



# Protection of Freedoms Act 2012

## 2012 CHAPTER 9

### PART 6

#### FREEDOM OF INFORMATION AND DATA PROTECTION

##### *The Information Commissioner*

#### **105 Appointment and tenure of Information Commissioner**

- (1) In paragraph 2(1) of Schedule 5 to the Data Protection Act 1998 (maximum term of appointment for the Information Commissioner) for “five years” substitute “ seven years ”.
- (2) After paragraph 2(3) of that Schedule to that Act (removal of the Information Commissioner from office) insert—

“(3A) No motion is to be made in either House of Parliament for such an Address unless a Minister of the Crown has presented a report to that House stating that the Minister is satisfied that one or more of the following grounds is made out—

- (a) the Commissioner has failed to discharge the functions of the office for a continuous period of at least 3 months,
- (b) the Commissioner has failed to comply with the terms of appointment,
- (c) the Commissioner has been convicted of a criminal offence,
- (d) the Commissioner is an undischarged bankrupt or the Commissioner's estate has been sequestrated in Scotland and the Commissioner has not been discharged,
- (e) the Commissioner has made an arrangement or composition contract with, or has granted a trust deed for, the Commissioner's creditors,
- (f) the Commissioner is otherwise unfit to hold the office or unable to carry out its functions.

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**Changes to legislation:** *Protection of Freedoms Act 2012, Cross Heading: The Information Commissioner is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

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- (3B) No recommendation may be made to Her Majesty for the appointment of a person as the Commissioner unless the person concerned has been selected on merit on the basis of fair and open competition.
- (3C) A person appointed as the Commissioner may not be appointed again for a further term of office.”
- (3) Omit paragraph 2(4) and (5) of that Schedule to that Act (termination of term of office on attaining 65 years of age etc. and eligibility for re-appointment).
- (4) In the italic heading to paragraph 2 of that Schedule to that Act, after “office” insert “ and appointment ”.
- (5) Omit section 18(5) to (7) of the Freedom of Information Act 2000 (spent provisions about period of office of Data Protection Commissioner as first Information Commissioner and application of paragraph 2(4)(b) and (5) of Schedule 5 to the Act of 1998 to that person).

**Commencement Information**

**II** S. 105 in force at 16.3.2015 by [S.I. 2015/587](#), [art. 2\(a\)](#)

**106 Alteration of role of Secretary of State in relation to guidance powers**

- (1) For section 41C(7) of the Data Protection Act 1998 (code of practice about assessment notices: requirement for approval of Secretary of State) substitute—
- “(7) The Commissioner must consult the Secretary of State before issuing the code (or an altered or replacement code).”
- (2) In section 52B of that Act (data-sharing code: approval by the Secretary of State)—
- (a) for subsections (1) to (3) substitute—
- “(1) When a code is prepared under section 52A, the Commissioner must—
- (a) consult the Secretary of State, and
- (b) submit the final version of the code to the Secretary of State.
- (2) The Secretary of State must lay the code before Parliament.”, and”
- (b) in subsection (6) for the words from the beginning to “the Commissioner” substitute “ Where such a resolution is passed, the Commissioner ”.
- (3) For section 55C(5) of that Act (guidance about monetary penalty notices: requirement for approval of Secretary of State) substitute—
- “(5) The Commissioner must consult the Secretary of State before issuing any guidance under this section.”

**Commencement Information**

**I2** S. 106 in force at 1.9.2013 by [S.I. 2013/1906](#), [art. 3\(c\)](#)

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## 107 Removal of Secretary of State consent for fee-charging powers etc.

- (1) In section 51 of the Data Protection Act 1998 (general duties of the Information Commissioner)—
  - (a) in subsection (8) (power to charge fees, with the consent of the Secretary of State, in relation to any Part 6 services)—
    - (i) omit “with the consent of the Secretary of State”, and
    - (ii) before “services” insert “ relevant ”, and
  - (b) after subsection (8) insert—

“(8A) In subsection (8) “relevant services” means—

    - (a) the provision to the same person of more than one copy of any published material where each of the copies of the material is either provided on paper, a portable disk which stores the material electronically or a similar medium,
    - (b) the provision of training, or
    - (c) the provision of conferences.

(8B) The Secretary of State may by order amend subsection (8A).”
- (2) In section 67(5)(a) of that Act (orders under the Act subject to negative procedure) after “51(3)” insert “ or (8B) ”.
- (3) In section 47 of the Freedom of Information Act 2000 (general functions of the Information Commissioner)—
  - (a) in subsection (4) (power to charge fees, with the consent of the Secretary of State, in relation to services provided under that section)—
    - (i) omit “with the consent of the Secretary of State”, and
    - (ii) before “services” insert “ relevant ”, and
  - (b) after subsection (4) insert—

“(4A) In subsection (4) “relevant services” means—

    - (a) the provision to the same person of more than one copy of any published material where each of the copies of the material is either provided on paper, a portable disk which stores the material electronically or a similar medium,
    - (b) the provision of training, or
    - (c) the provision of conferences.

(4B) The Secretary of State may by order amend subsection (4A).

(4C) An order under subsection (4B) may include such transitional or saving provision as the Secretary of State considers appropriate.

(4D) The Secretary of State must consult the Commissioner before making an order under subsection (4B).”
- (4) In section 82(3)(a) of that Act (orders under the Act subject to negative procedure) after “4(1)” insert “ or 47(4B) ”.

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### Commencement Information

**I3** S. 107 in force at 1.9.2013 by [S.I. 2013/1906](#), [art. 3\(d\)](#)

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## **108 Removal of Secretary of State approval for staff numbers, terms etc.**

- (1) Paragraph 4 of Schedule 5 to the Data Protection Act 1998 (appointment of officers and staff of the Information Commissioner) is amended as follows.
- (2) After sub-paragraph (4) insert—

“(4A) In making appointments under this paragraph, the Commissioner must have regard to the principle of selection on merit on the basis of fair and open competition.”
- (3) Omit sub-paragraph (5) (approval of Secretary of State required for number, and terms and conditions, of persons to be appointed).

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### **Commencement Information**

**I4** S. 108 in force at 1.9.2013 by [S.I. 2013/1906](#), [art. 3\(e\)](#)

**Changes to legislation:**

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**Changes and effects yet to be applied to :**

- specified provision(s) amendment to earlier commencing SI 2012/2234 art. 13 by [S.I. 2014/831 art. 2\(2\)](#)
- specified provision(s) transitional provisions and savings for commencing S.I. 2013/1814 by [S.I. 2013/1813 art. 2-9](#)

**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Sch. 1 para. 7A inserted by [2019 c. 3 Sch. 2 para. 20](#)