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**Changes to legislation:** Data Protection Act 2018, Cross Heading: Freedom of Information (Scotland) Act 2002 (asp 13) is up to date with all changes known to be in force on or before 20 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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## SCHEDULES

### SCHEDULE 19

#### MINOR AND CONSEQUENTIAL AMENDMENTS

#### PART 1

##### AMENDMENTS OF PRIMARY LEGISLATION

###### *Freedom of Information (Scotland) Act 2002 (asp 13)*

- 88 The Freedom of Information (Scotland) Act 2002 is amended as follows.
- 89 In section 2(2)(e)(ii) (absolute exemptions), omit “by virtue of subsection (2)(a)(i) or (b) of that section”.
- 90 (1) Section 38 (personal information) is amended as follows.
- (2) In subsection (1), for paragraph (b) substitute—
- “(b) personal data and the first, second or third condition is satisfied (see subsections (2A) to (3A));”.
- (3) For subsection (2) substitute—
- “(2A) The first condition is that the disclosure of the information to a member of the public otherwise than under this Act—
- (a) would contravene any of the data protection principles, or
- (b) would do so if the exemptions in section 24(1) of the Data Protection Act 2018 (manual unstructured data held by public authorities) were disregarded.
- (2B) The second condition is that the disclosure of the information to a member of the public otherwise than under this Act would contravene Article 21 of the GDPR (general processing: right to object to processing).”
- (4) For subsection (3) substitute—
- “(3A) The third condition is that—
- (a) on a request under Article 15(1) of the GDPR (general processing: right of access by the data subject) for access to personal data, the information would be withheld in reliance on provision made by or under section 15, 16 or 26 of, or Schedule 2, 3 or 4 to, the Data Protection Act 2018, or
- (b) on a request under section 45(1)(b) of that Act (law enforcement processing: right of access by the data subject), the information would be withheld in reliance on subsection (4) of that section.”
- (5) Omit subsection (4).

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(6) In subsection (5), for the definitions of “the data protection principles” and of “data subject” and “personal data” substitute—

““the data protection principles” means the principles set out in—

- (a) Article 5(1) of the GDPR, and
- (b) section 34(1) of the Data Protection Act 2018;

“data subject” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act);

“the GDPR”, “personal data”, “processing” and references to a provision of Chapter 2 of Part 2 of the Data Protection Act 2018 have the same meaning as in Parts 5 to 7 of that Act (see section 3(2), (4), (10), (11) and (14) of that Act);”.

(7) After that subsection insert—

“(5A) In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the GDPR would be contravened by the disclosure of information, Article 6(1) of the GDPR (lawfulness) is to be read as if the second sub-paragraph (disapplying the legitimate interests gateway in relation to public authorities) were omitted.”

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**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):

- s. 204(1)(l) inserted by [S.I. 2024/374 Sch. 5 para. 7](#)
- Sch. 3 para. 8(1)(y) added by [2022 c. 18 \(N.I.\) Sch. 3 para. 78\(3\)](#)