

# Explanatory Framework for Adequacy Discussions

## **Section E3: Schedule 2 Restrictions**

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### **Overview**

This annex lists the restrictions to data subject rights and other provisions set out in Schedule 2 to the DPA 2018.

## Section E3: Schedule 2 Restrictions

Schedule 2 is divided into six parts. The majority of the restrictions are to be found in Parts 1 to 4. Parts 5 and 6 cover restrictions that are specifically for journalistic, academic, artistic, and literary purposes (“the special purposes”); research and statistics; and archiving in the public interest.

### Parts 1-4 of Schedule 2

#### Paragraph 2: Crime and Taxation

The prevention or detection of crime, the apprehension or prosecution of offenders, and the assessment or collection of tax or duty are all important functions of substantial public interest. Subject to limitations and safeguards, this provision restricts various rights and obligations when their exercise would undermine these functions.

The restriction covers the following provisions in the UK GDPR:

| Article Number | Description  |
|----------------|--|
| 13(1)-(3)      | personal data collected from data subject: information to be provided  |
| 14(1)-(4)      | personal data collected other than from data subject: information to be provided   |
| 15(1)-(3)      | confirmation of processing, access to data, and safeguards for third country transfers   |
| 16             | right to rectification   |
| 17(1)-(2)      | right to erasure   |
| 18(1)          | right to restriction of processing   |
| 19             | notification obligation regarding rectification or erasure of personal data or restriction of processing   |
| 20(1)-(2)      | right to data portability  |
| 21(1)          | objections to processing   |
| 5              | general principles so far as its provisions correspond to the rights and obligations in the above provisions   |
| 5(1)(a)-(b)    | lawful, fair, and transparent processing (other than the lawfulness requirements set out in Article 6) and purpose limitation, the application of which may be adapted under Article 6(3) of the UK GDPR |
| 34(1)-(4)      | communication of personal data breach to the data subject  |

### Section E3: Schedule 2 Restrictions

When the data is received and processed by a further controller for the purpose of discharging statutory functions, the further controller is also exempt from certain of the provisions but only to the extent the original controller was. These are:

| Article number | Description  |
|----------------|--|
| 13(1)-(3)      | personal data collected from data subject: information to be provided  |
| 14(1)-(4)      | personal data collected other than from data subject: information to be provided                             |
| 15(1)-(3)      | confirmation of processing, access to data, and safeguards for third country transfers                       |
| 5              | general principles so far as its provisions correspond to the rights and obligations in the above provisions |

The **limitations and safeguards** include the below points:

- This restriction's scope is limited to processing that is for the purposes of preventing or detecting crime; apprehending or prosecuting offenders; assessing or collecting a tax or similar imposition.
- The restriction is subject to a prejudice test: it applies to the provisions outlined above only to the extent that the application of that provision would likely prejudice the relevant purpose of the processing.

#### Paragraph 3: Crime and Taxation Risk Assessment

Crime and taxation risk assessment systems are an essential tool for those collecting duties or administering benefits. They enable data controllers to prevent tax evasion and ensure public money is not misused.

Accordingly, this provision ensures that data controllers are not required to provide information when this would undermine the operation of the risk system.

The restriction covers the following provisions in the UK GDPR:

| Article number | Description   |
|----------------|---|
| 13(1)-(3)      | personal data collected from data subject: information to be provided |

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|           |   |
|-----------|---|
| 14(1)-(4) | personal data collected other than from data subject: information to be provided                              |
| 15(1)-(3) | confirmation of processing, access to data, and safeguards for third country transfers                        |
| 5         | general principles so far as its provisions correspond to the rights and obligations in the above provisions. |

The **limitations and safeguards** include the below points:

- This exemption is narrowly scoped in terms of the provisions it can disapply (only the above articles around the disclosure of information), and the situations it applies to.
- It is restricted only to personal data classifying the data subject as part of a risk assessment system which is operated for purposes relating to the prevention of crime or collection of taxes and duties. Paragraph 2 tightly restricts what constitutes such a risk assessment system. This includes providing that the exemption only applies where the risk assessment system is operated by a government department, local authority, or another authority administering housing benefits.
- The exemption is subject to a prejudice test: it applies to a provision only to the extent that the application of the provision would stop a crime or a taxation risk assessment system from working effectively.

#### Paragraph 4: Maintaining effective immigration control

The maintenance of effective immigration control is important for a modern democratic society.

The Government must be able to restrict obligations on a case by case basis in the relatively limited number of circumstances where complying with those obligations would result in a prejudice to the maintenance of effective immigration control. For example, when full compliance with a subject access request would mean disclosing information of a planned enforcement action and thus likely lead to the data subject concealing their whereabouts.

This provision restricts various rights and obligations when their exercise would be likely to prejudice the maintenance of effective immigration control. As with other restrictions in the DPA 2018, it is subject to limitations and safeguards to ensure the restriction is necessary and proportionate. The restriction covers the following provisions in the UK GDPR:

| Article number | Description |
|----------------|-------------|
|----------------|-------------|

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|           |   |
|-----------|---|
| 13(1)-(3) | personal data collected from data subject: information to be provided   |
| 14(1)-(4) | personal data collected other than from data subject: information to be provided  |
| 15(1)-(3) | confirmation of processing, access to data, and safeguards for third country transfers  |
| 17(1)-(2) | right to erasure  |
| 18(1)     | right to restriction of processing  |
| 21(1)     | objections to processing  |
| 5         | general principles so far as its provisions correspond to the rights and obligations provided for in the provisions mentioned above |

The **limitations and safeguards** include the below points:

- The restriction has limitations and is narrowly scoped: it has a prejudice test limiting when it can apply, and the list of rights it covers is also limited.
- The data remains subject to the rest of the provisions in the UK GDPR and DPA 2018 and is subject to access controls, accessible only by those who have an operational need for a strict purpose and only for the time they need such access.
- There are enforcement mechanisms available under the DPA 2018 and the wider UK legislative framework to deal with any 'abuse' of this restriction. Individuals can lodge a complaint with the Information Commissioner's Office, or pursue action through the courts, as well as making a direct request to the data controller to review a decision.
- In addition, the Home Office has developed guidance for its staff on how to use this restriction. This includes guidance on the prejudice test and that the restriction should not be applied in a blanket manner, as well as the need to apply a proportionality and necessity test.
- The guidance clarifies that when someone makes a subject access request, all their personal data should be provided, and that only data that would be likely to prejudice the maintenance of effective immigration control should be redacted.
- Furthermore, once such enforcement action has been taken, there would be no legal justification to continue withholding data related to it, and it could be released on a subsequent request.

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- Any restriction on rights is time-limited to the period where the matter that gave rise to the risk of prejudice is still a live matter. Once resolved, the restricted right should be reinstated.
- The Home Office is also carrying out a review of the use of the immigration restriction over its first year of operation.

### Paragraph 5: Information required to be disclosed by law or in connection with legal proceedings

Certain organisations have a legal obligation to make information public, such as Companies House, which registers companies, or the Land Registry. This provision ensures that data protection rights do not prevent a controller from making this information available when it is required by law to do so.

It also ensures a controller is not prevented from disclosing information to a third party where there is a legal requirement or court order for disclosure, and other instances where disclosure is required in connection with legal proceedings. This reflects the public nature of such proceedings, where personal data is routinely disclosed in accordance with court procedures.

Where legal proceedings have been commenced, the court will determine the appropriate basis for disclosure of information to ensure the effective administration of justice, in accordance with the relevant procedural rules.

This provision also applies to disclosures for the purpose of obtaining legal advice, and establishing and defending legal rights.

The restriction covers the following provisions in the UK GDPR:

| Article number | Description  |
|----------------|--|
| 13(1)-(3)      | personal data collected from data subject: information to be provided                  |
| 14(1)-(4)      | personal data collected other than from data subject: information to be provided       |
| 15(1)-(3)      | confirmation of processing, access to data, and safeguards for third country transfers |
| 16             | right to rectification   |
| 17(1)-(2)      | right to erasure   |

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|             |   |
|-------------|---|
| 18(1)       | right to restriction of processing  |
| 19          | notification obligation regarding rectification or erasure of personal data or restriction of processing  |
| 20(1)-(2)   | right to data portability   |
| 21(1)       | objections to processing  |
| 5           | general principles so far as its provisions correspond to the rights and obligations provided for in the provisions mentioned above   |
| 5(1)(a)-(b) | lawful, fair and transparent processing (other than the lawfulness requirements set out in Article 6) and purpose limitation, the application of which may be adapted under Article 6(3) of the UK GDPR |

The **limitations and safeguards** include the below points:

- The restriction is narrowly scoped and only applies in a limited range of situations set out in paragraphs 1 and 3. These revolve around:
  - legal obligations to publish or disclose the data;
  - or when disclosure is necessary for:
    - legal proceedings;
    - obtaining legal advice;
    - or otherwise establishing and defending legal claims.
- The restriction is subject to a prejudice test: it only applies to the extent that the application of the relevant provisions would prevent the data controller making a disclosure in the circumstances outlined above.
- Certain pieces of underlying legislation provide additional safeguards. For example, restrictions in the Companies Act 2006 on usage and disclosure of the information received by the registrar of companies.

#### Paragraph 7: Functions designed to protect the public

Regulators and entities charged with protecting the public serve an important public interest, in particular by protecting individuals against dishonesty, incompetence, and malpractice.

This means they need to be able to confidentially keep under review and investigate activities or organisations that they oversee. Since the sanctions available to them are not exclusively criminal, they cannot rely on the restriction on data subject rights for the purpose of preventing crime in paragraph 2.

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This provision thus restricts various rights when they would prejudice the relevant functions for protecting the public. The restriction covers the following provisions in the UK GDPR:

| Article number | Description   |
|----------------|---|
| 13(1)-(3)      | personal data collected from data subject: information to be provided   |
| 14(1)-(4)      | personal data collected other than from data subject: information to be provided  |
| 15(1)-(3)      | confirmation of processing, access to data, and safeguards for third country transfers  |
| 16             | right to rectification  |
| 17(1)-(2)      | right to erasure  |
| 18(1)          | right to restriction of processing  |
| 19             | notification obligation regarding rectification or erasure of personal data or restriction of processing                            |
| 20(1)-(2)      | right to data portability   |
| 21(1)          | objections to processing  |
| 5              | general principles so far as its provisions correspond to the rights and obligations provided for in the provisions mentioned above |

The **limitations and safeguards** include the below points:

- The restriction is narrowly scoped and only applies to a limited range of functions related to protecting the public, as set out in the table under paragraph 7.
- The first column in the table shows the restricted purposes for which the restriction can apply, e.g. protecting the public from financial loss, dishonesty, malpractice, etc.
- The second half places further conditions on the function for it to qualify under the restriction, e.g. that the function must be conferred under an enactment, or be of a public nature exercised in the public interest, etc.
- The restriction is subject to a prejudice test. It can be used only to the extent that applying the relevant provision would be likely to prejudice the purpose of the restriction, i.e. the proper discharge of the relevant function for protecting the public.

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- Certain functions in the below table also have additional safeguards provided by underlying legislation. For example, section 15 of the Health Service Commissioners Act 1993 sets rules on confidentiality of information and its disclosure, and Sections 15 and 55 of the Enterprise and Regulatory Reform Act 2013 contain prohibitions on disclosure of certain data.

| Description of function design  | Condition  |
|---|--|
| <p>1. The function is designed to protect members of the public against—</p> <ul style="list-style-type: none"> <li>a. financial loss due to dishonesty, malpractice or other seriously improper conduct by, or the unfitness or incompetence of, persons concerned in the provision of banking, insurance, investment or other financial services or in the management of bodies corporate, or</li> <li>b. financial loss due to the conduct of discharged or undischarged bankrupts.</li> </ul> | <p>The function is—</p> <ul style="list-style-type: none"> <li>a. conferred on a person by an enactment;</li> <li>b. a function of the Crown, a Minister of the Crown or a government department, or</li> <li>c. of a public nature, and is exercised in the public interest.</li> </ul> |
| <p>2. The function is designed to protect members of the public against—</p> <ul style="list-style-type: none"> <li>a. dishonesty, malpractice or other seriously improper conduct, or</li> <li>b. unfitness or incompetence.</li> </ul>  | <p>The function is—</p> <ul style="list-style-type: none"> <li>a. conferred on a person by an enactment,</li> <li>b. a function of the Crown, a Minister of the Crown or a government department, or</li> <li>c. of a public nature, and is exercised in the public interest.</li> </ul> |
| <p>3. The function is designed—</p> <ul style="list-style-type: none"> <li>a. to protect charities or community interest companies against misconduct or mismanagement (whether by trustees, directors or other persons) in their administration,</li> <li>b. to protect the property of charities or community interest companies from loss or misapplication, or</li> <li>c. to recover the property of charities or community interest companies.</li> </ul>                                   | <p>The function is—</p> <ul style="list-style-type: none"> <li>a. conferred on a person by an enactment,</li> <li>b. a function of the Crown, a Minister of the Crown or a government department, or</li> <li>c. of a public nature, and is exercised in the public interest.</li> </ul> |
| <p>4. The function is designed</p>  | <p>The function is— (a) conferred on a person by</p>   |

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|   |  |
|---|--|
| <ul style="list-style-type: none"> <li>a. to secure the health, safety and welfare of persons at work, or</li> <li>b. to protect persons other than those at work against risk to health or safety arising out of, or in connection with the action of persons at work.</li> </ul>  | <p>an enactment, (b) a function of the Crown, a Minister of the Crown or a government department, or (c) of a public nature, and is exercised in the public interest.</p>  |
| <p>5. The function is designed to protect members of the public against—</p> <ul style="list-style-type: none"> <li>a. maladministration by public bodies,</li> <li>b. failures in services provided by public bodies, or</li> <li>c. a failure of a public body to provide a service which it is a function of the body to provide.</li> </ul>   | <p>The function is conferred by any enactment on— (a) the Parliamentary Commissioner for Administration, (b) the Commissioner for Local Administration in England, (c) the Health Service Commissioner for England, (d) the Public Services Ombudsman for Wales, (e) the Northern Ireland Public Services Ombudsman, (f) the Prison Ombudsman for Northern Ireland, or (g) the Scottish Public Services Ombudsman.</p> |
| <p>6. The function is designed—</p> <ul style="list-style-type: none"> <li>a. to protect members of the public against conduct which may adversely affect their interests by persons carrying on a business,</li> <li>b. to regulate agreements or conduct which have as their object or effect the prevention, restriction or distortion of competition in connection with any commercial activity, or</li> <li>c. to regulate conduct on the part of one or more undertakings which amounts to the abuse of a dominant position in a market.</li> </ul> | <p>The function is conferred on the Competition and Markets Authority by an enactment.</p>   |

#### Paragraph 8: Audit functions

Ensuring efficient and effective use of public funds is an important duty in modern democracies. The independent National Audit Office, which reports to the Comptroller and Auditor General, helps Parliament hold the UK government to account by auditing central government departments and other public bodies.

The Auditor General for Scotland, Auditor General for Wales and Comptroller and Auditor General for Northern Ireland are independent auditors of public bodies in Scotland, Wales and Northern Ireland respectively.

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This provision disapplies the below rights only where they would be likely to otherwise prejudice the functions of the above public audit bodies in England, Wales, Scotland and Northern Ireland.

The restriction covers the following provisions in the UK GDPR:

| Article number | Description   |
|----------------|---|
| 13(1)-(3)      | personal data collected from data subject: information to be provided   |
| 14(1)-(4)      | personal data collected other than from data subject: information to be provided  |
| 15(1)-(3)      | confirmation of processing, access to data, and safeguards for third country transfers  |
| 16             | right to rectification  |
| 17(1)-(2)      | right to erasure  |
| 18(1)          | right to restriction of processing  |
| 19             | notification obligation regarding rectification or erasure of personal data or restriction of processing                            |
| 20(1)-(2)      | right to data portability   |
| 21(1)          | objections to processing  |
| 5              | general principles so far as its provisions correspond to the rights and obligations provided for in the provisions mentioned above |

The **limitations and safeguards** include the below points:

- The restriction is narrowly scoped both in terms of the controllers and the purposes that it applies to.
- It can only apply for the purposes of discharging a function that has been conferred by an enactment on the Comptroller and Auditor General; the Comptroller and Auditor General for Northern Ireland; and the Auditors General for Scotland and Wales.
- The restriction is subject to a prejudice test: it applies to a provision only to the extent that the provision would prejudice the proper discharge of the relevant functions.

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### Paragraph 9: Functions of the Bank of England

The Bank of England plays a crucial role in providing financial stability for the UK, in particular by protecting against threats to the financial system. This includes prudential regulation.

This provision allows the Bank of England to restrict certain rights when they would be likely to prejudice its functions as set out under the Banking Act 2009 and the Financial Services and Markets Act 2000. It also covers functions conferred under enactment on the Prudential Regulation Authority (PRA), which is owned by the Bank of England.

The restriction covers the following provisions in the UK GDPR:

| Article number | Description   |
|----------------|---|
| 13(1)-(3)      | personal data collected from data subject: information to be provided   |
| 14(1)-(4)      | personal data collected other than from data subject: information to be provided  |
| 15(1)-(3)      | confirmation of processing, access to data, and safeguards for third country transfers  |
| 16             | right to rectification  |
| 17(1)-(2)      | right to erasure  |
| 18(1)          | right to restriction of processing  |
| 19             | notification obligation regarding rectification or erasure of personal data or restriction of processing                            |
| 20(1)-(2)      | right to data portability   |
| 21(1)          | objections to processing  |
| 5              | general principles so far as its provisions correspond to the rights and obligations provided for in the provisions mentioned above |

The **limitations and safeguards** include the below points:

- The restriction is narrowly scoped both in terms of the data controllers and the purposes that it applies to.
- It can only apply to personal data processed for the purposes of discharging a function of the Bank of England, or the PRA:

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- o The functions for the Bank of England pertain to its capacity as a monetary authority or its public functions, and these are set out in the Banking Act 2009 (section 244(2)(c) and (2A), and the Financial Services and Markets Act 2000 (section 349);
  - o The functions for the PRA are those conferred under the Financial Services and Markets Act 2000 or by another enactment.
- 
- The restriction is subject to a prejudice test. It can be used only to the extent that applying the relevant provision would be likely to prejudice the relevant functions of the Bank of England or PRA.

Paragraph 10: Regulatory functions relating to legal services, the health service and children's services

There are various bodies entrusted to deal with complaints made in relation to the provision of legal services and other public services such as health and social care and children's services.

Investigation of alleged malpractice or unacceptable conduct could be compromised if the individuals under investigation were able to gain access to their records. This provision thus restricts various rights when they would be likely to prejudice the relevant regulatory functions.

The restriction covers the following provisions in the UK GDPR:

| Article number | Description  |
|----------------|--|
| 13(1)-(3)      | personal data collected from data subject: information to be provided                                    |
| 14(1)-(4)      | personal data collected other than from data subject: information to be provided                         |
| 15(1)-(3)      | confirmation of processing, access to data, and safeguards for third country transfers                   |
| 16             | right to rectification   |
| 17(1)-(2)      | right to erasure   |
| 18(1)          | right to restriction of processing   |
| 19             | notification obligation regarding rectification or erasure of personal data or restriction of processing |
| 20(1)-(2)      | right to data portability  |

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|       |   |
|-------|---|
| 21(1) | objections to processing  |
| 5     | general principles so far as its provisions correspond to the rights and obligations provided for in the provisions mentioned above |

The **limitations and safeguards** include the below points:

- The restriction is narrowly scoped both in terms of the controllers and the purposes that it applies to.
- It can only apply for the purposes of discharging one of a limited range of functions set down in paragraph 10(2). This narrow range includes legal services' functions, NHS functions, and various functions under the Children Act 1989 relating to the consideration of a complaint.
- The restriction is subject to a prejudice test. It can be used only to the extent that applying the relevant provision would be likely to prejudice the discharge of the relevant function.

#### Paragraphs 11-12: Regulatory functions of certain other persons

Regulators serve an important public interest, and it is essential they are able to carry out their duties.

This means they need to be able to confidentially keep under review and investigate activities or organisations that they oversee. Investigation of alleged malpractice or unacceptable conduct could be compromised if the individuals under investigation were able to gain access to their records.

This provision thus restricts various rights when they would prejudice the relevant function. The restriction covers the following provisions in the UK GDPR:

| Article number | Description  |
|----------------|--|
| 13(1)-(3)      | personal data collected from data subject: information to be provided                  |
| 14(1)-(4)      | personal data collected other than from data subject: information to be provided       |
| 15(1)-(3)      | confirmation of processing, access to data, and safeguards for third country transfers |
| 16             | right to rectification   |

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|           |   |
|-----------|---|
| 17(1)-(2) | right to erasure  |
| 18(1)     | right to restriction of processing  |
| 19        | notification obligation regarding rectification or erasure of personal data or restriction of processing                            |
| 20(1)-(2) | right to data portability   |
| 21(1)     | objections to processing  |
| 5         | general principles so far as its provisions correspond to the rights and obligations provided for in the provisions mentioned above |

The **limitations and safeguards** include the below points:

- The restriction is narrowly scoped both in terms of the controllers and the purposes that it applies to.
- The table under paragraph 11 and replicated below sets out in the first column which regulators the restriction could apply to. These include the Information Commissioner, the Scottish Information Commissioner, the Pension Ombudsman, and other regulators and local authority officers with oversight responsibilities. The restriction can only apply to a function exercised by the regulators listed in this table.
- In addition, it can only apply to the specific functions exercised by those listed regulators that are conferred under the various enactments listed in the second column, e.g. the Information Commissioner’s functions conferred under the Freedom of Information Act 2000.
- The restriction is subject to a prejudice test. It can be used only to the extent that applying the relevant provision would be likely to prejudice the proper discharge of the relevant function.

| Person on whom function is conferred | How function is conferred   |
|--------------------------------------|---|
| 1. The Commissioner.                 | By or under— <ol style="list-style-type: none"> <li>the data protection legislation;</li> <li>the Freedom of Information Act 2000;</li> <li>section 244 of the Investigatory Powers Act 2016;</li> <li>the Privacy and Electronic Communications (EC Directive) Regulations 2003 (S.I. 2003/2426);</li> </ol> |

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|   | <ul style="list-style-type: none"> <li>e. the Environmental Information Regulations 2004 (S.I. 2004/3391);</li> <li>f. the INSPIRE Regulations 2009 (S.I. 2009/3157);</li> <li>g. Regulation (EU) No 910/ 2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (as it has effect in UK law);</li> <li>h. the Re-use of Public Sector Information Regulations 2015 (S.I. 2015/1415);</li> <li>i. the Electronic Identification and Trust Services for Electronic Transactions Regulations 2016 (S.I. 2016/696).</li> </ul> |
| 2. The Scottish Information Commissioner.   | <p>By or under—</p> <ul style="list-style-type: none"> <li>a. the Freedom of Information (Scotland) Act 2002 (asp 13);</li> <li>b. the Environmental Information (Scotland) Regulations 2004 (S.S.I. 2004/520);</li> <li>c. the INSPIRE (Scotland) Regulations 2009 (S.S.I. 2009/440).</li> </ul>   |
| 3. The Pensions Ombudsman   | By or under Part 10 of the Pension Schemes Act 1993 or any corresponding legislation having equivalent effect in Northern Ireland.  |
| 4. The Board of the Pension Protection Fund.  | By or under sections 206 to 208 of the Pensions Act 2004 or any corresponding legislation having equivalent effect in Northern Ireland.   |
| 5. The Ombudsman for the Board of the Pension Protection Fund.                        | By or under any of sections 209 to 218 or 286(1) of the Pensions Act 2004 or any corresponding legislation having equivalent effect in Northern Ireland.  |
| 6. The Pensions Regulator.  | By an enactment.  |
| 7. The Financial Conduct Authority.   | By or under the Financial Services and Markets Act 2000 or by another enactment.  |
| 8. The Financial Ombudsman.   | By or under Part 16 of the Financial Services and Markets Act 2000.   |
| 9. The investigator of complaints against the financial regulators.                   | By or under Part 6 of the Financial Services Act 2012.  |
| 10. A consumer protection enforcer, other than the Competition and Markets Authority. | By or under the CPC Regulation.   |

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| 11. The monitoring officer of a relevant authority        | By or under the Local Government and Housing Act 1989.   |
| 12. The monitoring officer of a relevant Welsh authority. | By or under the Local Government Act 2000.   |
| 13. The Public Services Ombudsman for Wales.              | By or under the Local Government Act 2000.   |
| 14. The Charity Commission.                               | By or under—<br>a. the Charities Act 1992;<br>b. the Charities Act 2006;<br>c. the Charities Act 2011. |

#### Paragraph 13: Parliamentary Privilege

Parliamentary privilege is a vital constitutional principle. It dates back to the 17<sup>th</sup> century and the Bill of Rights, which states *“the Freedom of Speech and Debates or Proceedings in Parlyament ought not to be impeached or questioned in any court or Place out of Parlyament.”*

In order to carry out its public duties without fear or favour, Parliament – its members and officers – need certain rights and immunities. Parliament needs the right to regulate its own affairs, free from intervention by the government or the courts. Members need to be able to speak freely, uninhibited by possible defamation claims.

Paragraph 13 of Schedule 2 thus ensures the exercise of data subject rights does not breach the principle of parliamentary privilege as is necessary for democracy, subject to limitations and safeguards. The restriction covers the following provisions in the UK GDPR:

| Article number | Description  |
|----------------|--|
| 13(1)-(3)      | personal data collected from data subject: information to be provided                  |
| 14(1)-(4)      | personal data collected other than from data subject: information to be provided       |
| 15(1)-(3)      | confirmation of processing, access to data, and safeguards for third country transfers |
| 16             | right to rectification   |
| 17(1)-(2)      | right to erasure   |

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|           |   |
|-----------|---|
| 18(1)     | right to restriction of processing  |
| 19        | notification obligation regarding rectification or erasure of personal data or restriction of processing                            |
| 20(1)-(2) | right to data portability   |
| 21(1)     | objections to processing  |
| 5         | general principles so far as its provisions correspond to the rights and obligations provided for in the provisions mentioned above |
| 34(1)-(4) | communication of personal data breach to the data subject   |

The **limitations and safeguards** include the below points:

- This applies only in situations in relation to the privileges of the Houses of Parliament and thus only to a limited number of data controllers.
- It has an in-built prejudice test: it only applies when necessary to avoid an infringement of parliamentary privilege.
- Parliament also has its own internal disciplinary mechanisms for dealing with potential abuses of parliamentary privilege.

#### Paragraph 14: Judicial appointments, judicial independence and judicial proceedings

The judiciary is a cornerstone of our constitution, playing a vital role in upholding the rule of law. Government business must be conducted in accordance with the law and, for there to be confidence that this happens in practice, the law must be administered by a judiciary that is independent of Government.

Accordingly, this provision is aimed at protecting the independence of the judiciary by restricting various rights, subject to limitations and safeguards.

In particular, judicial independence requires that the judiciary have a safe place to conduct data processing necessary for the carrying out of their role without fear that such processing may be challenged by parties to proceedings.

Equally, judicial independence means it is important to safeguard the integrity of the process for assessing suitability for judicial office or the office of Queen's Counsel. The process by which judges are appointed is key to protecting judicial independence and ensuring public confidence in the administration of justice.

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The appointment process is transparent, but transparency has to be balanced against the need to ensure robust enquiries about candidates are made prior to appointment. Disclosure of factors and deliberations about specific individuals in that process could be used to undermine the credibility of judges and legal professionals. It could also have a chilling effect on future applications, by dissuading full and frank discussions and diligence regarding candidates by the appointing commission and referees.

The restriction covers the following provisions in the UK GDPR:

| Article number | Description   |
|----------------|---|
| 13(1)-(3)      | personal data collected from data subject: information to be provided   |
| 14(1)-(4)      | personal data collected other than from data subject: information to be provided  |
| 15(1)-(3)      | confirmation of processing, access to data, and safeguards for third country transfers  |
| 16             | right to rectification  |
| 17(1)-(2)      | right to erasure  |
| 18(1)          | right to restriction of processing  |
| 19             | notification obligation regarding rectification or erasure of personal data or restriction of processing                            |
| 20(1)-(2)      | right to data portability   |
| 21(1)          | objections to processing  |
| 5              | general principles so far as its provisions correspond to the rights and obligations provided for in the provisions mentioned above |

The **limitations and safeguards** include the below points:

- The restriction is narrowly scoped to situations involving the integrity of the justice system. The three situations are:
  - o data processed for the purposes of assessing suitability for the position of Queen’s Counsel or a judicial office;
  - o data processed by a court, tribunal, or individual acting in a judicial capacity;
  - o circumstances that do not fall into the above two categories but where applying one of the listed provisions would still likely prejudice judicial independence or proceedings.

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- The Lord Chief Justice and Senior President of Tribunals have established a supervisory body, the Judicial Data Protection Panel (JDPP). Further information on the JDPP can be found [here](https://www.judiciary.uk/wp-content/uploads/2019/04/JDPP-Request-Policy-April-2019.pdf):

<https://www.judiciary.uk/wp-content/uploads/2019/04/JDPP-Request-Policy-April-2019.pdf>

### *Paragraph 15: Crown honours, dignities, and appointments*

Crown honours, dignities, and appointments are uniquely sensitive, high profile matters. Processing in relation to assessing a person's suitability would typically include communications between Her Majesty The Queen and the Prime Minister and involve information and judgments on individuals, often provided in confidence by third parties.

Systems of this kind need to be capable of being operated on a basis of full confidence and discretion. This provision therefore disappplies a number of rights in relation to processing for the above purpose.

The restriction covers the following provisions in the UK GDPR:

| Article number | Description   |
|----------------|---|
| 13(1)-(3)      | personal data collected from data subject: information to be provided   |
| 14(1)-(4)      | personal data collected other than from data subject: information to be provided  |
| 15(1)-(3)      | confirmation of processing, access to data, and safeguards for third country transfers  |
| 16             | right to rectification  |
| 17(1)-(2)      | right to erasure  |
| 18(1)          | right to restriction of processing  |
| 19             | notification obligation regarding rectification or erasure of personal data or restriction of processing                            |
| 20(1)-(2)      | right to data portability   |
| 21(1)          | objections to processing  |
| 5              | general principles so far as its provisions correspond to the rights and obligations provided for in the provisions mentioned above |

## Section E3: Schedule 2 Restrictions

The **limitations and safeguards** include the below points:

- The restriction is narrowly scoped: it only applies to data processed for the purposes of assessing suitability for a narrow range of honours and dignities conferred by the Crown, and a narrow range of offices.
- The latter is set down in paragraph 2 and includes high profile positions such as archbishops in the Church of England, the Poet Laureate, and the Astronomer Royal.

### Paragraphs 16-17: Protection of the rights of others: disclosure when data are mixed

Sometimes the disclosure of personal data to the data subject may involve disclosing personal data of another individual. This could infringe the other data subject's privacy rights. This provision builds on Article 15(4) of the UK GDPR, which says that the right to obtain a copy of personal data being processed by the data controller shall not adversely affect the rights and freedoms of others.

Subject to limitations and conditions, this provision accordingly disapplies the right of access when complying with it would involve disclosing another person's data. The restriction covers the following provisions in the UK GDPR:

| Article number | Description  |
|----------------|--|
| 15(1)-(3)      | confirmation of processing, access to data, and safeguards for third country transfers                       |
| 5              | general principles so far as its provisions correspond to the rights and obligations in the above provisions |

The **limitations and safeguards** include the below points:

- The restriction is narrow and only applies to the right of access and general principles when they correspond to this right.
- Moreover, it only applies to the extent that disclosing the data to the data subject would involve disclosing another individual's data. It does not allow for a blanket refusal of an access request: if there is personal data that does not involve a third person's personal data, then it must be released under the normal access conditions of the UK GDPR.

### Section E3: Schedule 2 Restrictions

- In addition, the provision sets out circumstances where the restriction does not apply. If the other individual has consented to the disclosure to the data subject, then the restriction does not apply.
  
- It also does not apply if it would be reasonable to disclose the data without the other individual's consent. The data controller must consider a number of factors when making this assessment of whether it is reasonable to disclose the information. These are set out in paragraph 16(3) and include:
  - the type of information that would be disclosed;
  - any duty of confidentiality owed to the other individual;
  - what steps the data controller has taken to seek the other individual's consent;
  - whether the other individual is capable of providing consent;
  - whether the other individual has expressly refused consent.
  
- Paragraph 17 sets out further tests for reasonableness for the areas of health, social work, and education:
  - For health data, the test is met if the data in question is in a health record, and the "other individual" is a health professional who contributed to the record or was professionally involved in diagnosis or treatment of the data subject.
  - For social work data, the test is met if the "other individual" had a specific profession outlined in paragraph 17(3)(a), e.g. children's court officer or a person who provided a social services function, and the information about them was provided in connection with that role or service.
  - For education data, the test has two conditions that must be met.
    - Firstly, the "other individual" must be an education-related worker or an individual employed by an education authority in Scotland in pursuance of education functions.
    - Secondly, the information about them must relate to his or her capacity as an employee or was supplied in such a capacity.
  - The various terms, e.g. "education-related worker" are defined further in paragraph 17(5).

#### Paragraph 19: Legal Professional Privilege

Legal professional privilege and confidentiality of communications between lawyers and their clients are fundamental common law and human rights enjoyed by clients in the UK.

This provision avoids personal data having to be disclosed to the other party in court proceedings by protecting legal professional privilege. It restricts a limited number of rights in situations where legal professional privilege, confidentiality of communications or a duty

### Section E3: Schedule 2 Restrictions

of confidentiality could apply to that information. Without this, legal professional privilege could be undermined.

The restriction covers the following provisions in the UK GDPR:

| Article number | Description  |
|----------------|--|
| 13(1)-(3)      | personal data collected from data subject: information to be provided  |
| 14(1)-(4)      | personal data collected other than from data subject: information to be provided                             |
| 15(1)-(3)      | confirmation of processing, access to data, and safeguards for third country transfers                       |
| 5              | general principles so far as its provisions correspond to the rights and obligations in the above provisions |

The **limitations and safeguards** include the below points:

- This restriction has been drafted in a narrow way to ensure respect of the principles of necessity and proportionality.
- Firstly, its scope applies to a limited range of situations. It only covers processing where a claim for legal professional privilege or confidentiality of communications (in Scotland) could be made in respect of that information in legal proceedings. It also applies where a legal adviser has a duty of confidentiality to his or her client in respect of that information.
- Secondly, its scope applies to a limited range of rights: it only covers the rights where disclosure of information is involved.

#### Paragraph 20: Self Incrimination

The right to freedom from a requirement to provide information that would lead to self-incrimination is an important right in UK law. Subject to limitations and conditions, this provision gives individuals the means to protect themselves from self-incrimination.

It reflects the law against self-incrimination, which exempts a person from being compelled to produce documents or provide information that might incriminate them in any potential or current criminal proceedings.

The restriction covers the following provisions in the UK GDPR:

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| Article number | Description  |
|----------------|--|
| 13(1)-(3)      | personal data collected from data subject: information to be provided  |
| 14(1)-(4)      | personal data collected other than from data subject: information to be provided                             |
| 15(1)-(3)      | confirmation of processing, access to data, and safeguards for third country transfers                       |
| 5              | general principles so far as its provisions correspond to the rights and obligations in the above provisions |

The **limitations and safeguards** include the below points:

- This restriction has been drafted in a narrow way to ensure respect of the principles of necessity and proportionality.
- Firstly, the restriction applies only to situations where compliance with those specific rights would reveal evidence of the commission of an offence and expose a person to proceedings for that offence. The scope is further narrowed in paragraph 20(2), which excludes a range of perjury offences.
- Secondly, its scope applies to a limited range of rights: it only covers the rights where disclosure of information is involved.

### Paragraph 21: Corporate finance

Preventing insider trading and similar activity is important to protect the integrity of financial markets and the economy. When personal data constitutes price-sensitive information, its inappropriate disclosure could distort the functioning of financial markets.

Accordingly, this provision restricts the rights of access and information, subject to limitations and safeguards. The restriction covers the following provisions in the UK GDPR:

| Article number | Description  |
|----------------|--|
| 13(1)-(3)      | personal data collected from data subject: information to be provided            |
| 14(1)-(4)      | personal data collected other than from data subject: information to be provided |

### Section E3: Schedule 2 Restrictions

|           |  |
|-----------|--|
| 15(1)-(3) | confirmation of processing, access to data, and safeguards for third country transfers                       |
| 5         | general principles so far as its provisions correspond to the rights and obligations in the above provisions |

The **limitations and safeguards** include the below points:

- This restriction only applies to a limited range of rights in the UK GDPR in keeping with the purpose of preventing insider trading.
- Furthermore, this restriction is limited only to data processed in connection with a corporate finance service.
- Most importantly, this restriction is also subject to a prejudice test. The data controller must meet one of two conditions to use this restriction.
- The first condition is that applying those particular provisions would be likely to affect the price of an instrument.
- The second condition is that the data controller reasonably believes applying the provisions could affect a decision about dealing in or issuing an instrument or whether to act in a way to have an effect on a business activity. Paragraph 21(4) sets out the meaning of “an instrument”, which includes company shares.
- In addition, this condition can only be used if applying the provisions would harm the orderly functioning of financial markets or efficient allocation of capital within the economy.
- Moreover, it is worth noting that this restriction does not stop individuals from obtaining the rest of their personal data that is irrelevant to the restriction. Nor does it stop them from obtaining the restricted personal data in the future, if the restriction is no longer applicable.

#### Paragraph 22: Management forecasts

It is in the public interest for businesses to be able to hold discussions and make decisions about their future structure. This includes discussions about which employees may be moved or promoted, and whether an employee may be laid off. Such discussions need to be able to remain confidential until the decisions can be announced.

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Were the intentions to be disclosed prematurely to certain individuals through a subject access request, this could compromise planning. It would also be counter to individuals' own interests for tentative plans to be revealed, if subsequently they were changed.

This provision therefore imposes a restriction on the rights to access and information, subject to limitations and safeguards. The restriction covers the following provisions in the UK GDPR:

| Article number | Description  |
|----------------|--|
| 13(1)-(3)      | personal data collected from data subject: information to be provided  |
| 14(1)-(4)      | personal data collected other than from data subject: information to be provided                             |
| 15(1)-(3)      | confirmation of processing, access to data, and safeguards for third country transfers                       |
| 5              | general principles so far as its provisions correspond to the rights and obligations in the above provisions |

The **limitations and safeguards** include the below points:

- This restriction only applies to a limited range of rights in the UK GDPR.
- This restriction is thus tightly focused on the purpose of preventing access to data that would prejudice management forecasts and planning.
- It is also narrowly scoped and applies only to personal data processed for this specific purpose. The data subject would have full access to their other personal data that did not fall in this category.
- The restriction is also subject to a prejudice test: it can only be used if the application of those provisions would be likely to prejudice the conduct of the relevant business or activity. The restriction therefore does not stop data subjects from obtaining the relevant personal data in the future, if the restriction is no longer applicable.

### Paragraph 23: Negotiations with the data subject

There are many negotiations that may need to take place between individuals and data controllers, and which are important elements for the functioning of a modern market economy and democracy.

### Section E3: Schedule 2 Restrictions

For instance, when a claim is made by a policy-holder, the insurance company might note on the policy-holder's record the maximum amount for which they are prepared to settle. A requirement to expose this figure to the claimant would prejudice the company's negotiating position.

Or an individual may wish to negotiate their future salary with a company or their severance package. The individual's personal data may include the company's assessment of what they are prepared to offer as a last resort in negotiations. Disclosing this data to the data subject could distort the outcome of negotiations.

This provision therefore imposes a restriction on the rights to access and information, subject to limitations and safeguards. The restriction covers the following provisions in the UK GDPR:

| Article number | Description  |
|----------------|--|
| 13(1)-(3)      | personal data collected from data subject: information to be provided  |
| 14(1)-(4)      | personal data collected other than from data subject: information to be provided                             |
| 15(1)-(3)      | confirmation of processing, access to data, and safeguards for third country transfers                       |
| 5              | general principles so far as its provisions correspond to the rights and obligations in the above provisions |

The **limitations and safeguards** include the below points:

- This restriction only applies to a limited range of rights in the UK GDPR.
- This restriction is thus tightly focused on the purpose of preventing access to data that would distort negotiations or give one party an unfair advantage.
- It is also narrowly scoped and applies only to negotiations with the data subject and only covers personal data that contains the intentions of the data controller.
- The data subject would have full access to their other personal data that did not fall in this category.
- The restriction is also subject to a prejudice test: it can only be used if the application of those provisions would be likely to prejudice the negotiations. This also means

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that the restriction does not stop data subjects from obtaining the relevant personal data in the future, if the restriction is no longer applicable.

### Paragraph 24: Confidential references

Confidential references are a necessary part of ensuring the efficient functioning of labour markets and the allocation of workers to roles. They are also an important tool to assess a person's suitability for education and training placements or to provide a service.

If the subject of the reference had an unfettered right to obtain it, then reference-authors would be deterred from recording their honest views, notably when they may fear reprisals from the data subject. This would undermine the reliability of references and lead to distortions in the system for ensuring that only the most meritorious candidates are chosen. In turn, this would seriously impede the freedom of people to choose the most suitable candidate to obtain services from or offer a placement to.

Accordingly, this provision restricts a limited range of rights in order to protect the confidentiality of the reference. The restriction covers the following provisions in the UK GDPR:

| Article number | Description  |
|----------------|--|
| 13(1)-(3)      | personal data collected from data subject: information to be provided  |
| 14(1)-(4)      | personal data collected other than from data subject: information to be provided                             |
| 15(1)-(3)      | confirmation of processing, access to data, and safeguards for third country transfers                       |
| 5              | general principles so far as its provisions correspond to the rights and obligations in the above provisions |

The **limitations and safeguards** include the below points:

- The provision is narrowly scoped: it is limited solely to references that have been given in (or are to be given) in confidence, rather than all references.
- The ICO are also able to contact data controllers to check whether the reference truly is confidential and falls under the restriction.
- Furthermore, under UK law, a referee may owe a duty of care to both the ex-employee and a prospective employer and thus could potentially be held liable

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for any reference that is not true, accurate, and fair and that causes damage to either party. A referee could also potentially be held liable for a reference which constitutes unlawful discrimination, or is an act of victimisation in response to a protected activity, such as whistleblowing.

Depending on the nature of the claim (e.g. negligence, discrimination or victimisation), a case may be brought in either the civil courts or the Employment Tribunal.

If it is necessary for the contents of the reference to be admitted in evidence for a claimant to make their case, or for the respondent to defend their position, then the reference is likely to be disclosable for the purpose of those proceedings. This means parties may be entitled to disclose it, or the court or tribunal may make a disclosure order covering the reference.

#### Paragraph 25: Exam scripts and marks

Exams play a vital role in modern societies, including to help ensure that the most qualified candidates are accepted into certain professions. It is in the public interest to make sure the systems that deliver results operate effectively.

Firstly, this provision ensures that candidates' marks are not disclosed to them before the appointed results day. Giving some candidates access to their marks before others would give them an unfair advantage, and so awarding organisations need to be able to control the release of results. The provision also avoids marks being prematurely disclosed before confirmation, which could cause confusion and disappointment and also pose risks to the integrity and accuracy of the results information. Awarding organisations may adjust marks until shortly before release, e.g. if they identify an issue at the quality-assurance stage.

Secondly, the provision aims to protect the integrity of exams by ensuring that exam scripts cannot be accessed outside established processes. This is necessary to protect the confidentiality of the questions so that awarding organisations can re-use questions where appropriate. This means they are then able to build exam papers and conduct multiple assessments in the year, which is crucial for many professions.

The reuse of questions is widely acknowledged as being best practice for certain types of assessment and essential to the way in which standards are set and maintained in these assessments.

Subject to limitations and safeguards, the restriction covers the following provisions in the UK GDPR:

### Section E3: Schedule 2 Restrictions

| Article number | Description  |
|----------------|--|
| 13(1)-(3)      | personal data collected from data subject: information to be provided  |
| 14(1)-(4)      | personal data collected other than from data subject: information to be provided                             |
| 15(1)-(3)      | confirmation of processing, access to data, and safeguards for third country transfers                       |
| 5              | general principles so far as its provisions correspond to the rights and obligations in the above provisions |

The **limitations and safeguards** include the below points:

- The scope of this restriction is limited to only personal data constituting information recorded by a candidate during an exam, and personal data constituting marks or information processed for determining the results of an exam or in consequence of determining the results. Paragraph 25(4) defines what an "exam" is.
- The effect of the restriction is also further limited depending on which of the above categories the data falls under. Sub-paragraphs 2 and 3 set out that the data subject still has a right of access to marks or other information that was processed for determining their results, or in consequence of determining the results. Exercise of this right is only delayed to ensure candidates cannot find out their mark until results have been made available to everyone.
- Furthermore, awarding organisations have an interest in ensuring that their process is, and is seen to be, fair. They typically have a number of safeguards built into their own governance processes. These include:
  - their recruitment and training arrangements for markers to ensure markers are appropriately qualified to make assessment decisions;
  - quality assurance procedures to ensure the accuracy of marking and moderation;
  - their post-results services and appeals procedures;
  - and finally their complaints procedure which allows for individuals to raise concerns that may fall outside of these established procedures.
- Moreover, Ofqual, the independent qualifications, assessments, and examinations regulator in England, set high expectations of the exam boards they regulate in accordance with their regulatory requirements. They undertake regular communications, audits and oversight of the exam boards to ensure compliance with their regulations. Other regulators have similar requirements.

## Section E3: Schedule 2 Restrictions

### Part 5 of Schedule 2

#### Paragraph 26: Journalistic, academic, artistic and literary purposes

Freedom of expression and information are valued highly in the UK. This provision is designed to reconcile the right to freedom of expression and information with data protection rights.

Subject to a number of limitations and conditions, it restricts certain data protection rights and obligations where the processing of personal data is for journalistic, academic, artistic or literary purposes. These are known as the “special purposes”. This is to ensure the special importance of the above activities is recognised in UK law, and publication of information in the public interest is not prevented.

The restriction covers the following provisions in the UK GDPR:

| Article number | Description  |
|----------------|--|
| 5(1)(a)-(e)    | general principles - lawful, fair, and transparent processing; purpose limitation; data minimisation; accuracy; storage limitation |
| 6              | lawfulness of processing   |
| 7              | conditions for consent   |
| 8(1)-(2)       | child’s consent for information society services   |
| 9              | processing of special categories of personal data  |
| 10             | processing of personal data relating to criminal convictions and offences  |
| 11(2)          | processing which does not require identification   |
| 13(1)-(3)      | personal data collected from data subject: information to be provided  |
| 14(1)-(4)      | personal data collected other than from data subject: information to be provided   |
| 15(1)-(3)      | confirmation of processing, access to data, and safeguards for third country transfers   |
| 16             | right to rectification   |
| 17(1)-(2)      | right to erasure   |
| 18(1)(a)(b)(d) | right to restriction of processing   |

### Section E3: Schedule 2 Restrictions

|           |  |
|-----------|--|
| 19        | notification obligation regarding rectification or erasure of personal data or restriction of processing |
| 20(1)-(2) | right to data portability  |
| 21(1)     | objections to processing   |
| 34(1)-(4) | communication of personal data breach to the data subject  |
| 36        | prior consultation   |
| 44        | general principles for transfers   |

The **limitations and safeguards** include the below points:

- The exemption only applies to processing that is carried out with a view to the publication of artistic, academic, literary, or journalistic material.
- It also has a prejudice test: it only applies to the extent that the data controller reasonably believes compliance with the relevant provision would be incompatible with journalism, or academic, artistic, or literary purposes.
- There is also a public interest test: the data controller must reasonably believe that publishing the material would be in the public interest. To determine this, the data controller must take into account the special importance of freedom of expression and information, as well as the relevant codes of practice or guidelines set out in paragraph 26(6).
- Section 175 of the DPA 2018 permits the ICO to provide assistance to individuals who are party to proceedings involving the special purposes if it is a matter of substantial public importance. This assistance may include paying applicants' costs or indemnifying them from liability for costs, expenses, or damages from proceedings.
- Moreover, section 124 of the DPA 2018 requires the ICO to prepare a code of practice for journalism containing practical guidance for compliance and good practice.
- In addition, sections 177 to 179 of the DPA 2018 require the ICO to:
  - publish guidance informing individuals of the steps they can take if they believe the media is not complying with data protection legislation;
  - periodically review and report on the compliance of the media sector generally with data protection legislation; and

## Section E3: Schedule 2 Restrictions

- review the effectiveness of the media's dispute resolution mechanisms in relation to breaches or alleged breaches of data protection law.

### Part 6 of Schedule 2

#### Paragraph 27: Research and statistics

Historical, statistical, or scientific research may offer considerable benefits to society. This provision recognises the importance of processing for these purposes. It restricts a limited range of data protection rights in the event they would prevent or seriously impair these purposes.

Subject to limitations and safeguards, the restriction covers the following provisions in the UK GDPR:

| Article number | Description  |
|----------------|--|
| 15(1)-(3)      | confirmation of processing, access to data, and safeguards for third country transfers |
| 16             | right to rectification   |
| 18(1)          | right to restriction of processing   |
| 21(1)          | objections to processing   |

The **limitations and safeguards** include the below points:

- The restriction is narrowly scoped. It covers a narrow range of rights and applies to a restricted set of purposes. It also has a prejudice test: it can only be invoked to the extent that applying the various provisions would prevent or seriously impair the relevant purposes.
- In addition, controllers wishing to use the restriction must meet requirements for processing set out in Article 89 of the UK GDPR and section 19 of the DPA 2018. Section 19 sets out two tests.
  - Firstly, the processing must not be likely to cause substantial damage or distress to data subjects.
  - Secondly, it must not be carried out for the purposes of measures or decisions about a particular data subject. The exception to the latter is when it is necessary for approved medical research, as defined in sub-section 4.

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- In addition, if the right to access the data (Article 15) is being disapplied, then the results of the research or statistics cannot be made available in a way that identifies the data subject.
- Where processing for scientific or historical research purposes or statistical purposes is carried out at the same time as processing for another purpose, the restriction does not apply to the processing for that other purpose.

#### Paragraph 28: Archiving in the public interest

The UK values the importance of the permanent preservation of archives for long-term public benefit, for example by museums, galleries, and libraries. This provision therefore recognises the importance of processing of personal data for archiving purposes in the public interest.

The provision restricts certain data protection rights and obligations to ensure that data protection law is compatible with the processing activities associated with these purposes.

Subject to limitations and safeguards, the restriction covers the following provisions in the UK GDPR:

| Article number | Description  |
|----------------|--|
| 15(1)-(3)      | confirmation of processing, access to data, and safeguards for third country transfers                   |
| 16             | right to rectification   |
| 18(1)          | right to restriction of processing   |
| 19             | notification obligation regarding rectification or erasure of personal data or restriction of processing |
| 20(1)-(2)      | right to data portability  |
| 21(1)          | objections to processing   |

The **limitations and safeguards** include the below points:

- The restriction is narrowly scoped. It covers a narrow range of rights and applies only to archiving in the public interest. It also has a prejudice test: it can only be invoked to the extent that applying the various provisions would prevent or seriously impair this purpose.

### Section E3: Schedule 2 Restrictions

- In addition, controllers wishing to use the restriction must meet requirements for processing set out in Article 89 of the UK GDPR and section 19 of the DPA 2018. Section 19 sets out two tests.
- Firstly, the processing must not be likely to cause substantial damage or distress to data subjects. Secondly, it must not be carried out for the purposes of measures or decisions about a particular data subject.
- Where processing for archiving purposes in the public interest is carried out at the same time as processing for another purpose, the restriction does not apply to the processing for that other purpose.
- Furthermore, the National Archives have published detailed [guidance for archivists](http://www.nationalarchives.gov.uk/documents/information-management/guide-to-archiving-personal-data.pdf), approved by the Information Commissioner (see foreword by Elizabeth Denham), on complying with data protection law.  
<http://www.nationalarchives.gov.uk/documents/information-management/guide-to-archiving-personal-data.pdf>