

PROTECTION OF FREEDOMS ACT 2012

EXPLANATORY NOTES

THE ACT

Commentary on Sections

Part 6: Freedom of information and data protection

Section 106: Alteration of role of Secretary of State in relation to guidance powers

424. **Section 106** removes the current requirement that guidance issued by the Information Commissioner under sections 41C, 52A and 55C of the DPA relating to assessment notices, data sharing and monetary penalty notices respectively must be approved by the Secretary of State.
425. **Subsection (1)** replaces the current section 41C(7) of the DPA so as to require the Information Commissioner to consult the Secretary of State before issuing or amending a code of practice relating to assessment notices issued under section 41C. The current requirement for Secretary of State approval is removed.
426. **Subsection (2)** replaces the current section 52B(1) to (3) and amends section 52B(6) of the DPA to require the Information Commissioner to consult the Secretary of State when preparing a code of practice relating to data sharing under section 52A. The current requirement for Secretary of State approval, which can only be withheld where it appears that the terms of the code could result in the UK being in breach of its EU or other international obligations, is removed. A code of practice issued under section 52A must still be laid before Parliament by the Secretary of State.
427. **Subsection (3)** replaces the current section 55C(5) of the DPA to require the Information Commissioner to consult the Secretary of State before issuing a code of practice relating to his functions under sections 55A and 55B in respect of civil monetary penalties. The current requirement for Secretary of State approval is removed.