breach of the restrictions imposed by the Commissioner for non-Crown data under Schedule 3 provisions.
- (9) It is an offence for a person to process personal data that is part of an archiving system in the circumstances where that person is not required or authorised to process the data by—
- (a) the controller, or
  - (b) an enactment, a rule of law, or the order or a court or tribunal.
- (10) It is an offence for a controller or processor to obstruct the Commissioner for non-Crown data in the exercise of powers under Article 58 of the GDPR (powers) or Schedule 3 provisions.
- (11) In this section, “Commissioner for non-Crown data” means the Information Commissioner of the Areas for non-Crown data.

## **Penalties for offences**

**16.**—(1) A person who commits an offence under section 9, 10, 12, 13, or 14 is liable on conviction to a fine.

(2) A person who commits an offence under section 15 is liable on conviction to imprisonment for a term not exceeding 3 years or a fine not exceeding €30,000, or both.

(3) Subsections (4) and (5) apply where a person is convicted of an offence under section 9.

(4) Subject to subsection (5), the court by or before which the person is convicted may order a document or other material to be forfeited, destroyed or erased if—

- (a) it has been used in connection with the processing of personal data, and
- (b) it appears to the court to be connected with the commission of the offence.

(5) If a person, other than the offender, who claims to be the owner of the material, or to be otherwise interested in the material, applies to be heard by the court, the court must not make an order under subsection (4) without giving the person an opportunity to show why the order should not be made.

## **PART 7**

### **The Information Tribunal**

#### **The Information Tribunal**

**17.**—(1) There is to be a tribunal, known as the Information Tribunal (“the Tribunal”).

(2) Proceedings before the Tribunal are to be heard by—

- (a) the person who, in accordance with subsection (3), is the Chair, and
- (b) two other members, or (with the consent of the parties) one other member, selected from the panel appointed under subsection (4).

(3) The Chair is to be a Senior Judge or a Judge (both terms within the meaning of the Courts (Constitution and Jurisdiction) Ordinance 2007<sup>(a)</sup>) designated by the Administrator with the consent of the Presiding Judge.

(4) The Administrator, after consultation with the Presiding Judge, is to appoint a panel of not less than three other members.

(5) A person is eligible for appointment under subsection (4), only if the person has the qualifications prescribed in an order made by the Administrator as a public instrument with the concurrence of the Presiding Judge.

(6) The Tribunal may not exercise any function under this Ordinance in relation to a claim after the expiry of 6 years from the date on which the right to bring that claim arose.

#### **Tribunal Procedure Rules**

**18.** The Administrator, with the consent of the Presiding Judge, may, by a public instrument, make rules governing the practice and procedure to be followed in the Tribunal.

#### **Review of decision of the Tribunal**

**19.**—(1) The Tribunal may review a decision made by it on a matter in a case.

(2) The power under subsection (1) in relation to a decision is exercisable—

- (a) on the Tribunal’s own initiative, or

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<sup>(a)</sup> Ordinance 5/2007, as amended by Ordinances 2/2014, 6/2016, 2/2017, 2/2018, 3/2018, 3/2019 and 7/2020

- (b) on application by a person who for the purposes of section 20 has the right to appeal the decision.
- (3) Rules made under section 18 may—
- (a) provide that the Tribunal may not under subsection (1) review a decision of a description specified in the rules;
  - (b) provide that the Tribunal’s power under subsection (1) to review a decision of a description prescribed in the rules may be exercisable only on the Tribunal’s own initiative;
  - (c) provide that an application under subsection (2)(b) may be made only on the grounds specified in the rules;
  - (d) provide that the Tribunal’s power to review a decision under subsection (1) may be made only on the grounds specified in the rules.
- (4) Where the Tribunal has under subsection (1) reviewed a decision, the Tribunal may in the light of the review do any of the following—
- (a) correct accidental errors in the decision or in a record of the decision;
  - (b) amend reasons given for the decision;
  - (c) set the decision aside.
- (5) Where under subsection (4) the Tribunal sets a decision aside, the Tribunal must either—
- (a) re-decide the matter concerned, or
  - (b) refer that matter to the Senior Judges’ Court.
- (6) Where the Tribunal is acting under subsection (5)(a), it may make such findings of fact as it considers appropriate.
- (7) Where the Tribunal refers a matter to the Senior Judges’ Court under subsection (5)(b), the Court must re-decide the matter.
- (8) Where the Court is under subsection (7) re-deciding a matter, it may—
- (a) make any decision which the Tribunal could make if the Tribunal were re-deciding the matter and,
  - (b) make such findings of fact as it considers appropriate.
- (9) A decision of the Tribunal may not be reviewed under subsection (1) more than once, and once the Tribunal has decided that an earlier decision should not be reviewed under subsection (1) it may not then decide to review that earlier decision under that subsection.

**Right of appeal**

- 20.**—(1) Any party to a case has a right to appeal to the Senior Judges’ Court (“the Court”) on any point of law arising from a decision made by the Tribunal.
- (2) The right may be exercised only with permission of the Tribunal.
- (3) Where the Court finds that the making of the decision concerned involved the making of an error on a point of law, the Court—
- (a) may (but need not) set aside the decision of the Tribunal, and
  - (b) if it does, must either—
    - (i) remit the case to the Tribunal with directions for its reconsideration, or
    - (ii) re-make the decision.
- (4) In acting under subsection (3)(b)(ii), the Court—
- (a) may make any decision which the Tribunal could make if the Tribunal were re-making the decision, and
  - (b) may make such findings of fact as it considers appropriate.

### **Practice Directions**

**21.**—(1) The Presiding Judge may issue practice directions as to the practice and procedure of the Tribunal.

(2) A power under this section to give directions includes—

- (a) power to vary or revoke directions made in exercise of the power, and
- (b) power to make different provision for different purposes.

## **PART 8**

### **Supplementary**

#### **Application to the Crown**

**22.**—(1) This Ordinance binds the Crown in right of the Areas.

(2) As regards criminal liability—

- (a) the Crown is not liable to criminal prosecution under this Ordinance;
- (b) a person is liable to prosecution for an act done or an omission made in the course of the service of the Crown only in relation to offences under sections 9, 10 and 12 to 14.

#### **Power to make regulations**

**23.** The Administrator may make regulations, made as a public instrument, for—

- (a) any of the purposes of this Ordinance;
- (b) the regulation of any matter within the scope of this Ordinance;
- (c) the better implementation of this Ordinance.

## SCHEDULE 1

Section 5(2)

### Modifications of the GDPR in relation to non-Protocol data

**1.** Article 27(3) (representatives of controllers or processors not established in the Union) applies as if the Areas were part of the Republic.

**2.** In Article 28(8) (processor), omit “and in accordance with the consistency mechanism referred to in Article 63”.

**3.**—(1) Article 35 (data protection impact assessment) is modified as follows.

(2) In paragraph 4, omit the second sentence.

(3) In paragraph 5, omit the second sentence.

(4) Omit paragraph 6.

**4.**—(1) Article 40 (codes of conduct) is modified as follows.

(2) In paragraph 3, omit “and having general validity pursuant to paragraph 9 of this Article”.

(3) In paragraph 4, omit “or 56”.

(4) In paragraph 6, omit “and where the code of conduct concerned does not relate to processing activities in several Member States,”.

(5) Omit paragraphs 7, 8, 9, 10 and 11.

**5.** In Article 41 (monitoring of approved codes of conduct), omit paragraph 3.

**6.**—(1) Article 42 (certification) is modified as follows.

(2) In paragraph 4, omit “or 56”.

(3) In paragraph 5, omit from “or by the Board pursuant to Article 63” to the end of the paragraph.

(4) In paragraph 8, for “The Board” substitute “Supervisory authorities”.

**7.**—(1) Article 43 (certification bodies) is modified as follows.

(2) In paragraph 1—

(a) omit “one or both of the following”;

(b) in point (a) omit “or 56”;

(c) omit point (b).

(3) In paragraph 2—

(a) in point (b), omit “or 56 or by the Board pursuant to Article 63”;

(4) In paragraph 3, omit “or 56 or by the Board pursuant to Article 63”.

(5) In paragraph 6, omit the second sentence.

**8.** In Article 47 (binding corporate rules), paragraph 1, in the opening words, omit “in accordance with the consistency mechanism set out in Article 63”.

**9.** In Article 51 (supervisory authority), omit paragraphs 3 and 4.

**10.** In Article 52 (independence of supervisory authorities), in paragraph 4, before “cooperation”, insert “and”, and omit “and participation in the Board”.

**11.**—(1) Article 55 (competence of supervisory authorities) is modified as follows.

(2) In paragraph 1, for “on the territory of its own member State” substitute “in the Areas”.

(3) In paragraph 2, omit the second sentence.

- 12.** Omit Article 56 (competence of the lead supervisory authority).
- 13.** In Article 57 (tasks of supervisory authorities), in paragraph 1, omit point (t).
- 14.** In Article 59 (powers of supervisory authorities) omit “, to the Commission and to the Board”.
- 15.** Omit Article 60 (cooperation between the lead supervisory authority and the other supervisory authorities concerned).
- 16.**—(1) Article 61 (mutual assistance) is modified as follows.
  - (2) In paragraph 1, omit the second sentence.
  - (3) Omit paragraphs 2 to 9.
- 17.** Omit Articles 62 to 66 (joint operations of supervisory authorities and consistency mechanism).
- 18.** In Article 67 (exchange of information between supervisory authorities), omit “and between supervisory authorities and the Board, in particular the standardised format referred to in Article 64”
- 19.** Omit Articles 68 to 76 (European Data Protection Board).
- 20.**—(1) Article 78 (right to lodge a complaint with a supervisory authority) is modified as follows.
  - (2) In paragraph 2, omit “and 56”.
  - (3) Omit paragraph 4.
- 21.** In Article 84 (penalties), omit paragraph 2.
- 22.** In Article 85 (processing and freedom of expression and information), omit paragraph 3.
- 23.** In Article 88 (processing in the context of employment), omit paragraph 3.
- 24.** In Article 90 (obligation of secrecy), omit paragraph 2.

## SCHEDULE 2

Section 6

### Provisions of the 2018 Act having effect in the Areas in respect of Crown data

#### PART 1

##### Provisions applying generally, and their modifications

1. Part 2 (general processing), with the following modifications—
  - (a) omit sections 8(b), 13, and 20;
  - (b) in section 26, for subsection (2)(h)(ii) substitute—

“(ii) sections 9 to 12 of the Data Protection Ordinance 2020 (offences relating to personal data);”.
2. Part 3 (law enforcement processing).
3. Part 5 (the Information Commissioner), except for sections 114, 116(1), 122, 124, and 132.
4. Part 6 (enforcement), with the following modification—
  - (a) omit sections 144, 148, 170 to 173, 175(7), 175(8) and 177 to 179;
  - (b) in section 175, at the end insert—

“(9) The recovery of expenses incurred by the Commissioner in providing an applicant with assistance under this section (as taxes or assessed in accordance with rules of court) is to be paid to the Commissioner, in priority to other debts—

    - (a) out of any expenses which, by virtue of any judgment or order of the court, are payable to the applicant by any other person in respect of the matter in connection with which the assistance is provided, and
    - (b) out of any sum payable to the applicant under a compromise or settlement arrived at in connection with that matter to avoid, or bring to an end, any proceedings.”;
  - (c) in section 180—
    - (i) for subsection (1), substitute—

“(1) The jurisdiction conferred by the provisions listed in subsection (2) is exercisable by the Information Tribunal.”;
    - (ii) omit subsections (3), (4) and (5).
5. Part 7 (supplementary and final provisions), except for sections, 183, 184, 188 to 200, 202, 203 and 206 to 214.
6. Schedule 1 (special categories of personal data and criminal convictions etc data).
7. Schedule 2 (exemptions etc from the GDPR), except for paragraphs 9, 10 and 13.
8. Schedule 3 (exemptions etc from the GDPR: health, social work, education and child abuse data).
9. Schedule 4 (exemption from the GDPR: disclosure prohibited by an enactment).
10. Schedule 5 (accreditation of certification providers: reviews and appeals) .
11. Schedule 6 (the Applied GDPR and the Applied Chapter 2).
12. Schedule 7, as substituted by—

Competent Authorities

1. The Administrator.
  2. The Police Service.
  3. The Fiscal Officer.
  4. Sovereign Base Areas Customs and Immigration Service.
  5. The Attorney General and Legal Adviser.
  6. The Area Officers.
  7. A court or tribunal.”.
13. Schedule 8 (condition for sensitive processing under Part 3).
14. Schedule 13 (other General functions of the Commissioner) .
15. Schedule 14 (co-operation and mutual assistance), Part 1.
16. Schedule 15 (powers of entry and inspection), with the following modifications—
- (a) omit paragraphs 12, 15, 18 and 19;
  - (b) in paragraphs 1 and 2, references to a judge of the High Court, a circuit judge or a District Judge (Magistrates’ Courts) must be construed as a reference to a judge of the Resident Judge’s Court.
17. Schedule 16 (penalties), with the following modifications—
- (a) in paragraph 9, for subparagraph (2) substitute—  
“(2) A penalty is recoverable as a civil debt.”;
  - (b) omit subparagraphs (3) and (4).

PART 2

Supplementary modifications relating to non-Protocol data

18. In section 17 (accreditation of certification providers), omit subsections (1)(b), (6), (7), and, in subsection (8), the definition of “national accreditation body”.
19. Omit section 118 (co-operation and mutual assistance).
20. In section 120 (further international role), omit subsection (2).
21. In section 165 (complaints by data subjects)—
- (a) in subsection (5)(b), omit the words “or a foreign designated authority”,
  - (b) omit subsection (6),
  - (c) in subsection (7), omit the definition of “foreign designated authority”.
22. In Schedule 5 (accreditation of certification providers: reviews and appeals), omit paragraphs 4(4) and 6(4).
23. In Schedule 13—
- (a) in paragraph 1(1)(c), omit "Parliament",
  - (b) in paragraph 1(1)(e), omit the words from “and, if appropriate” to the end.
  - (c) omit paragraph 1(1)(f),

- (d) in paragraph (1)(g), omit the words from including on the basis of information received” to the end,
- (e) omit paragraph 1(1)(i),
- (f) omit paragraph 3.

**24.** Omit Schedule 14, Part 1 (co-operation and mutual assistance) (notwithstanding paragraph 16 above),

## SCHEDULE 3

Section 7(2)

### Provisions of Laws of the Republic having effect in the Areas in respect of non-Crown data

1. The following provisions of the Protection of Natural Persons with regard to the Processing of Personal Data and on the Free Movement of such Data Law (No.125(I)/2018)(a)—

- (a) sections 1 (preliminary) to 3 (field of application);
- (b) sections 8 (information society services offered to children) and 9 (processing of genetic and biometric data);
- (c) sections 11 (restrictions of rights and obligations) and 12 (exemption from the responsibility to announce an infringement);
- (d) sections 14 (definition of data protection officer) and 15 (obligation of the data protection officer for secrecy or confidentiality);
- (e) section 16 (accreditation of certification organisations), except for subsection (5);
- (f) section 17 (transfer of personal data to a third country or international organisation);
- (g) section 18 (transfer of special categories of personal data based on derogations for specific situations);
- (h) sections 23 (power and duties of the Commissioner) and 24 (additional duties of the Commissioner);
- (i) section 25 (additional powers of the Commissioner), except for subsections (f), (g)(i), (g)(v) and (i);
- (j) sections 28 (recourse against decisions of the Commissioner) and 29 (processing and freedom of expression and information);
- (k) section 31 (safeguards and derogations relating to processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes);
- (l) section 32 (administrative fines), except for subsection (3);
- (m) section 37 (transition provisions), except for subsections (1) and (2).

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(a) Published in the Gazette of the Republic on 31 July 2018 as GN. 4670, in force from 31 July 2018

## SCHEDULE 4

Section 8(3)

### The Information Commissioner of the Areas for Crown data

#### **Status and capacity**

1.—(1) The Information Commissioner of the Areas for Crown Data is to be a corporation sole.

(2) The Information Commissioner of the Areas for Crown Data is not to be regarded as a servant or agent of the Crown.

#### **Appointment**

2.—(1) The Information Commissioner of the Areas for Crown data is to be appointed by the Administrator.

(2) No appointment of a person as Information Commissioner of the Areas for Crown data may be made unless the person concerned has the qualifications, experience and skills required to perform the duties and exercise the powers of that office.

(3) An Information Commissioner of the Areas for Crown data is to hold office for such term, not exceeding 7 years, as may be determined at the time of the Commissioners' appointment, subject to paragraph 3.

(4) A person may not be appointed Information Commissioner for Crown data more than once.

#### **Resignation and removal**

3.—(1) An Information Commissioner of the Areas for Crown data may be relieved from office by the Administrator at the Commissioner's own request.

(2) Subject to sub-paragraph (4), the Administrator may remove an Information Commissioner of the Areas for Crown data from office if the Commissioner—

- (a) is guilty of serious misconduct;
- (b) no longer fulfils the conditions required for the performance of the Commissioner's functions.

(3) The Administrator must, by regulations made as a public instrument, prescribe procedures for—

- (a) the investigation and determination of allegations by any person of misconduct by Information Commissioner of the Areas for Crown data, and
- (b) reviews and investigations of incapacity or other matters affecting an Information Commissioner of the Areas for Crown data performance of duties.

(4) The power under subparagraph (2) is exercisable only after the Administrator has complied with the procedures prescribed in paragraph (3).

#### **Confidentiality of information**

4.—(1) A person who is or has been an Information Commissioner of the Areas for Crown Data must not, without lawful authority, disclose information which—

- (a) has been obtained by, or provided to, an Information Commissioner of the Areas for Crown Data in the course of, or for the purposes of, the discharging of that Commissioner's functions,
- (b) relates to an identified or an identifiable individual or business, and
- (c) is not available to the public from other sources at the time of the disclosure and has not previously been available to the public from other sources.

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

- (a) the disclosure was made with the consent of the individual or of the person for the time being carrying on the business,
- (b) the information was obtained or provided as described in subparagraph (1)(a) for the purpose of it being made available to the public (in whatever manner),
- (c) the disclosure was made for the purposes of, and is necessary for, the discharge of one or more of the Commissioner's functions,
- (d) the disclosure was made for the purposes of, and is necessary for, the discharge an obligation under the Protocol,
- (e) the disclosure was made for the purposes of criminal or civil proceedings, however arising, or
- (f) having regard to the rights, freedoms and legitimate interests of any person, the disclosure was necessary in the public interest.

(3) It is an offence for a person knowingly or recklessly to disclose information in contravention of subparagraph (1).

(4) A person who commits an offence under subsection (3) is liable on conviction to a fine.

#### **Officers and staff**

**5.—**(1) The Information Commissioner of the Areas for Crown Data —

- (a) must appoint one or more deputy Information Commissioners of the Areas for Crown Data, and
- (b) may appoint other officers and staff.

(2) The Information Commissioner of the Areas for Crown Data is to determine the remuneration, if any, and any other conditions of service of people appointed under this paragraph.

(3) The Information Commissioner of the Areas for Crown Data may pay pensions, allowances or gratuities to, or in respect of, people appointed under this paragraph, including pensions, allowances or gratuities paid by way of compensation in respect of loss of office or employment.

(4) The references in sub-paragraph (3) to paying pensions, allowances or gratuities includes making payments towards the provision of pensions, allowances or gratuities.

(5) In making appointments under this paragraph, the Information Commissioner of the Areas for Crown Data must have regard to the principle of selection on merit on the basis of fair and open competition.

#### **Carrying out of the Commissioner's functions by officers and staff**

**6.—**(1) The functions of the Information Commissioner of the Areas for Crown Data are to be carried out by the deputy commissioner or deputy commissioners if—

- (a) there is a vacancy in the office of the Information Commissioner of the Areas for Crown Data, or
- (b) the Information Commissioner of the Areas for Crown Data is for any reason unable to act.

(2) When the Information Commissioner of the Areas for Crown Data appoints a second or subsequent deputy Crown Data Commissioner, the Information Commissioner of the Areas for Crown Data must specify which deputy Information Commissioner of the Areas for Crown Data is to carry out which of the Information Commissioner of the Areas for Crown Data's functions in the circumstances referred to in sub-paragraph (1).

(3) A function of the Information Commissioner of the Areas for Crown Data may, to the extent authorised by the Commissioner, be carried out by—

- (a) the staff or officers of the Information Commissioner of the Areas for Crown Dat , or

- (b) the staff or officers of the Information Commissioner referred to in the 2018 Act and acting under section 120(4) of that Act.

**Authentication of the seal of the Commissioner**

7. The application of the seal of the Information Commissioner of the Areas for Crown Data is to be authenticated by—

- (a) the Information Commissioner of the Areas for Crown Data 's signature, or
- (b) the signature of another person authorised for the purpose.

**Presumption of authenticity of documents issued by the Commissioner**

8. A document purporting to be an instrument issued by the Information Commissioner of the Areas for Crown Data and to be—

- (a) duly executed under the seal of the Information Commissioner of the Areas for Crown Data, or
- (b) signed by or on behalf of the Information Commissioner of the Areas for Crown Data,

is to be received in evidence and is to be deemed to be such an instrument unless the contrary is shown.

**Fees etc and other sums**

9. All fees, charges, penalties and other sums received by the Information Commissioner of the Areas for Crown Data in carrying out the functions of that office are to be paid by the Information Commissioner of the Areas for Crown Data to the Administrator

**Accounts**

10.—(1) The Information Commissioner of the Areas for Crown Data must—

- (a) keep proper accounts and other records in relation to the accounts, and
- (b) prepare in respect of each financial year a statement of account in such form as the Administrator may direct.

(2) The Information Commissioner of the Areas for Crown Data must send a copy of the statement to the Administrator on or before 31 August next following the end of the year to which the statement relates.

(3) In this paragraph, “financial year” means a period of 12 months beginning with 1 April.

## EXPLANATORY NOTE

*(This note is not part of the Ordinance)*

1. This explanatory note relates to the Data Protection Ordinance 2020 (“the Ordinance”). It has been prepared by the Office of the Attorney General and Legal Adviser in order to assist the reader of the Ordinance. It does not form part of the Ordinance.

2. The Ordinance makes provision for the protection of personal data in the Areas. In particular, but not exclusively, it gives effect to Article 1(3) of the Protocol relating to the Sovereign Base Areas of the United Kingdom of Great Britain and Northern Ireland in Cyprus to the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (“the Protocol”). Under that provision, in addition to any provision applying in the Areas under the Protocol, Regulation (EU) 2016/679 (often referred to as the General Data Protection Regulation, or GDPR), and Directive (EU) 2016/680 (often referred to as the Law Enforcement Directive, or LED) apply in respect of personal data processed in the Areas on the basis of the Protocol.

3. Section 4 of the Ordinance provides that references to the GDPR in the Ordinance are to be read as to the GDPR as it has effect in the Areas by virtue of the European Union (Withdrawal and Implementation of Protocol) Ordinance 2020 (“the EU Ordinance”), and Part 2 of the Ordinance. The EU Ordinance generally gives effect to the Protocol, including its Article 1(3). Part 2 of the Ordinance provides that, to the extent that it does not do so under the EU Ordinance, the GDPR has effect, but subject, in that respect, to the modifications set out in Schedule 1.

4. With regard to the processing of personal data in respect of which the Crown in right of the Areas is a data controller, section 6 gives effect in the Areas to certain provisions, listed in Schedule 2 of the United Kingdom (UK) Data Protection Act 2018 (“the Schedule 2 provisions”), and provisions made under these. Those provisions apply and supplement the GDPR, and transpose the LED. The Schedule 2 provisions apply in the Areas as they did immediately before the Ordinance comes into force; that time is 1am on 1 January 2021, i.e. the “IP completion day” defined by the European Union (Withdrawal Agreement) Act 2020 (which is, in the UK, 11pm on 31 December 2020). Amendments to the Schedule 2 provisions taking effect on or after that time will therefore not be applied in the Areas under section 6 (even if they were made in instruments made before that date). Section 6 and Schedule 2 provide for a number of modifications to be made to the Schedule 2 provisions. As far as statutory instruments made under the Schedule 2 provisions are concerned, these have effect as amended from time to time.

5. With regard to the processing of data to which section 6 does not apply, section 7 gives effect to certain provisions of the laws of the Republic, listed the Schedule 3 (“the Schedule 3 provisions”), and provisions made under these. The Schedule 3 provisions, and any public instrument made under these, have effect as amended from time to time. Section 7 and Schedule 3 provide for a number of modifications to be made to the Schedule 3 provisions.

6. Section 8 and Schedule 4 establish an Information Commissioner of the Areas for Crown Data, to act as a supervisory authority for the purposes of Article 51 of the GDPR in relation to processing to which section 6 applies. Regarding processing to which section 7 applies, the functions of the supervisory authority are conferred functions, or deemed to be conferred functions, for the purposes of the Conferral of Protocol Functions on the Republic Ordinance 2020. This means that they will be exercised by the authorities of the Republic. Those authorities are referred to in this Ordinance as the Commissioner for non-Crown data (see section 3).

7. Sections 9 to 12 creates offences, applying only to persons in the service of the Crown, relating to the unlawful obtaining of personal data, the re-identification of de-identified personal data, and the alteration of personal data to prevent disclosure to the data subject. They provide for defences to those offences.

**8.** Sections 13 and 14, which also apply only to persons in the service of the Crown, create offences of obstructing the execution of a warrant issued under Schedule 2 provisions, and making a false statement in response to a request for information pursuant to such a warrant.

**9.** Section 15 provide for a number of offences relating to certain provisions of the GDPR particularly with regards to the Information Commissioner for non-Crown data.

**10.** Section 16 provides for penalties for the above offences, and for the court to order the forfeiture, destruction or erasure of material used in connection with those offences.

**11.** Part 7 (sections 17 to 21) provides for the creation of an Information Tribunal. Under section 6, references, in the Schedule 2 provisions, to a court or tribunal are to be construed as references to the Information Tribunal, as are, under section 7, references to the Administrative court of the Republic in the Schedule 3 provisions. This gives the Information Tribunal jurisdiction over the decision of the Information Commissioners of the Areas. Part 7 provides for the appointment of the Tribunal members, the making of rules of procedure, reviews of or appeal against decisions of the Tribunal, and the making of Practice Directions.

**12.** Section 22 provides that the Ordinance binds the Crown in right of the Areas. The Crown itself is not liable to criminal prosecution, but a person in the service of the Crown is liable to prosecution only in relation to offences under sections 9, 10, and 12 to 14.

**13.** Section 23 provides for a power of the Administrator to make regulations.