An introduction to the Data Protection Bill

Information Commissioner's Office

Contents

About the 'Introduction to the Data Protection Bill'

This document is intended as an introduction to the content and structure of the Data Protection Bill for organisations and individuals who are already familiar with data protection law and the GDPR. It seeks to help you navigate your way around the Bill and focus on the sections that are most relevant to you.

It is vital that you review the precise wording of the Bill and take account of changes that will occur as the Bill passes through Parliament.

The Bill can appear to be a complex piece of legislation as it brings together four regimes of data protection law. In practice, most organisations will be concerned with only the two 'general processing' regimes in Part 2, which are intended to operate in a very similar manner. The other two regimes apply to a limited group of controllers: law enforcement 'competent authorities' and the intelligence services. Individuals may of course be affected by processing which is regulated under any one of the four regimes. Although again it is likely the general processing regimes in Part 2 will be the most relevant to the day to day lives of individuals.

We intend to produce detailed guidance once the Bill has been enacted.

Background

What is the purpose of the Data Protection Bill?

The Bill seeks to empower individuals to take control of their personal data and to support organisations with their lawful processing of personal data.

> "The introduction of the Data Protection Bill…will put in place one of the final pieces of much needed data protection reform. Effective, modern data protection laws with robust safeguards are central to securing the public's trust and confidence in the use of personal information within the digital economy, the delivery of public services and the fight against crime."
>
> **Elizabeth Denham – Information Commissioner**

The Data Protection Bill (Bill) was announced in the Queen's Speech on 21 June 2017. The Bill updates data protection laws in the UK, supplementing the General Data Protection Regulation (EU) 2016/679 (GDPR), implementing the EU Law Enforcement Directive, as well as extending data protection laws to areas which are not covered by the GDPR. It is intended to provide a comprehensive package to protect personal data.

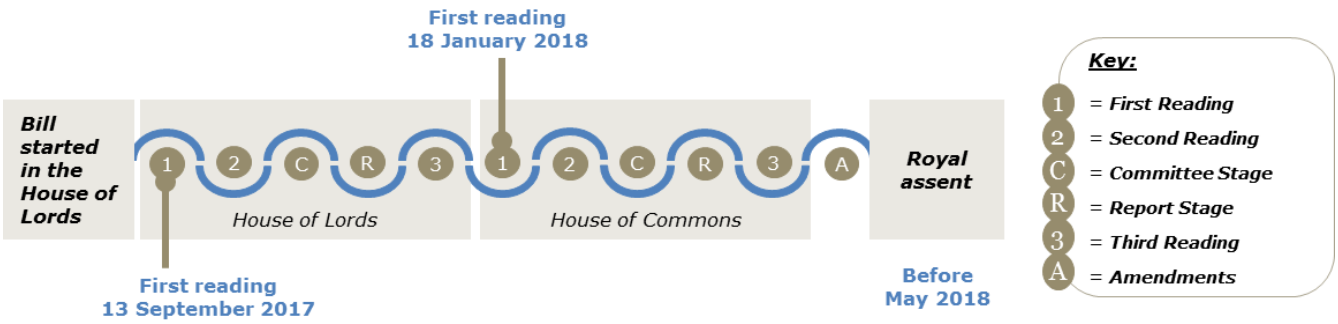
How does the Bill become law?

A bill is a proposal for a new law or to change an existing law. Before a bill becomes law (and becomes an Act) it must pass through, and be approved by, the House of Lords and the House of Commons. A bill can start its journey in either House.

The provisions in a bill are known as "clauses" and only become "sections" once the bill becomes an Act. However for clarity we have referred to these as "sections" in this document.

The Bill has completed its journey through the House of Lords, which is the House it started in. The Bill now sits in the House of Commons.

The diagram below shows how the Bill will progress through Parliament.



The Bill contains important elements to support the GDPR, which will take effect from 25 May 2018. The Bill also transposes the so-called Law Enforcement Directive (LED)[1].

The plan is for the Bill to have completed its parliamentary passage and be ready to take effect in May when these EU laws take effect.

Why is the Bill necessary?

This table provides an overview of the key effects the Bill will have on UK data protection law and why these changes may be considered necessary.

Effect	Change	Why is it necessary?
Repeal of the Data Protection Act 1998 (1998 Act)	The Bill will replace the 1998 Act as the primary piece of data protection legislation in the UK.	• The Bill seeks to ensure UK data protection law keeps pace with technological change and addresses the benefits and challenges this can bring to the collection and use of personal data. • The Bill also aims to bring continuity as it will seek to ensure legislation which interacts with UK data protection law will continue to have effect in a data protection context, eg the Freedom of Information Act 2000.

[1] Its name in full is "Directive (EU) 2016/680 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 by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA".

Effect	Change	Why is it necessary?
Ensure the standards set out in the GDPR have effect in the UK	The Bill assists with and supplements the adoption of the GDPR into UK law. The GDPR introduces stricter requirements than under the 1998 Act.	• The GDPR has direct effect in the UK from 25 May 2018 until the UK leaves the EU. • Where a piece of EU legislation has direct effect, it becomes immediately enforceable in a Member State from its effective date. National legislation is not required to make a regulation apply in a Member State. • The Bill will not transpose the GDPR into UK law, before or after the day the UK leaves the EU. The government plans to achieve this through the European Union (Withdrawal) Bill (after its adoption as an Act). • Once the UK leaves the EU, the Bill will help ensure that the standards of the GDPR are enshrined in UK law.
Address areas within the GDPR which are left to the discretion of the UK	The Bill strengthens, or provides exceptions from, some of the requirements of the GDPR.	• The Bill ensures that the data protection standards set out in the GDPR, when applied in the UK, reflect the requirements of the UK.
Address areas outside the scope of the GDPR	The Bill extends data protection law into types of processing that are not covered by the GDPR.	• The Bill is intended to provide the UK with comprehensive data protection legislation. • The Bill applies GDPR standards to additional areas of processing not covered by the GDPR and EU law (eg the processing of unstructured manual files by public authorities).
Ensure the LED is implemented into UK law, and extend standards to other law enforcement processing in the UK not covered by the LED	The Bill ensures a single, coherent, domestic and trans-national regime for the processing of personal data for law enforcement purposes, across the whole of the law enforcement sector.	• The LED as an EU directive does not have direct effect. It requires national law in Member States to implement it. • The Bill will ensure that the LED is implemented into UK law. • The Bill will also create consistency with other jurisdictions subject to the LED. • The Bill strengthens the rights of individuals and the control they can exercise over their own data in the law enforcement context. • By implementing the LED and

Effect	Change	Why is it necessary?
		extending it to other areas of law enforcement, the UK will operate a system more closely aligned with the rest of the EU. This will assist with a key aim of the LED to aid the sharing of information across borders for law enforcement purposes.
Address the processing of personal data by the intelligence service	The Bill provides a specific data protection regime for the intelligence services based on the standards in the modernised Convention 108 (the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data)	• The Bill will update the laws governing the processing of personal data by the intelligence services. • The Bill will ensure that the laws in this area are in line with the modernised Convention 108 standards.
Further define the role of the Information Commissioner	The Bill provides the Information Commissioner with additional functions and further clarifies her role.	• Whilst the role of the Information Commissioner closely reflects the 1998 Act, the Bill provides additional functions as required under regulations such as the GDPR.
Consolidate and clarify areas relating to enforcement	The Bill introduces new powers and offences in relation to data protection whilst largely replicating existing powers under the 1998 Act.	• The Bill increases the maximum level of fines in the UK so that it is consistent with the GDPR. • The Bill also adds to and modernises many of the offences currently contained within the 1998 Act.

Structure

The Bill will play a key role in implementing a wide range of data protection reforms across the UK.

The Bill seeks to introduce four distinct data protection regimes into UK Data Protection law. Each regime focuses on the regulation of personal data processing for a specific type or category of data processing. The four regimes cover processing:

- within the scope of the GDPR;
- outside the scope of the GDPR;
- by competent authorities for law enforcement purposes; and
- by the intelligence services.

The Bill is split up into seven parts and multiple schedules:

Section	Section title	Overview of section
Part 1	Preliminary	• Overview of the Bill. • Key terms used in the Bill.
Part 2	General Processing	• Applies to most processing of personal data in the UK. • Split into two parts. First under the GDPR and second applying a similar regime to processing not covered by the GDPR, Part 3 for Law Enforcement and Part 4 for Intelligence Services.
Part 2, Chapter 2	General Processing - The GDPR	• Applies to processing of personal data to which the GDPR applies. • Supplements and must be read with the GDPR • Addresses areas left for Member State implementation under the GDPR. • Refers to Schedules 1 to 4.
Part 2, Chapter 3	General Processing - Other General Processing	• Applies to processing of personal data to which the GDPR does **not** apply. • It does not apply to law enforcement processing or intelligence service processing. • Referred to in the Bill as the **applied GDPR**. • Also applies Part 2 Chapter 2 (along with the relevant Schedules) to the applied GDPR.

Section	Section title	Overview of section
		Referred to as the **applied Chapter 2**.
Part 3	Law Enforcement Processing (LE processing)	• Transposes the LED into UK law. • Addresses areas left for Member State implementation under the LED. • Applies the same regime to UK law enforcement processing not covered by the LED.
Part 4	Intelligence Service Processing (IS processing)	• Provides intelligence services with a specific data protection regime for the processing of personal data.
Part 5	The Information Commissioner	• Details the general functions of the Commissioner and her office, along with her powers. • Provides information about the international role of the Information Commissioner. • Provides information about the statutory guidance which the Information Commissioner produces.
Part 6	Enforcement	• Sets out the enforcement regime under the Bill. • Provides details about the notices the Information Commissioner can issue. • Provides information about offences, claims, appeals and complaints.
Part 7	Supplementary and Final Provision	• Additional provisions, eg additional information about offences, the Tribunal, the territorial application of the Bill and further definitions. • We do not have a separate section on Part 7 in this document. The key provisions for the purpose of this document are regarding offences, and they are covered in the section on Part 6.
Schedule 1	Special categories of personal data and criminal convictions etc data	• Provides a list of conditions which, if one is met, permit the processing of the special categories of personal data and criminal conviction data. • Details policy documentation and additional safeguards which must be put in place when

Section	Section title	Overview of section
		relying on some of the conditions listed. • These apply to the GDPR and applied GDPR.
Schedule 2	Exemptions etc from the GDPR	• Provides various exemptions (permitted under GDPR). This applies to the GDPR and applied GDPR.
Schedule 3	Exemptions etc from the GDPR: health, social work, education and child abuse data	• Provides exemptions (permitted under GDPR) for health, social work, education and child abuse data. This applies to the GDPR and the applied GDPR.
Schedule 4	Exemptions etc from the GDPR: disclosure prohibited or restricted by an enactment	• Provides exemptions (permitted under GDPR) where disclosure is prohibited or otherwise restricted by an enactment. For example, relating to adoption records. This applies to both the GDPR and the applied GDPR.
Schedule 5	Accreditation of certification providers: reviews and appeals	• Provides details as to when and how a review or appeal can be made about the accreditation of certification providers.
Schedule 6	The applied GDPR and the applied Chapter 2	• Modifies the applied GDPR and applied Chapter 2 so that it makes sense in a UK only context. For example, making changes to territorial application and co-operation with other supervisory authorities.
Schedule 7	Competent authorities	• Provides a list of the "competent authorities" referred to in Part 3 (LE processing). • Describes other bodies and how they may be "competent authorities" for some functions.
Schedule 8	Conditions for sensitive processing under Part 3	• Provides conditions which must be met before carrying out sensitive processing by competent authorities under Part 3 (LE processing).
Schedule 9	Conditions for processing under Part 4	• Provides conditions which must be met before personal data can be processed under Part 4 (IS processing).
Schedule 10	Conditions for sensitive processing under	• Provides conditions which must be met before carrying out sensitive processing by the intelligence services under Part 4 (IS

Section	Section title	Overview of section
	Part 4	processing).
Schedule 11	Other exemptions under Part 4	• Provides exemptions which may apply under Part 4 (IS processing), due to the sensitive nature of processing for national security purposes.
Schedule 12	The Information Commissioner	• Provides for the operation of the Information Commissioner's Office, addressing areas such as the appointment of the Information Commissioner and the resourcing of her office.
Schedule 13	Other general functions of the Commissioner	• Provides for other general functions of the Information Commissioner, such as those relating to Part 3 (LE processing) and Part 4 (IS processing).
Schedule 14	Co-operation and mutual assistance	• Provides for the Information Commissioner's role in ensuring co-operation and mutual assistance with LED supervisory authorities and foreign designated authorities.
Schedule 15	Powers of entry and inspection	• Provides for the Information Commissioner's powers of entry and inspection.
Schedule 16	Penalties	• Details the content of notices concerning penalties and the enforcement of payments.
Schedule 17	Relevant Records	• Provides definitions and further provisions relating to relevant records – that is health records, records relating to a conviction or caution, or records relating to statutory functions.
Schedule 18	Minor and consequential amendments	• Details amendments to other legislation.

Part 1, Data Protection Bill

Preliminary

What is the scope of Part 1?

Part 1 sets out definitions that are used throughout the Bill. These definitions closely reflect those found in the GDPR, although there are some minor amendments. Of course these definitions do not apply when these terms are used within the GDPR.

Key terms	Definition
Personal data	Any information relating to an identified or identifiable living individual. This definition does not include the extra detail in the GDPR which goes on to define an 'identifiable living individual'.
Identifiable living individual	A living individual who can be identified, directly or indirectly, in particular by reference to: • an identifier such as a name, an identification number, location data or an online identifier; or • one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
Processing	In relation to personal data, means an operation or set of operations which is performed on personal data, or on sets of personal data, such as: • collection, recording, organisation, structuring or storage; • adaptation or alteration; • retrieval, consultation or use; • disclosure by transmission, dissemination or otherwise making available; • alignment or combination; or • restriction, erasure or destruction.
Data subject	The identified or identifiable living individual to whom personal data relates.
Controller and processor	Part 1 does not provide a single definition of controller and processor. Instead it points to the relevant Chapter or Part of the Bill for the specific definition of these terms. As a general rule the definitions of controller and processor mirror those of the GDPR:

Key terms	Definition
	• 'controller' means the natural or legal person who alone or jointly with others determines the purpose and means of the processing of personal data; and • 'processor' means the natural or legal person which processes personal data on behalf of the controller.
Filing system	Any structured set of personal data which is accessible according to specific criteria, whether held by automated means or manually and whether centralised, decentralised or dispersed on a functional or geographical basis.
The applied GDPR	The GDPR as applied by Part 2 Chapter 3. In practice this means that the Bill extends GDPR standards to: • processing outside the scope of EU law • processing outside the scope of the GDPR other than processing covered by Part 3 (LE processing) or Part 4 (IS processing)

There is a useful index of definitions within the Bill at Section 197 to 199.

Part 2, Data Protection Bill

General processing

What is the scope of Part 2?

Part 2 has two key purposes. The first is to supplement the GDPR by completing sections that have been left open for Member State interpretation and implementation. The second is to apply the GDPR requirements to certain general processing that falls outside its scope.

Given the connection between Part 2 of the Bill and the GDPR, it is important to read both of these together when considering how to implement data protection requirements.

Part 2, Chapter 1 sets out the scope and some definitions.

Part 2, Chapter 2 applies to the same types of processing that the GDPR applies to. If the processing is subject to the requirements of the GDPR, then Part 2, Chapter 2 will apply to that processing.

Part 2, Chapter 3 generally applies to processing of personal data that falls outside of the scope of EU law and the GDPR and which is not Part 3 LE processing or Part 4 IS processing. For example, the manual processing of unstructured personal data, such as unfiled handwritten notes on paper, by those public authorities that are subject to the information access regime under the Freedom of Information Act 2000.

Chapters 2 and 3 do not apply to processing of personal data by an individual for a purely personal or household activity.

Chapter and title	Overview of chapter content
1. Scope and definitions	• Sets the scope of Part 2, Chapters 2 and 3. • Describes how to interpret definitions from the GDPR when reading Chapters 2 and 3.

2 Part 2, Data Protection Bill

Chapter and title	Overview of chapter content
2. The GDPR	• Defines and modifies certain terms used in the GDPR. • Describes four lawful bases of processing which are considered necessary in the public interest or for the exercise of a controller's official authority. • Provides for children aged 13 and over to give consent for information society services. • Sets out exceptions to the general prohibition on the processing of the special categories of personal data and personal data relating to criminal convictions and offences and related security measures. • Provides for processing by credit reference agencies. • Makes provision for automated decision-making authorised by law. • Establishes exemptions to rights and obligations under the Bill. • Makes provision for the accreditation of certification providers. • Makes provision for the transfer of personal data outside the EU. • Makes provision for processing for archiving, research and statistical purposes.
3. Other General Processing	• Sets out the scope of Chapter 3 and definitions used in the Chapter. • Describes how the GDPR applies to processing activities within the scope of Chapter 3. • Describes how Chapter 2 (and also the Schedules referred to in Chapter 2) apply to processing under the applied GDPR, as it applies to processing under the GDPR. • Modifies the text of the GDPR and Chapter 2 to work in a purely national context, by reference to Schedule 6. • Sets out exemptions from the GDPR provisions for manual unstructured data held by public authorities subject to Freedom of Information Act obligations. • Sets out modifications and exemptions from the application of the GDPR for personal data processed for national security and defence purposes.

Part 2, Chapter 2 - The GDPR

What terms are specific to Part 2, Chapter 2 and what do they mean?

Generally, the terms used in Part 2, Chapter 2 have the same meaning as they do in the GDPR. However in certain instances, terms from the GDPR are modified, clarified or are given a different meaning, including those in the table below.

Term	Overview of term
Controller	This clarifies that where personal data is processed, for purposes and means that are required by an enactment, the person who is obliged to undertake this processing, by the enactment, will be the controller. The definition also identifies particular bodies and persons that act on behalf of the Crown and Parliament as data controllers.
Public authority and public body	A definition for the terms "public authority" and "public body" are set out for the purposes of interpreting the GDPR. These terms are not defined in the GDPR itself. The Bill provides that public authorities and public bodies are those defined by the Freedom of Information Act 2000, the Freedom of Information Act (Scotland) 2002 and any authority or body specified by the Secretary of State in regulations. However, such an authority or body will only be such a public body or authority when performing a task carried out in the public interest or in the exercise of official authority vested in it.
Personal data relating to criminal convictions and offences or related security measures	The Bill clarifies that such data includes personal data relating to: (a) the alleged commission of offences by the data subject; or (b) proceedings for an offence committed or alleged to have been committed by the data subject or the disposal of such proceedings, including sentencing. In this document, we refer to this type of personal data as "criminal convictions data". Please note, however, that criminal convictions data is not a formal definition used by the Bill.
Court	The Bill clarifies that, in relation to Chapter 2, Part 2, the term "court" does not include a tribunal.

What is the scope of Part 2, Chapter 2?

The GDPR establishes a pan-European regime for the general processing of personal data. The Regulation will have direct effect (ie will be part of the national law of Member States) from May 2018. This means that the Bill does not need to re-state the GDPR as it will be law in the UK in any event.

The GDPR recognises that there are differences in the legal, economic and social environments of the Member States. In specific instances it expressly allows Member States to derogate from or supplement the GDPR to accommodate these national differences. The Bill operates with the GDPR and sets out the derogations and supplementing provisions that will have effect in the United Kingdom.

Some of the key areas addressed by the Bill to tailor the GDPR to the UK environment are:

Lawfulness of processing: public interest, etc

The GDPR prohibits the processing of personal data unless the controller is able to identify an appropriate legal basis for that processing. Article 6(1) of the GDPR sets out six lawful bases for processing and, under Article 6(2), Member States are permitted to introduce more specific provisions for these six bases.

GDPR Article 6(1)(e): permits processing where necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller.

Bill Section 8: a task carried out in the public interest or the exercise of official authority includes processing that is necessary for the: (a) administration of justice; (b) exercise of a function of Parliament; (c) exercise of a function conferred on a person by an enactment; and (d) exercise of a function of the Crown, a Minister of the Crown or a government department.

Child's consent in relation to information society services

GDPR Article 8: where consent is relied on as the lawful ground for processing the personal data of a child, as part of an "information society service", consent will only be valid if the child is at least 16 years old.

The term "information society service" refers to "any service normally

provided for remuneration, at a distance, by electronic means and at the individual request of a recipient of services"(see Article 1 of Directive (EU) 2015/1535).

Bill Section 9: the UK will apply a lower age limit for gaining valid consent from children when offering an information society service. In the UK consent will be valid from children of at least 13 years old.

Special categories of personal data and criminal convictions

GDPR Articles 9 and 10: The GDPR requires special conditions to be met for processing "special categories" of personal data and criminal convictions data. Articles 9 and 10 of the GDPR prohibit the processing of such data unless the special conditions, set out in Articles 9(2) and 10 respectively, are met.

The special categories are 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.

The special conditions which allow processing of special category personal data include:

- Article 9(2)(b) – for employment, social security and social protection purposes.
- Article 9(2)(g) – for substantial public interest purposes.
- Article 9(2)(h) – for health and social care purposes.
- Article 9(2)(i) – for public health purposes.
- Article 9(2)(j) – for archiving, research and statistics purposes.

Article 10 requires that the processing of criminal convictions data is prohibited unless it is carried out under the control of official authority or if it is authorised by UK law. Member States may authorise the processing of criminal convictions personal data in specific circumstances and subject to appropriate safeguards.

Bill Section 10 and Schedule 1: set out exceptions from the prohibitions in the GDPR relating to processing the special categories of personal data and criminal convictions data. Section 10 and Schedule 1 combine to set out conditions that must be met and safeguards that must be put in place for the exceptions to apply.

Overall, section 10 and Schedule 1 provide information that may assist data controllers with their assessment of whether they have lawful grounds to process the special categories of personal data and criminal convictions data.

Schedule 1 – Conditions relating to the processing of the special categories of personal data and criminal convictions data

Schedule 1 of the Bill establishes conditions that permit the processing of the special categories of personal data and criminal convictions data.

The Schedule is split into four parts.

- Part 1 – Conditions relating to employment, health and research
- Part 2 – Substantial public interest conditions
- Part 3 – Additional conditions relating to criminal convictions
- Part 4 – Appropriate policy document and additional safeguards

Processing of the special categories of personal data meets the requirements in points (b), (h), (i) or (j) of Article 9(2) of the GDPR (for authorisation by, or a basis in UK law) if it meets one of the conditions listed in Part 1 of Schedule 1.

Processing of the special categories of personal data meets the requirement in point (g) of Article 9(2) of the GDPR (for a basis in UK law) if it meets one of the conditions listed in Part 2 of Schedule 1.

Processing meets the requirement in Article 10 of the GDPR (for authorisation by UK law) if it meets one of the conditions listed in Part 1, 2 or 3 of Schedule 1.

Schedule 1, Part 1 conditions - processing in connection with employment, health and research

- Employment, social security and social protection
  Processing necessary for the purposes of performing or exercising obligations or rights of the controller or the data subject under employment law, social security law or the law relating to social protection. In order to meet this condition the controller must have an

appropriate policy document in place, as required under Part 4 of Schedule 1 (see further guidance on appropriate policy documentation on page 24)

- Health or social care
  Processing necessary for health or social care purposes.

- Public health
  Processing necessary for reasons of public interest in the area of public health, and carried out under the responsibility of a health professional or another person who owes a duty of confidentiality.

- Research
  Processing necessary for archiving purposes, scientific or historical research purposes or statistical purposes and is in the public interest.

Schedule 1, Part 2 conditions - processing in the substantial public interest

- Statutory and government purposes
  Processing necessary for the exercise of a function conferred on a person by enactment or the exercise of a function of the Crown, a Minister or a government department.

- Administration of Justice and parliamentary purposes
  Processing necessary for the administration of justice or the exercise of a function of Parliament.

- Equality of opportunity or treatment
  Processing necessary for identifying or keeping under review the existence or absence of equality of opportunity or treatment between groups of people with the view to enabling such equality to be promoted or maintained.

It only applies to particular types of special category data, and the Bill sets out in a table the type of review which can be conducted. For example, data concerning sexual orientation can only be processed for reviewing equality of opportunity or treatment of people of different sexual orientation.

- Preventing or detecting unlawful acts
  Processing necessary to prevent or detect an unlawful act (including an unlawful failure to act).

- Protecting the public against dishonesty etc
  Processing necessary to protect the public against:
  - dishonesty, malpractice or other serious improper conduct;
  - unfitness or incompetence;

  - mismanagement in the administration of a body or association; or
  - failures in services provided by a body or association.

- Journalism etc in connection with unlawful act and dishonesty etc
  Processing for the "special purposes" (journalistic, academic, artistic and literary purposes), in relation to matters (whether alleged or established) concerning:
  - the commission of an unlawful act by a person;
  - dishonesty, malpractice or other serious improper conduct;
  - unfitness or incompetence;
  - mismanagement in the administration of a body or association; or
  - failures in services provided by a body or association.

- Preventing fraud
  Processing for the purposes of preventing fraud.

- Suspicion of terrorist financing and money laundering
  Processing necessary for certain disclosures made under the Terrorism Act 2000 and Proceeds of Crime Act 2002.

- Counselling etc
  Processing necessary for the provision of confidential counselling, advice or support services.

- Insurance
  Processing necessary for an insurance purpose, and which is of personal data revealing racial or ethnic origin, religious or philosophical beliefs or trade union membership, genetic data or data concerning health.

- Occupational pensions
  Processing necessary for the purpose of making a determination in connection with eligibility for or benefits payable under, an occupational pension scheme.

- Political parties
  Processing of political opinions data is necessary for the political activities of a person or organisation registered under the Political Parties, Elections and Referendums Act 2000.

- Elected representatives responding to requests
  Allows an elected representative to process data where necessary (in connection with the discharge of the elected representative's functions) for the purpose of taking action in response to a request from an individual.

- Disclosure to elected representative
  Processing which consists of the disclosure of personal data to an elected representative by a data controller necessary for the purpose of responding to a communication from the representative (in relation to a request the representative has received from an individual).

- Informing elected representatives about prisoners
  Processing for the purpose of informing a member of the House of Commons or a member of the Scottish Parliament about a prisoner.

- Publication of legal judgments
  Processing which is necessary for the purpose of publishing a judgment or other decision of a court or tribunal.

- Anti-doping in sport
  Processing which is necessary: (i) in connection with measures designed to eliminate (identify or prevent) doping which are undertaken by a body with responsibility for eliminating doping; or (ii) for the purpose of providing information about doping or suspected doping to such a body.

- Standards of behaviour in sport
  Processing where it is necessary to protect the integrity of a sport or sporting event from dishonesty, malpractice or other seriously improper conduct, or failure by a person participating in the sport or event to comply with standards of behaviour set by a body or association with responsibility for the sport or event.

Part 2, paragraph 5 provides that in order to meet a condition in this part the controller must have an appropriate policy document in place, as required under Schedule 1, Part 4 (see further guidance on appropriate policy documentation on page 24).

Schedule 1, Part 3 conditions – processing criminal convictions data

- Consent
  Processing with the consent of the data subject.

- Protecting individual's vital interests
  Processing of criminal convictions data necessary in the vital interests of an individual.

- Processing by not-for-profit bodies
  Processing in the course of legitimate activities pursued by a not-for-profit body with a political, philosophical, religious or trade union aim where the processing relates to members, former members or persons with regular contact with the body.

- Personal data in the public domain
  Processing where personal data is manifestly made public by a data subject.

- Legal claims
  Processing is necessary for purpose of: (i) any legal proceedings; (ii) obtaining legal advice; or (iii) establishing, exercising or defending legal rights.

- Judicial acts
  Processing is necessary when a court or tribunal is acting in its judicial capacity.

- Administration of accounts used in commission of indecency offences involving children
  Processing for certain indecency offences processing involving children necessary for administering an account relating to the payment card used in the commission of the offence or cancelling the card used. In order to meet this condition the controller must have an appropriate policy document in place, as required under Part 4 of Schedule 1 (see further guidance on appropriate policy documentation on page 24).

- Extension of certain conditions under Schedule 1, Part 2
  Allows processing of criminal convictions data, where processing would meet a condition in Schedule 1, Part 2 except for the fact it must satisfy the substantial public interest test, provided the controller has an appropriate policy document in place and meets the additional safeguards in Part 4.

- Extension of insurance conditions
  Should the processing of personal data not reveal racial or ethnic origin, religious or philosophical beliefs or trade union membership, genetic data or data concerning health, then this extension allows processing where it would otherwise meet the insurance condition in Schedule 1, Part 2, or the condition relating to the extension of certain conditions under Schedule 1, Part 2 stated above (when processing criminal convictions data).

Part 4 – Appropriate policy documentation and additional safeguards

Schedule 1, Part 4 makes provision for the establishment, content and maintenance of "appropriate policy documentation" where such documentation is required by a condition in Parts 1, 2 or 3.

These appropriate policy documentation must:

- explain how the controller complies with the data protection principles set out in Article 5 of the GDPR;
- explain the controller's policies for the retention and erasure of personal data processed under the relevant condition; and
- be retained, reviewed and (if appropriate) updated by the controller and (if requested) made available to the Information Commissioner, until six months after the controller ceases carrying out the processing.

Where appropriate policy documentation is required, the controller's records of processing activities (under Article 30 of the GDPR) must include:

- details of the relevant condition relied on;
- how processing satisfies Article 6 of the GDPR (lawfulness of processing); and
- details of whether the personal data is retained and erased in accordance with the appropriate policy documentation (and if not the reasons why not).

Obligation of credit reference agencies

GDPR Article 15: This provides data subjects with a right of access to personal data held about them by a controller.

Bill Section 13: limits the extent to which the right of access applies to credit reference agencies. Credit reference agencies are only required to include personal data about a data subject's financial standing when responding to a subject access request, unless the data subject indicates otherwise.

When responding to a subject access request, credit reference agencies are also required to inform data subjects of their right to have incorrect information corrected under the Consumer Credit Act 1974.

Automated decision-making authorised by law: safeguards

GDPR Article 22: This requires that data subjects shall not be subject to a decision based solely on automated processing (including profiling), which produces legal effects concerning the data subject or similarly affects them.

This will not apply if the automated decision making is authorised by EU or Member State law to which the controller is subject and which also lays down suitable measures to safeguard the data subject's rights, freedoms and legitimate interests.

Bill Section 14: sets out the safeguards that must be in place when a significant decision is based solely on automated processing which is required or authorised by law:

- the controller must notify the data subject, as soon as reasonably practicable, that a decision has been taken based solely on automated processing;
- the data subject is given 21 days from receipt of the notification to request the controller either reconsider the decision, or take a decision that is not based solely on automated processing; and
- from receipt of the request from the data subject, the controller has 21 days to comply with the request and notify the data subject in writing of the steps taken to comply with the request and the outcome of complying.

Exemptions

GDPR Article 23: This permits EU or Member State legislation to restrict the scope of obligations and rights under the GDPR where such restriction is necessary to safeguard:

- national security;
- defence;
- public security;
- the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties;
- other important objectives of general public interest of the EU or of a Member State, in particular an important economic or financial interest, public health and social security;
- the protection of judicial independence and judicial proceedings;
- the prevention, investigation, detection and prosecution of breaches of ethics for regulated professions;
- monitoring, inspection or regulatory function connected with the

exercise of official authority related to national security, important objectives of general public interest and the prevention, investigation detection and prosecution of breaches of ethics in regulated professions;

- the protection of data subjects or the rights and freedoms of others; and
- the enforcement of civil law claims.

In addition **Article 85** permits certain exemptions from the GDPR for reasons relating to freedom of expression and **Article 89** permits exemptions from the GDPR for reasons relating to scientific or historical research purposes, statistical purposes and archiving purposes. These are discussed further below.

Bill Section 15 and Schedules 2, 3 and 4: set out the exemptions from the GDPR, in accordance with Articles 23, 85 and 89 of the GDPR.

2 Part 2, Data Protection Bill

The tables below provides summary descriptions of the exemptions in the Bill and the relevant Articles of the GDPR.

For your ease of reference, the relevant GDPR Articles are

Article 5: the Principles
Article 13: Transparency information when collecting personal data directly
Article 14: Transparency information when not collecting personal data directly
Article 15: Subject access
Article 16: Right of rectification
Article 17: Right to erasure
Article 18: Right to restriction of processing
Article 19: Notification regarding rectification, erasure or restriction
Article 20: Right of data portability
Article 21: Right to object

Exemption	GDPR Article									
	5	13	14	15	16	17	18	19	20	21
Crime and taxation: general **Schedule 2, Para 2** Exemption for the purposes of the prevention or detection of crime, the apprehension or prosecution of offenders or the assessment or collection of tax or duty.	✓	✓	✓	✓	✓	✓	✓		✓	✓
Crime and taxation: risk assessment system **Schedule 2, Para 3** Exemption for personal data which consists of a classification	✓	✓	✓	✓						

Exemption	GDPR Article									
	5	13	14	15	16	17	18	19	20	21
applied to a data subject as part of a risk assessment system operated by government, local authority or another authority administering housing benefit for crime and taxation purposes.										
Immigration **Schedule 2, Para 4** Exemption for the purposes of the maintenance of effective immigration control, or the investigation or detection of activities that would undermine the maintenance of effective immigration control.	✓	✓	✓	✓		✓	✓			
Information required to be disclosed by law etc or in connection with legal proceedings **Schedule 2, Para 5** Exemption if: • the controller is obliged by enactment to make personal data available to the public; • disclosure is required by an enactment, rule of law or court/tribunal order; or • disclosure is necessary for the purposes of actual or prospective legal proceedings, or obtaining of legal advice or establishing, exercising or defending legal rights.	✓	✓	✓	✓	✓	✓	✓		✓	✓

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Exemption	GDPR Article									
	5	13	14	15	16	17	18	19	20	21
Functions designed to protect the public etc **Schedule 2, Para 7** Exemption for the purpose of certain bodies or persons discharging functions, including: • to protect the public in relation to financial loss, harm by persons authorised to carry on any profession or other activity, • to protect charities and community interest companies and their property from mishandling, • to protect the health and safety of persons at work or other persons in connection with the action of persons at work, • to protect the public for maladministration and failures by a public body and to regulate anti-competitive behaviour.	✓	✓	✓	✓	✓	✓	✓		✓	✓
Regulatory functions relating to legal services, the health service and children's services **Schedule 2, Para 8** Exemption for the purpose of certain bodies or persons discharging functions relating to the Legal Services Board, considering legal complaints, complaints as to the maladministration of a health service redress scheme by anybody or other person, complaints about health care or social services, the investigation of complaints relating to social and palliative care and complaints about social services.	✓	✓	✓	✓	✓	✓	✓		✓	✓

2 Part 2, Data Protection Bill

Exemption	GDPR Article									
	5	13	14	15	16	17	18	19	20	21
Regulatory functions of certain other bodies **Schedule 2, Para 9** Exemption for the purpose of certain bodies or persons discharging functions relating to the Financial Ombudsman, the investigator of complaints against the financial regulators, a consumer protection officer other than the Competition and Markets Authority, the monitoring officer of a relevant authority and the Public Services Ombudsman for Wales.	✓	✓	✓	✓	✓	✓	✓		✓	✓
Parliamentary privilege **Schedule 2, Para 11** Exemption if this is required for the purpose of avoiding an infringement of parliamentary privilege.	✓	✓	✓	✓	✓	✓	✓		✓	✓
Protection of the rights of others **Schedule 2, Para 14** Exemption if a disclosure of information by a controller would involve disclosing information relating to another individual identifiable from the information.	✓			✓						
Legal professional privilege **Schedule 2, Para 17** Exemption for information subject to legal professional privilege or in Scotland, confidentiality of communications.	✓	✓	✓	✓						

2 Part 2, Data Protection Bill

Exemption	GDPR Article									
	5	13	14	15	16	17	18	19	20	21
Self-incrimination **Schedule 2, Para 18** Exemption from certain GDPR provisions where compliance would reveal evidence of the commission of an offence and would expose that person to proceedings for that offence.	✓	✓	✓	✓						
Confidential references **Schedule 2, Para 22** Exemption if the personal data consists of a confidential reference for purposes including the education, training or employment of the data subject. This exemption also applies to the appointment of the data subject to any office, including that of a volunteer, or the provision of any service by the data subject.	✓	✓	✓	✓						
Exam scripts and exam marks **Schedule 2, Para 23** Exemption when personal data is recorded by a candidate during an exam.	✓	✓	✓	✓						
Research and statistics **Schedule 2, Para 25** Exemption if personal data is processed for scientific or historical research purposes, or for statistical purposes.				✓	✓		✓	✓	✓	✓

2 Part 2, Data Protection Bill

Exemption	GDPR Article									
	5	13	14	15	16	17	18	19	20	21
Archiving in the public interest **Schedule 2, Para 26** Exemption if personal data is processed for archiving purposes in the public interest.				✓	✓		✓	✓	✓	✓
Health data processed by a court **Schedule 3, Para 3** Exemption if health personal data is processed by the Court.	✓	✓	✓	✓	✓	✓	✓		✓	✓
Data subjects expectations and wishes with respect to health data **Schedule 3, Para 4** Exemption relating to a request for health data in certain situations where the data subject is under 18 years old (16 in Scotland) and the requestor has parental responsibility or the data subject is incapable of managing their own affairs and responding to the request would not confirm with the data subject's wishes.	✓	✓	✓	✓	✓	✓	✓		✓	✓
Serious harm from health data disclosure **Schedule 3, Para 5** Exemption from Article 15(1) and (3) when the serious harm test* is met or where a controller who is not a health professional obtains an opinion from someone who appears to be an appropriate health professional.				✓*						

Exemption	GDPR Article									
	5	13	14	15	16	17	18	19	20	21
Social work data processed by a court **Schedule 3, Para 9** Exemption if personal data concerning social work is processed by the Court.	✓	✓	✓	✓	✓	✓	✓		✓	✓
Data subjects expectations and wishes with respect to social work data **Schedule 3, Para 10** Exemption relating to a request for social work data in certain situations where the data subject is under 18 years old (16 in Scotland) and the requestor has parental responsibility or the data subject is incapable of managing their own affairs and responding to the request would not conform with the data subject's wishes.	✓	✓	✓	✓	✓	✓	✓		✓	✓
Serious harm from social work data disclosure **Schedule 3, Para 11** Exemption from Article 15(1) and (3) of the GDPR when the serious harm test* is met. In addition there is a restriction of Article 15(1) and (3) of the GDPR where a controller is obliged to disclose social work data which was originally supplied by the Scottish Children's Reporter Administration ("the Principal Reporter") and which the data subject is not entitled to receive. This restriction does not apply where the Scottish Children's Reporter Administration is of the opinion that the serious harm test is not met.				✓*						

2 Part 2, Data Protection Bill

Exemption	GDPR Article									
	5	13	14	15	16	17	18	19	20	21
Education data processed by a court **Schedule 3, Para 18** Exemption if educational personal data is processed by the Court.	✓	✓	✓	✓	✓	✓	✓		✓	✓
Serious harm from education data disclosure **Schedule 3, Para 19** Exemption from Article 15(1) and (3) when the serious harm test* is met. There is also a restriction of Article 15(1) and (3) where a controller is obliged to disclose education data which was originally supplied by the Scottish Children's Reporter Administration and which the data subject is not entitled to receive. Where a request is made by a data subject in accordance with Article 15(1) and (3), this must be notified to the Scottish Children's Reporter Administration within 14 days. This restriction does not apply where the Scottish Children's Reporter Administration is of the opinion that the serious harm test is not met.				✓*						
Child abuse data **Schedule 3, Para 21** Exemption from Article 15(1) and (3) when a request for child abuse data would not be in the best interests of the data subject under 18 years old and the requestor has parental responsibility or the data subject is incapable of managing their own affairs and the person making the request has been appointed by a court to manage those affairs.				✓						

*The "**serious harm test**" involves consideration of whether the application of the Article 15 Right of Access under the GDPR to the data would be likely to cause serious harm to the physical or mental health of the data subject or another individual.

Exemption	GDPR Article										
	5	13	14	15	16	17	18	20	21	60-62	63-67
Journalistic, academic, artistic and literary purposes Schedule 2, Para 24 Exemption from certain GDPR provisions if the personal data is being processed for the special purposes with a view to publication by a person of journalistic, academic, artistic and literary material in the public interest.	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓

Exemption	GDPR Article	
	5	15
Exemption from certain GDPR provisions if personal data is processed for the following purposes, when disclosing information about: • human fertilisation and embryology information (Schedule 4, para 2); • adoption records and reports (Schedule 4, para 3); • statements of special educational needs (Schedule 4, para 4); • parental order records and reports (Schedule 4, para 5); and • information provided by the Principle Reporter for children's hearing (Schedule 4, para 6).	✓	✓

Are there any further exemptions?

Yes. The following exemptions are also available:

- when assessing a person's suitability for judicial office or the office of Queen's Counsel (Schedule , para 12);
- when assessing a person's suitability for offices such as the Poet Laureate etc (Schedule 2, para 13);
- in connection with a corporate finance service involving price-sensitive information (Schedule 2, para 19);
- management forecasting or planning in relation to a business or other activity (Schedule 2, para 20); and
- any negotiations with the data subject and where this would be likely to prejudice those negotiations (Schedule 2, para 21).

Accreditation of certification providers

GDPR Article 43: provides for the accreditation by a Member State's supervisory authorities or other national accreditation bodies of organisations wishing to operate as certification providers.

Bill Section 17: the Information Commissioner and the UK's national accreditation body (UKAS) are the only persons who can provide accreditation of certification providers in the UK. Further, the Information Commissioner and UKAS may only accredit certification providers after the Information Commissioner has published a statement that they and, where applicable, UKAS, will undertake this accreditation role. Section 17 also confirms that UKAS may charge a reasonable fee in relation to accreditation.

Schedule 5 of the Bill sets out the review and appeal process for accreditation decisions.

The GDPR encourages Member States and supervisory authorities, such as the Information Commissioner, to establish certification mechanisms and data protection seals and marks. These demonstrate compliance with data protection obligations by controllers and processors.

Transfers of personal data to third countries, etc

GDPR Articles 44 to 49: The GDPR imposes a general prohibition on the

transfer of personal data outside the EU, unless:

- Article 45 - the transfer is based on an adequacy decision;
- Article 46 – the transfer is subject to appropriate safeguards;
- Article 47 – the transfer is governed by Binding Corporate Rules; or
- Article 49 – the transfer is in accordance with specific exceptions.

One of the specific exceptions is where the transfer of personal data outside the EU is necessary for important reasons of public interest (Article 49(1)(d)).

Bill Section 18: permits the Secretary of State to specify circumstances where transfer will or will not be considered to be necessary for important reasons of public interest. In addition it permits the Secretary of State to restrict transfers out of the EU more generally where it is necessary for important reasons of public interest.

Processing for archiving, research and statistical purposes: safeguards

GDPR Articles 9(j) and 89(1): There is a specific legal basis for processing special categories of data for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes, which is also in accordance with Article 89(1) and based on Member State law which contains suitable safeguards.

Bill Section 19 sets out suitable safeguards for UK law, in that processing will not satisfy the safeguards requirement where it is:

- for measures or decisions with respect to a particular data subject, unless the purpose for which the processing is necessary includes the purposes of approved medical research; or
- likely to cause substantial damage or substantial distress to an individual.

Part 2, Chapter 3 – Other General Processing

What is the scope of Part 2, Chapter 3?

The GDPR doesn't apply to all processing of personal data occurring in the UK. It doesn't cover processing which is:

- **outside the scope of EU law**, such as immigration issues relating to third-country nationals on humanitarian grounds;
- **outside the scope of the GDPR**, such as 'common foreign and security policy activities' (Article 2(2)(b) GDPR), or manual unstructured processing of personal data held by an FOI public authority.

To fill in those gaps the Bill covers:

- Part 3 (LE processing);
- Part 4 (IS processing);
- Part 2, Chapter 3 ('everything else').

Processing personal data under Part 2, Chapter 3 is governed by:

- the applied GDPR;
- as modified by the applied Chapter 2; and
- as modified by Schedule 6.

"**The applied GDPR**" is used to mean the GDPR when applied to the 'everything else' category, that is processing covered by Part 2, Chapter 3 (and not covered by the GDPR, LE processing or IS processing).

"**The applied Chapter 2**" is used to mean Part 2, Chapter 2 of the Bill when applied to the "applied GDPR", incorporating the modifications made to the GDPR by Chapter 2 (eg the additional processing conditions and exemptions set out in Schedule 1-4).

Schedule 6 modifies the applied GDPR and applied Chapter 2 to make the provisions work in a national context. For example, Schedule 6 removes references to "the Union" and "Member States" and replaces them with references to the United Kingdom. Schedule 6 changes are included in the definitions above.

This is set out in Part 2, Chapter 3, Sections 21 and 22.

Which terms are specific to Part 2, Chapter 3and what do they mean?

Part 2, Chapter 3 includes terms which are not used elsewhere in the Bill, including the key terms in the table below.

Term	Overview of term
Automated or structured processing of personal data	Processing of personal data: a) wholly or partly by automated means; and b) other than by automates means that forms part of a filing system or is intended to form part of a filing system.
Manual unstructured processing of personal data	Any processing of personal data which is not automated or structured processing.
FOI public authority	A public authority as defined by the Freedom of Information Act 2000 and the Freedom of Information Act (Scotland) 2002.
Held by an FOI public authority	This term is defined by reference to the relevant provisions of the Freedom of Information Acts in the UK, but excludes information held by an intelligence service on behalf of an FOI public authority. It goes on to exclude personal data which section 7 of the Freedom of Information Act 2000 or section 7 of the Freedom of Information (Scotland) Act 2002, prevents those Acts applying to.

Manual unstructured data held by public authorities

Chapter 3, Section 24 relates only to manual unstructured data, which is data that is not held electronically and is not in a structured manual filing system. Therefore it covers all manual documents held by a public authority, from a pile of papers on a desk to papers unsystematically kept in files.

A key reason for including this type of data in the Bill is that access to it under FOIA is covered by the FOIA exemption for personal data. This allows public authorities to consider access requests which include personal data in line with the requirements of the Bill.

As an aside, Schedule 18, Paragraph 37 contains consequential amendments to FOIA. This includes at Paragraph 37(8), a specific provision allowing FOI public authorities to apply the legitimate interests gateway when disclosing information under FOIA (as was the case under the 1998 Act).

It would be disproportionately onerous to apply all the GDPR requirements to this type of data. Section 24 of the Bill exempts manual unstructured personal data held by public authorities from most provisions of the applied GDPR.

The key obligations under the 'applied GDPR' which continue to apply include:

- Article 5(1)(d) Principle of accuracy
- Article 5(2) Principle of accountability (but only in relation to Art 5(1)(d))
- Article 15 - Right of access by the data subject (but only where the data subject provides a description of the personal data requested or the estimated cost of compliance does not exceed any maximum set by the Secretary of State)
- Article 16 – Right to rectification
- Article 17 – Right to erasure
- Article 18 – Right to restrict processing
- Articles 24 – 43 Controller and processor obligations, including Art 32 – security of processing

Manual unstructured data used in longstanding historical research

Chapter 3, Section 25 covers research which has been running since before 24 October 1998, conducted by a FOI public authority.

In addition to the exemptions in Section 24 for an FOI public authority, the following are also excluded:

- Article 5(1)(d) - Principle of accuracy
- Article 16 – Right to rectification
- Article 17 – Right to erasure

National security and defence exemption

Chapter 3, Section 26 is an exemption for processing for national security and defence purposes, other than by a law enforcement organisation (a 'competent authority') or the intelligence services.

The key obligations under the 'applied GDPR' which continue to apply include:

- Article 5 principles (except the requirement for processing to be lawful under Article 6)
- Article 10 (data relating to criminal convictions etc.). If this data is being processed as part of a criminal investigation or prosecution, then one of the lawful bases for processing criminal convictions data should apply
- Articles 24 - 32 – controller and processor – including the security requirements but excluding personal data breach notification
- Articles 83 & 84 – administrative fines and penalties

Some key obligations which are excluded are:

- Chapter III GDPR – data subject rights

- Articles 33 & 34 – personal data breach notifications
- Chapter V – transfers to third countries and international organisations

Under Section 27 a Cabinet Minister, the Attorney General or the Advocate General for Scotland can sign a certificate that the exemption in Section 26 is required for safeguarding national security, and this certificate will be conclusive evidence. An affected data subject can appeal this to the Information Tribunal.

Section 28 modifies Article 9 of the GDPR, to allow processing of special category data for national security and defence purposes.

It also excludes Article 32 requirement on controllers and processors to put in place appropriate technical and organisational measures when processing personal data for national security and defence purposes. Instead the controller or processor must simply comply with the requirement to put in place security measures appropriate to the risks arising from the processing of the personal data.

Part 3, Data Protection Bill

Law enforcement processing

What is the scope of Part 3?

Part 3 is mainly of interest to organisations which have a law enforcement function, and all individuals whose personal data may be handled for law enforcement purposes.

Part 3 regulates the processing of personal data by law enforcement organisations ("competent authorities") for the purposes of "the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security" (together law enforcement purposes).

This Part will implement the Law Enforcement Directive EU2016/680 (LED) into UK law, with additional provisions. The LED came into force in 2016 and EU member states have until May 2018 to adopt national legislation implementing its provisions.

Part 3 is divided into the six chapters described in the table below. As the ICO has produced, and will continue to update, detailed guidance on this Part of the Bill, in this overview we have only provided a summary of Chapters 1 to 3.

Chapter and title	Overview of chapter content
1. Scope and definitions	• Sets the scope to which Part 3 applies. • Provides definitions adopted by Part 3.
2. Principles	• Sets out six data protection principles, along with various safeguards which must be adhered to. All six of these principles must be met in order for a controller to comply with Part 3. The principles are similar but not identical to the GDPR principles.
3. Rights of data the data subject	• Provides individuals with a series of rights which they may exercise against controllers.
4. Controller and Processor	• Imposes a range of obligations upon controllers and processors, including the requirement to appoint a data protection officer.
5. Transfers of Personal Data to	• Establishes how and when personal data can be transferred to a country outside of the EU or an international

Chapter and title	Overview of chapter content
Third Countries	organisation.
6. Supplementary	• Provides supplementary provisions such those relating to national security certificates and how infringements of Part 3 should be reported.

Part 3, Chapter 1 – Scope and definitions

Chapter 1 provides the following key definitions:

Defined term	Simplified definition
Competent authority	Generally a person or body listed in Schedule 7 of the Bill. This list includes any United Kingdom government department other than a non-ministerial government department, the Commissioner of Police for the City of London, the Financial Conduct Authority and the Information Commissioner. A competent authority may also include persons or bodies that are not listed in Schedule 7 but which have statutory functions to process personal data for any of the law enforcement purposes. For example, the Independent Office of Police complaints. The intelligence services are not classed as a competent authority within Part 3. They come under Part 4 of the Bill.
Law enforcement purposes	Processing for one or more of the following purposes: prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security.
Controller	A competent authority which, alone or jointly with others, determines the purposes and means of the processing of personal data. Alternatively a controller may be a competent authority on which an obligation to process personal data is imposed by enactment.
Processor	Any person who processes personal data on behalf of the controller (which will be a competent authority).
Employee	In relation to any person, including an individual who holds a position (whether paid or unpaid) under the direction and control of another person or organisation.
Third country	This is a country or territory other than a Member State of the EU.
EU recipient	This is a recipient in a Member State other than the United Kingdom, or an agency, office or body established pursuant to Chapters 4 and 5 of Title V of the Treaty on the Functioning of the European Union.
non-EU recipient	This is a recipient in a country outside of the EU, or an international organisation.

Defined term	Simplified definition
Sensitive processing (see section 35(8))	The processing of: • personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs or trade union membership; • genetic data, or of biometric data, for the purpose of uniquely identifying an individual; • data concerning health; or • data concerning an individual's sex life or sexual orientation.
Relevant authority	In relation to transfers of personal data to third countries, this mean any person based in a third country that has (in that country) functions comparable to those of a competent authority.

In addition Chapter 1 provides definitions relating to a "personal data breach", "profiling", "recipient" and "the restriction of processing".

Part 3, Chapter 2 – Principles

This Chapter sets out six data protection principles and various safeguards which must be adhered to.

All six of these principles must be met in order for a controller to comply with Part 3.

- first data protection principle – processing must be lawful and fair;
- second data protection principle – purposes of processing must be specified, explicit and legitimate;
- third data protection principle – personal data must be adequate, relevant and not excessive;
- fourth data protection principle – personal data must be accurate and kept up to date;
- fifth data protection principle – personal data must be kept for no longer than is necessary; and
- sixth data protection principle – personal data must be processed in a secure manner.

Part 3, Chapter 3 – Rights of the data subject

This imposes obligations of transparency on controllers and confers certain rights to individuals about personal data processing.

Key rights and obligations	Overview of requirements
Make information available to individuals	• The controller is required to make available to the data subject a range of information, including: ○ the identity and contact details of the controller and the data protection officer; ○ the purpose for which their personal data is being processed; ○ the existence of their right to exercise any of the below rights; ○ the legal basis for the processing of their personal data; and ○ the retention period or criteria used to determine the retention period.
Right of access	• Confirmation from the controller whether or not a data subject's personal data is being processed and, if this personal data is being processed, access to that personal data.
Right to rectification	• The controller must, if requested, rectify or complete inaccurate or incomplete personal data. • A controller must notify the competent authority (if any) from which the inaccurate personal data originated, where this personal data has been rectified. • A controller must notify the recipients of personal data, where personal data which been rectified, which has been disclosed by the controller. Similarly the recipient must rectify the processing of the personal data in so far as they retain responsibility for it.
Right to erasure or restriction of processing	• The controller is obliged, if conditions are met, to erase personal data or restrict its processing without delay. • A controller must notify the recipients of personal data, where personal data which been erased or restricted which has been disclosed by the controller. Similarly the recipient must erase or restrict the processing of the personal data in so far as they retain responsibility for it.

Key rights and obligations	Overview of requirements
Right not to be subject to automated decision-making	• A controller cannot take a significant decision based solely on automated processing unless that decision is authorised by law.
Exercise of rights through the Commissioner	• An individual has the option to exercise their rights through the Information Commissioner.

When does a controller not need to comply with a request?

These rights do not apply to "relevant personal data" relating to processing in the course of a criminal investigation or criminal proceedings for the purposes of executing a criminal penalty. Relevant personal data is personal data contained in a judicial decision or in other documents relating to the investigation or proceedings. The exception to this is the right to not be subjected to automated decision-making, which continues to apply.

What is the period in which a request under these rights must be complied with?

The controller must provide the requested information or take the appropriate action without undue delay and at least within the "applicable time period".

The applicable time period is within one month of the day on which (unless otherwise specified in separate regulations, and then only up to three months):

- the request was received;
- the controller receives enough information to be able to confirm the identity of the individual; or
- the day on which a fee is paid, owing to the request being unfounded or excessive.

This period applies for all applicable data subject rights under Part 3.

Part 4, Data Protection Bill

Intelligence services processing

What is the scope of Part 4?

Part 4 is mainly of interest to the intelligence services and anyone whose personal data is or maybe processed by the intelligence services.

National security falls outside the scope of EU law. The activities of the UK intelligence services are therefore outside the scope of the GDPR and the LED. To address this, Part 4 of the Bill introduces a data protection regime applicable to processing of personal data by the intelligence services, namely:

- the Security Service;
- the Secret Intelligence Service; and
- the Government Communications Headquarters.

Part 4 is based on the Council of Europe's modernised Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data ("modernised Convention 108"). The original Convention 108 was opened for signature on 28th January 1981 and presently has 51 signatory countries. The modernised Convention 108 builds on the internationally recognised standards for personal data protection established under the original Convention.

Part 4 applies to the processing of personal data by intelligence services either (wholly or partly) by automated means or as part of (or intended to form part of) a filing system. It contains six chapters.

Chapter and title	Overview of chapter content
1. Scope and definitions	• Sets the scope to which Part 4 applies. • Provides definitions adopted by Part 4.
2. Principles	• Sets out six data principles, along with various safeguards which must be adhered to. All six of these principles must be met in order for a controller to comply with Part 4.
3. Rights of the data subject	• Provides data subjects with a series of rights which they may exercise against controllers.
4. Controller and Processor	• Imposes a range of obligations upon controllers and processors including data security and data breach obligations.

4 Part 4, Data Protection Bill

Chapter and title	Overview of chapter content
5. Transfers of personal data outside the United Kingdom	• Establishes when personal data can be transferred outside the United Kingdom or to an international organisation.
6 Exemptions	• Provides exemptions where the provisions of this Part do not apply due to the requirement to safeguard national security.

Part 4, Chapter 1 - Scope and definitions

What terms are specific to Part 4?

The following key definitions are used:

Defined term	Simplified definition
Intelligence Service	• The Security Services; • The Secret Intelligence Service; and • The Government Communications Headquarters.
Controller	This means the intelligence service which, alone or jointly with others, determines the purposes and means of the processing of personal data.
Processor	Any person who processes personal data on behalf of the controller (other than a person who is an employee of the controller).
Consent	This definition is largely taken from Recital 32 of the GDPR. Consent must be freely given, specific, informed and an unambiguous indication of the individual's wishes. This must be provided by a statement or clear affirmative action, signifying the individual's agreement to the processing of their personal data.
Employee	In relation to any person, includes an individual who holds a position (whether paid or unpaid) under the direction and control of that person.
Sensitive processing	In essence, this is processing of special categories of data (as defined in the GDPR) plus processing of criminal convictions data.

In addition Chapter 1 provides definitions for a "personal data breach", "recipient" and "restriction of processing".

Part 4, Chapter 2 – Principles

Chapter 2 sets out six data principles, along with various safeguards which must be adhered to.

All six of these principles must be met in order to comply with Part 4.

The six data protection principles are as follows:

- first data protection principle – processing must be lawful, fair and transparent.
- For processing to be lawful at least one of the Schedule 9 conditions must be met and in addition, for sensitive processing at least one of the Schedule 10 conditions.
- second data protection principle – purposes of processing must be specified, explicit and legitimate;
- third data protection principle – personal data must be adequate, relevant and not excessive;
- fourth data protection principle – personal data must be accurate and kept up to date;
- fifth data protection principle – personal data must be kept for no longer than is necessary; and
- sixth data protection principle –personal data must be processed in a secure manner.

Part 4, Chapter 3 – Rights of the data subject

Key rights	Overview of requirements
Right to information	• A controller must provide a data subject with the following information: ○ the identity and contact details of the controller; ○ the legal basis on which and the purposes for which their personal data is being processed; ○ the categories of personal data being processed; ○ the recipients or categories of recipients of the personal data; ○ the right to lodge a complaint with the Information Commissioner; ○ how to exercise their rights; and ○ any other information that is required to make processing fair. • The controller may comply with the right to information by making information generally available.
Right of access	• A data subject has the right to request confirmation from a controller whether or not their personal data is being processed and, if this personal data is being processed, access to their personal data and the information set out below: ○ the purpose and legal basis for the processing; ○ the categories of personal data concerned; ○ the recipients or categories of recipients to whom the personal data has been disclosed; ○ the period for which the personal data is to be preserved; ○ the existence of data subject's rights to rectification and erasure of personal data; ○ the right to lodge a complaint with the Information Commissioner; and ○ any information about the origin of the personal data.
Right not to be subject to automated	• A controller may not take a decision significantly affecting a data subject that is based solely on automated processing. • A decision will be considered to significantly affect a data subject if it has a legal effect concerning a data subject. A decision may be

Key rights	Overview of requirements
decision-making	made based solely on automated processing where: ○ it is authorised by law; ○ the data subject has given consent to the decision being made on that basis; or ○ a decision is taken for the purpose of considering whether to enter into a contract, or with a view to entering into a contract with the data subject or in the course of performing such a contract.
Right to object to processing	• A data subject may give notice to the controller requesting that the controller no longer process their personal data, either in general or for a specific purpose or in a specific manner. This notice may be given when an individual believes that this processing would cause an unwarranted interference with their rights.
Rights to rectification and erasure	• A data subject has the right to apply to court, where they believe their personal data is inaccurate, requesting that this is rectified without undue delay. • Likewise it is possible for a data subject to apply to court, where they believe that data protection principles have not been complied with, and for a court to order erasure of that data without undue delay. • A data subject may contest the accuracy of personal data held by a controller and a court may order that the processing of the personal data is restricted, where it is not possible for the controller to confirm the accuracy of the personal data.

Part 4, Chapter 4 – Controller and processor

What are the main obligations of a controller under Chapter 4?

A controller must implement appropriate measures to ensure that the processing of personal data complies with the requirements of Part 4. A controller must be able to evidence these measures to others, including the Information Commissioner.

A controller must also, prior to processing personal data, consider the impact of the proposed processing on the rights and freedoms of data subjects.

A controller must implement appropriate technical and organisational measures to ensure that the data protection principles are implemented and the risks to the rights and freedoms of data subjects are minimised.

There are provisions for joint controllers, with similar requirements to those in the GDPR.

What are the main obligations of a processor under Part 4?

A processor may only process personal data under this Part 4 on instruction from the controller or where complying with a legal obligation. It must also implement the security and data breach reporting measures described below.

What level of security does a controller or processor need to implement?

Each controller and processor must implement appropriate technical and organisational measures to ensure an appropriate level of security. Detailed obligations apply where there is automated processing.

What action does a controller need to take in the event of a data breach?
• Provide a notification to the Information Commissioner without undue delay. • If the notification is not made within 72 hours, the notification must detail the reason for the delay.
The notification must include: • a description of the nature of the data breach (eg approximate numbers of affected data subjects, the categories and approximate number of data records concerned etc); • the name and contact details of a contact point from whom additional information

What action does a controller need to take in the event of a data breach?

can be obtained;

- a description of the likely consequences of the breach; and
- a description of the measures taken by the controller to address the breach, including any measures to mitigate the adverse effects.

The information required for a notification may be provided in phases if it is not possible to provide this at the same time.

If a processor becomes aware of a data breach this must be communicated to the controller without undue delay.

Part 4, Chapter 5 – Transfers of personal data outside the United Kingdom

A controller may not transfer personal data to a country outside the United Kingdom or to an international organisation unless the transfer is necessary and proportionate for the purposes of that controller's statutory function or for purposes provided for in the relevant sections of the Security Services Act 1989 or the Intelligence Services Act 1994.

Part 4, Chapter 6 – Exemptions

The following exemptions apply to processing by the Security Services, if that exemption is required for the purpose of safeguarding national security:

- The data protection principles, except that the processing of personal data must remain lawful, and meet at least one of the conditions found in Schedule 9 for processing of personal data and Schedule 10 for sensitive processing.
- The rights of the data subject.
- The communication of a personal data breach to the Information Commissioner.
- Provisions relating to inspection of personal data in accordance with international obligations found in Part 5 of the Bill.
- Certain powers of the Information Commissioner to monitor, enforce and conduct investigations.
- The Information Commissioner's power to issue notices and her powers of entry and inspection as found in Part 6 and Schedule 15 of the Bill.
- The offences relating to personal data as found in Part 6.
- Provisions relating to the special purposes found in Part 6 of the Bill.

Further exemptions - Schedule 11

Schedule 11 provides further exemptions which may be applied in specific scenarios.

These exemptions relate to:

- The prevention of crime.
- Information required to be disclosed by law.
- Parliamentary privilege.
- Prejudice to judicial proceedings.
- The conferring by the Crown of any honour or dignity.
- Prejudice to combat effectiveness of any of the armed forces.
- Prejudice to the economic well-being of the United Kingdom.
- Legal professional privilege.
- Prejudice to negotiations with the data subject.
- Confidential references given by the controller
- Exam scripts or marks
- Research and statistical purposes

- Archiving in the public interest.

Part 5, Data Protection Bill

The Information Commissioner

The Information Commissioner is the UK's national supervisory authority for the purposes of the GDPR and the LED and shall continue to be the UK's designated authority for the purposes of the Convention 108.

Part 5 and Schedule 12 make provision to allow the Information Commissioner and her office to continue to operate under the UK's new data protection laws. It describes the Information Commissioner's functions, duties and powers.

The ICO will shortly issue a draft Regulatory Action Policy, based on its functions, duties and powers, for consultation.

Part 6, Data Protection Bill

Enforcement

What is the scope of Part 6?

Part 6 of the Bill relates to enforcement and addresses a wide range of areas.

When reading Part 6 of the Bill there is a logical progression, from considering the Commissioner's civil enforcement powers, which are exercisable through a series of notices, the effects of which are summarised in the table found on the next page, through to explaining what action a person can take against such notices.

Part 6 also considers complaints made by individuals, the potential remedies that can be provided by a court including compliance orders and compensation to data subjects (which may be awarded for contravention of the GDPR or other data protection legislation).

Finally Part 6, and some provisions found within Part 7, address a variety of criminal offences and their penalties.

ICO Enforcement actions and rights of appeal
Part 6, Sections 143 to 162

The Information Commissioner's powers under Part 6 of the Bill apply to data processing activities that fall under the GDPR, which includes the applied GDPR as set out in Part 1, Chapter 3 of the Bill, as well as processing activities that fall under Part 3, Chapter 2 (law enforcement processing) and Part 4, Chapter 2 (intelligence services processing).

Type of notice	Information Notice (Sections 143-145)	Assessment Notice (Sections 146-147)	Enforcement Notice (Sections 148-152 and Schedule 15)	Penalty Notice (Sections 154-158 and Schedule 16)
What is the purpose of the notice	To provide ICO with information that it reasonably requires for carrying out its functions.	To permit ICO to undertake an assessment as to data protection compliance. Where a notice is given to a processor – the ICO will provide a copy to each relevant controller if reasonably practicable	To require a person to take the steps specified in the notice, or to require that a person refrains from taking certain steps.	To permit ICO to sanction a person for non-compliance. This includes non-compliance with an enforcement notice.
When will a notice be issued?	As part of the ICO's exercise of its investigative powers.	As part of the ICO's exercise of its investigative powers.	When a person has failed to: • comply with the principles, data subject rights and controller/processor obligations in the GDPR, applied GDPR,	The same as for an Enforcement Notice. In addition, where a person has failed to: • comply with an information notice, assessment notice, or

Type of notice	Information Notice (Sections 143-145)	Assessment Notice (Sections 146-147)	Enforcement Notice (Sections 148-152 and Schedule 15)	Penalty Notice (Sections 154-158 and Schedule 16)
			and Part 3 (LE processing) and Part 4 (IS processing); • communicate a personal data breach to the Commissioner or a data subject; • comply with the principles for transfers to third countries and international organisations; • comply with an obligation relating to the monitoring of approved codes of conduct. • (for a certification provider) meet the requirements for accreditation; or • (for controllers) pay fees to the Commissioner.	enforcement notice. In deciding whether to issue a penalty notice, the ICO will consider a range of matters including the nature and gravity of the failure. The full list of matters which we can consider can be found in section 148(3) of the Bill.

Type of notice	Information Notice (Sections 143-145)	Assessment Notice (Sections 146-147)	Enforcement Notice (Sections 148-152 and Schedule 15)	Penalty Notice (Sections 154-158 and Schedule 16)
What must the notice contain?	• Why the ICO requires this information. • Information about rights of appeal. It must not require information to be provided before the end of the appeal period, unless the matter is urgent.	• The time, or period for compliance. • Information about rights of appeal.	• Details of the failures and reasons for reaching such an opinion. • Information about rights of appeal.	The ICO must first send to the person a "notice of intent", and the penalty notice must follow within six months of the notice of intent. This can be extended by agreement. The notice of intent must contain: • the reasons why the ICO proposes to issue the notice • the right to make written or oral representations and the period in which they can be made (not less than 21 days for written representations). The penalty notice must include specific information, eg reasons for the penalty, the amount, how it is to be paid and rights of appeal.

Type of notice	Information Notice (Sections 143-145)	Assessment Notice (Sections 146-147)	Enforcement Notice (Sections 148-152 and Schedule 15)	Penalty Notice (Sections 154-158 and Schedule 16)
What is optional for the ICO?	The notice may specify or describe the information required or the category of information required, and may set out: • the form; • the time or period; and • the place, for providing the information. It may also specify that the notice is urgent and the reasons why.	Requirements to: • permit the ICO to enter specified premises; • direct the ICO to specific documents on the premises; • assist the ICO in viewing specified information; • provide a copy of the specified documents; • direct the ICO to specified equipment or other material; • permit the ICO to inspect or examine specified documents, information, equipment or material; • permit the ICO to observe the processing of personal data	Requirements: • which are appropriate to the failure; • for certain failures - to ban all or limited types of processing of personal data; • to erase personal data held; • to take steps to ensure the accuracy of personal data; • to notify third parties; • of the time or period to comply. If the matter is urgent, it can be as short as seven days.	A penalty notice may subsequently be varied by the ICO by written notice. This variation may not reduce the period for payment, increase the amount of the penalty or otherwise vary the notice to the detriment of the person it is issued against.

Type of notice	Information Notice (Sections 143-145)	Assessment Notice (Sections 146-147)	Enforcement Notice (Sections 148-152 and Schedule 15)	Penalty Notice (Sections 154-158 and Schedule 16)
		• make available a number of specified persons for interview		
When does a person not need to comply?	• Where legal professional privilege applies. • Where providing the information would infringe the privileges of either Houses of Parliament. • Where doing so would reveal evidence of the commission of certain offences. • Until such time as an appeal is determined or withdrawn. • Where the notice is withdrawn in writing.	• Where legal professional privilege applies. • Where providing the information would infringe the privileges of either Houses of Parliament. • Until such time as an appeal is determined or withdrawn. • Where the notice is withdrawn in writing. • Where personal data is being processed for the special purposes. • If the body is specified in section 141(5)(a) or (b) of the Bill (eg a Security Service).	• Until such time as an appeal is determined or withdrawn. • Where providing the information would infringe the privileges of either Houses of Parliament. • Where, under Part 3 (LE processing) or Part 4 (IS processing), a person is a joint controller but not responsible for compliance with the relevant provision. • Where the notice is withdrawn in writing.	• Where a person is the Crown Estate Commissioners or a person who is a controller for the Royal Household. • Where providing the information would infringe the privileges of either Houses of Parliament. • Where, under Part 3 (LE processing) or Part 4 (IS processing), a person is a joint controller but not responsible for compliance with the relevant provision. • Where the notice is withdrawn in writing.

Type of notice	Information Notice (Sections 143-145)	Assessment Notice (Sections 146-147)	Enforcement Notice (Sections 148-152 and Schedule 15)	Penalty Notice (Sections 154-158 and Schedule 16)
When must a notice be complied with?	• At least 28 days from the date the notice was given. • If the notice is urgent, and reasons are given, the minimum amount of time to respond must be at least 7 days.		• The period in which a penalty must be paid will be detailed in the notice. • This must be at least 28 days from the date the notice was given.	
What happens if a person fails to comply with a notice?	• A penalty notice. • It is offence, in response to an information notice, to make a statement you know is false or recklessly make a statement which is false in a material respect.	• A penalty notice. • Failure to comply may lead to the issue of a warrant, in relation to entry and inspection.	• A penalty notice.	• If the period to comply has passed, and the right to appeal has ended or is no longer available, then the ICO may apply for a Court Order.

Fines that the Information Commissioner may impose
Part 6, Sections 155 to 158

In accordance with Part 6, the maximum penalty that may be imposed is:

- the amount specified in Article 83 of the GDPR;
- the "**higher maximum amount**": which is in the case of an undertaking, the higher of 20,000,000 EUR or 4% of the undertaking's total annual worldwide turnover in the preceding financial year, or in any other case 20,000,000 EUR; or
- the "**standard maximum amount**": which is in the case of an undertaking the higher of 10,000,000 EUR or 2% of the undertaking's total annual worldwide turnover in the preceding financial year, or in any other case 10,000,000 EUR.

The amount imposed will depend on the reason why the notice is issued. The table below provides more information.

An infringement of a provision contained within the GDPR or the applied GDPR	• the amount specified in Article 83 of the GDPR; or • if an amount is not specified there, the standard maximum amount.
An infringement of a provision of Part 3	• in relation to a failure to comply with section 35, 36, 37, 38(1), 39(1), 40, 44, 45, 46, 47, 48, 49, 52, 53, 73, 74, 75, 76, 77 or 78, the higher maximum amount; and • otherwise, the standard maximum amount.
An infringement of a provision of Part 4	• in relation to a failure to comply with section 86, 87, 88, 89, 90, 91, 93, 94, 100 or 109, the higher maximum amount, and • otherwise, the standard maximum amount.
Failure to comply with an information, assessment or enforcement notice	• in relation to a failure to comply with an information notice, an assessment notice or an enforcement notice, the higher maximum amount.

In addition to the above, please note that Schedule 16 confirms that failure to comply with a Penalty Notice is a civil failure, rather than a crime. Accordingly payment may be pursued in the civil courts.

Powers of entry and inspection (search warrants)
Part 6, Section 153 and Schedule 15

A warrant may be issued if the judge is satisfied that there are reasonable grounds to suspect that crime under the Bill has been or is being committed, or that a person has failed, or is failing, to (in summary):

- comply with the data protection principles, data subject rights and controller/processor obligations set out in the GDPR, applied GDPR and Part 3 (LE processing) and Part 4 (IS processing) of the Bill;
- communicate a personal data breach to the Commissioner or a data subject; or
- comply with the principles for transfers of personal data to third countries and international organisations.

(This list is initially set out in Section 148(2)). In addition, a judge must also be satisfied that there are reasonable grounds to suspect that evidence can be found on the premises.

In addition, should a person fail to comply with an Assessment Notice the Information Commissioner may apply to the Court for a search warrant, to enter premises and carry out various inspections. The Information Commissioner may also apply for a warrant for her to determine if the controller or processor has or is complying. This is an alternative remedy to the imposition of a Penalty Notice.

There are a number of additional conditions which apply:

Condition 1

- At least seven days have passed since the Commissioner gave notice in writing demanding access to the premises in question.

Condition 2

- Access was demanded at a reasonable hour, but access was unreasonably refused; or
- Entry was granted by the occupier, but they unreasonably refused to allow the Commissioner to carry out the required searches and inspections.

Condition 3

- The occupier of the premises was notified by the Commissioner that an application for the warrant had been made; and
- The occupier had an opportunity to be heard by the judge on the question of whether the warrant should be issued or not.

Compliance with these conditions is not required where such compliance would defeat the purpose of entry to the premises or where access is urgently required. The powers of inspection and seizure should not apply to information that is subject to legal professional privilege.

Further details as to what the warrant should contain and how it operates are in Schedule 15 of the Bill.

It is also important to note that it is an offence to intentionally obstruct the execution of a warrant, or to fail to offer assistance that may be reasonably required, without reasonable grounds to do so. It is also an offence for a person, in response to an enforcement notice, to make a statement which they know is false or to recklessly make a statement which is false in a material respect. (Paragraph 15 of Schedule 15)

Rights of appeal and Determinations of appeals
Part 6, Sections 161 and 162

A person may appeal the following to the Tribunal:

- An information notice.
- An assessment notice.
- An enforcement notice.
- A penalty notice.
- A penalty variation notice.
- The amount of a penalty specified in a penalty or penalty variation notice.
- The urgency of compliance with any of the above notices required by the Information Commissioner.
- A refusal by the Information Commissioner to cancel or vary an enforcement notice.
- A finding by the Information Commissioner that processing is not for the special purposes.

The provisions on appeals to the Tribunal are largely unchanged. This means that the Tribunal may review the facts and circumstances of the case and the legal basis, and may substitute its own decision for that of the Information Commissioner.

Complaints by data subjects
Part 6, Section 163

Section 163 requires the Information Commissioner to deal with complaints about data processing that are made by data subjects.

The Information Commissioner must take appropriate steps when responding to a complaint. This includes carrying out an investigation and providing the data subject with information about progress made, including whether further investigations will be required. Additionally, the Information Commissioner must inform the data subject of the outcome of the complaint; provide information about appeals; and, if asked to do so, provide further information about how to pursue the complaint.

If a complaint relates to an alleged infringement of an individual's rights under another EU country's laws implementing the Law Enforcement Directive, the Information Commissioner must send the complaint to that other country. The Information Commissioner must inform the individual that the complaint has been passed on, and, if requested, provide further information about how the individual can pursue the complaint.

Orders to progress complaints
Part 6, Section 164

Section 164 provides an additional mechanism for an individual to progress their complaint. Should they be unhappy with how the Information Commissioner has handled their complaint, they may, in certain circumstances, refer the matter to the Tribunal.

The Tribunal has the power to order the Information Commissioner to take appropriate steps to respond to the complaint and to inform the complainant of the progress made, or the outcome, within a specified period.

Compliance orders
Part 6, Section 165

Section 165 guarantees an individual the right to an effective judicial remedy against certain acts of non-compliance by a controller or processor.
This provides that an individual may bring court proceedings as an alternative to making a complaint to the Information Commissioner. The court has the power to order the controller or processor to take specified steps, or refrain from taking specified steps, for the purposes of securing compliance. However, the court must specify the period within which a step should be taken, or the time at which a step should be taken.

If the court proceedings concern joint controllers who are undertaking processing activities in accordance with Part 3 of the Bill, the court can only order a particular controller to take or refrain from taking steps if it is satisfied that the particular controller is responsible for the compliance issue that the case involves. In addition, the right to bring court proceedings to force compliance does not apply to data processing activities under Part 4 of the Bill.

Compensation for contravention of the GDPR
Part 6, Section 166

Section 166 confirms that a person can bring court proceedings for compensation, if they have suffered "non-material damage" (eg damage which includes distress) because of a breach of the GDPR. Such compensation may be paid to the person, a representative body, or such other person as the court thinks fit.

Compensation for a contravention of other data protection legislation
Part 6, Section 167

Section 167 provides that a person who suffers damage following a contravention of data protection legislation, other than that of the GDPR, may also be entitled to compensation. For these purposes, damage means financial loss, or distress. Compensation proceedings can be brought against controllers and processors.

A controller will be exempt from liability if it can prove that it was not responsible for the event that gave rise to the damage complained about. Whereas, processors shall be liable for the damage only if they have not complied with their processing obligations, or if they have acted beyond the scope of their instructions. However, like controllers, they will be exempt from liability if they can prove that they were not responsible for the event that gave rise to the damage.

Joint controllers, who are caught by the provisions of Parts 3 or 4 of the Bill, will only be liable where they are responsible for compliance with the area of data protection legislation which they have fallen foul of.

Provisions relating to news-related material
Part 6, Sections 142, 168 and 169

Section 142 provides provisions which state that the Secretary of State will establish an inquiry, within 3 months of the Bill being passed, into allegations of data breaches committed by, or on behalf of, news publishers.

In addition, Section 168 and 169 provide details and confirmation that claims can be brought against publishers of news related material for a breach of data protection legislation.

It is important to note that whether or not the defendant is a member of an approved regulator when the claim was commenced will be an important factor when the court considers whether to award costs against the defendant.

The unlawful obtaining of personal data
Part 6, Section 170

Section 170 sets out a series of criminal offences related to the unlawful handling of personal data. It is an offence to knowingly or recklessly:

- handle personal data without the consent of the controller;
- procure or disclose the personal data of another person without the consent of the controller; or
- retain personal data, after it has been obtained, without the consent of the person who was controller when it was obtained.

Defences include:

- The action was necessary for the purposes of preventing or detecting crime.
- The action was required or authorised by an enactment, rule of law or court order.
- The action was justified in the public interest.
- The person holds the reasonable belief that their action was lawful or that the controller would have consented, had they known what has happening.
- The person acted for the special purposes, with a view to the publication by a person of any journalistic, academic, artistic or literary material, and in the reasonable belief that in the particular circumstances the action was justified as being in the public interest.

It is also an offence to sell, or offer to sell personal data that has been unlawfully obtained, which includes advertising this data for sale.

Re-identification of de-identified personal data
Part 6, Sections 171 and 172

Sections 171 and 172 detail two criminal offences relating to the re-identification of de-identified personal data.

Personal data is de-identified if it is processed in a way that means that it cannot be attributed to a specific person without further steps being taken. Re-identification occurs when such steps are taken.

It is an offence:

- if a person knowingly or recklessly re-identifies de-identified personal data without the consent of the controller who de-identified the personal data; or
- if a person knowingly or recklessly processes personal data that has been re-identified (which was an offence), without the consent of the controller responsible for the de-identification.

However, there are a series of defences. In general these mirror those found under section 170, the unlawful obtaining of personal data, and ther eis a similar defence where the person reasonably believed that the relevant controller had, or would have consented to the action.

There is a specific defence of the **effectiveness testing conditions**, when the following conditions must both be met:

Condition 1: The person is testing the effectiveness of the de-identification systems used by other controllers, which they reasonably believe is justified as being in the public interest, and where they do not intend to cause damage or distress.

Condition 2: The person notified the Information Commissioner or controller responsible for de-identifying the personal data about the re-identification, without undue delay, and where feasible, not later than 72 hours after becoming aware of it.

Where there is more than one controller responsible for de-identifying personal data, Condition 2 will be met should one or more of the controllers be notified.

The alteration of personal data to prevent disclosure
Part 6, Section 173

Section 173 provides that, where an access or data portability request has been received, it is an offence for a controller or related persons, including a processor, to obstruct the provision of information which an individual would be entitled to receive.

It is a defence if the obstruction would have occurred regardless of the request. In addition, it is a defence if the person charged acted in the reasonable belief that the individual was not entitled to receive the information.

Provisions relating to the special purposes
Part 6, Sections 174 to 176

What are the special purposes?

Sections 174-176 provides specific derogations from the GDPR for the following purposes:

- Journalistic.
- Academic.
- Artistic.
- Literary.

These derogations are permitted in accordance with Article 85(1) of the GDPR, which acknowledges that freedom of expression is a fundamental right along with the right to data protection. These derogations are defined as the 'special purposes'.

What are the Information Commissioner's powers in relation to the special purposes?

Where an organisation seeks to rely on one of the special purposes, the Information Commissioner may determine, in writing, that:

- it is not processing personal data only for the special purposes; or
- it is not processing the personal data with a view to the publication by a person of journalistic, academic, artistic or literary material which it has not previously published.

The Information Commissioner must provide this written determination to both the controller and processer. Such notice must also provide information about rights of appeal.

When will this determination take effect?

This written determination will not take effect until the period in which an appeal could be brought has passed, or, if the appeal has been brought, that no further appeal will be brought subsequently.

How the Information Commissioner can help, should an individual be a party in proceedings relating to these special purposes?

The Information Commissioner can offer help to an individual who applies for assistance, who is a party, or prospective party to special purposes proceedings.

The Information Commissioner will respond as soon as practicable confirming whether she can assist. She can only assist if the case involves a matter of

substantial public importance. Where she can assist she will inform an individual about how much assistance she can provide and will inform the other party against whom the proceedings are brought. If the Information Commissioner is unable to assist, she will notify the individual why.

How can the Information Commissioner assist an individual in special purposes proceedings?

The Information Commissioner can offer a range of assistance such as paying an individual's costs for proceedings or indemnifying them for their liability to pay costs, expenses or damages connected to proceedings.

When can special purpose proceedings be stayed?

A stay of proceedings is a ruling by a court that halts further legal proceedings until the Information Commissioner has provided her written determination or until the claim is withdrawn.

It is possible for a controller or processor to claim, or a court to determine, that a stay should be granted where the personal data:

- is only being processed for the special purposes;
- a person intends to publish the personal data in journalistic, academic, artistic or literary material; or
- the personal data has not previously been published by the controller.

In Scotland a claim is sisted.

Prohibition of requirement to produce relevant records
Part 7, Section 181

Section 181 protects individuals by making it an offence for a person to require another person to request access to a relevant record. The meaning of a relevant record is provided for within Schedule 17 and includes a health record and records relating to a conviction or caution.

Such a request is not permitted in connection with recruitment or continued employment of an employee or a contract for services.

It is an offence if a person requires another person to make an access request as a condition of providing goods, facilities or services to them or another (which are provided to the public or a section of the public).

It is a defence if the requirement to supply a relevant record was required by an enactment, rule of law or order of the court or was justified in the public interest.

Representation of data subjects
Part 7, Section 183

Section 183 provides that a not-for-profit body may, in certain instances, represent an individual in relation to processing under the GDPR applies or outside the scope of the GDPR. This includes in court proceedings for compensation against a controller or processor.

There are certain conditions that attach to the representative body, it must be active in the field of data protection, and be not-for-profit body with objectives in the public interest.

Penalties for offences
Part 7, Sections 189

Depending upon the offence committed a person may be liable to a range of fines. The amount of these fines are provided for within Section 189. Section 189 also confirms that in cases relating to the unlawful obtaining and forced disclosure of personal data, that the court can order that materials containing personal data be destroyed.

The prosecuting authorities in England, Wales and Northern Ireland are the Information Commissioner or the Director of Public Prosecutions (the DPP also has the power to authorise prosecutions by others). Such prosecutions may be brought within a period of six months, beginning from the day the prosecutor first knew of evidence sufficient to bring such proceedings, and must be brought within three years of the offence being committed.

Directors personal liability for offences
Part 7, Section 191

The Bill provides for the prosecution of company directors, managers, secretaries, officers and others, as well at the company itself, where an offence by the company is proved to have been committed with their consent, connivance, or neglect. If a company's affairs are managed by its members, they can be personally prosecuted for their acts of omissions.

Recordable offences
Part 7, Section 192

Section 192 lists the crimes fall into the category of 'recordable offences'. These are crimes are recorded on the Police National Computer and which constitute a criminal record.