

*Status: Point in time view as at 01/06/2004.*

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## SCHEDULES

### SCHEDULE 5

Section 6(7).

#### THE DATA PROTECTION COMMISSIONER AND THE DATA PROTECTION TRIBUNAL

#### PART I

#### THE COMMISSIONER

##### *Status and capacity*

- 1 (1) The corporation sole by the name of the Data Protection Registrar established by the <sup>M1</sup>Data Protection Act 1984 shall continue in existence by the name of the [<sup>F1</sup>Information Commissioner].
- (2) The Commissioner and his officers and staff are not to be regarded as servants or agents of the Crown.

##### **Textual Amendments**

**F1** Words in [Sch. 5 para. 1\(2\)](#) substituted (30.1.2001) by [2000 c. 36, ss. 18\(4\), 87\(2\)\(c\)](#), [Sch. 2 Pt. I para. 15\(2\)](#) (with [ss. 7\(1\)\(7\), 56, 78](#))

##### **Marginal Citations**

**M1** [1984 c. 35](#).

##### *Tenure of office*

- 2 (1) Subject to the provisions of this paragraph, the Commissioner shall hold office for such term not exceeding five years as may be determined at the time of his appointment.
- (2) The Commissioner may be relieved of his office by Her Majesty at his own request.
- (3) The Commissioner may be removed from office by Her Majesty in pursuance of an Address from both Houses of Parliament.
- (4) The Commissioner shall in any case vacate his office—
  - (a) on completing the year of service in which he attains the age of sixty-five years, or
  - (b) if earlier, on completing his fifteenth year of service.
- (5) Subject to sub-paragraph (4), a person who ceases to be Commissioner on the expiration of his term of office shall be eligible for re-appointment, but a person may not be re-appointed for a third or subsequent term as Commissioner unless, by reason

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of special circumstances, the person's re-appointment for such a term is desirable in the public interest.

**Modifications etc. (not altering text)**

**C1** Sch. 5 para. 2(4)(b) restricted (14.5.2001) by 2000 c. 36, s. 18(7), (with ss. 7(1)(7), 56, 78); S.I. 2001/1637, art. 2(a)

*Salary etc.*

- 3 (1) There shall be paid—
- (a) to the Commissioner such salary, and
  - (b) to or in respect of the Commissioner such pension,
- as may be specified by a resolution of the House of Commons.
- (2) A resolution for the purposes of this paragraph may—
- (a) specify the salary or pension,
  - (b) provide that the salary or pension is to be the same as, or calculated on the same basis as, that payable to, or to or in respect of, a person employed in a specified office under, or in a specified capacity in the service of, the Crown, or
  - (c) specify the salary or pension and provide for it to be increased by reference to such variables as may be specified in the resolution.
- (3) A resolution for the purposes of this paragraph may take effect from the date on which it is passed or from any earlier or later date specified in the resolution.
- (4) A resolution for the purposes of this paragraph may make different provision in relation to the pension payable to or in respect of different holders of the office of Commissioner.
- (5) Any salary or pension payable under this paragraph shall be charged on and issued out of the Consolidated Fund.
- (6) In this paragraph “pension” includes an allowance or gratuity and any reference to the payment of a pension includes a reference to the making of payments towards the provision of a pension.

*Officers and staff*

- 4 (1) The Commissioner—
- (a) shall appoint a deputy commissioner [<sup>F2</sup>or two deputy commissioners], and
  - (b) may appoint such number of other officers and staff as he may determine.
- [<sup>F3</sup>(1A) The Commissioner shall, when appointing any second deputy commissioner, specify which of the Commissioner's functions are to be performed, in the circumstances referred to in paragraph 5(1), by each of the deputy commissioners.]
- (2) The remuneration and other conditions of service of the persons appointed under this paragraph shall be determined by the Commissioner.

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- (3) The Commissioner may pay such pensions, allowances or gratuities to or in respect of the persons appointed under this paragraph, or make such payments towards the provision of such pensions, allowances or gratuities, as he may determine.
- (4) The references in sub-paragraph (3) to pensions, allowances or gratuities to or in respect of the persons appointed under this paragraph include references to pensions, allowances or gratuities by way of compensation to or in respect of any of those persons who suffer loss of office or employment.
- (5) Any determination under sub-paragraph (1)(b), (2) or (3) shall require the approval of the [<sup>F4</sup> Secretary of State] .
- (6) The <sup>M2</sup>Employers' Liability (Compulsory Insurance) Act 1969 shall not require insurance to be effected by the Commissioner.

#### Textual Amendments

- F2** Words in Sch. 5 para. 4(1)(a) inserted (30.11.2000) by 2000 c. 36, ss. 18(4), 87(1)(i), **Sch. 2 Pt. II para. 20(2)** (with ss. 7(1)(7), 56, 78)
- F3** Sch. 5 para. 4(1A) inserted (30.11.2000) by 2000 c. 36, ss. 18(4), 87(1)(i), **Sch. 2 Pt. II para. 20(3)** (with s. 7(1)(7), 56, 78)
- F4** Words in Sch. 5 para. 4 substituted (19.8.2003) by The Secretary of State for Constitutional Affairs Order 2003 (S.I. 2003/1887), art. 9, **Sch. 2 para. 9(1)(c)**

#### Marginal Citations

- M2** 1969 c. 57.

- 5 (1) The deputy commissioner [<sup>F5</sup>or deputy commissioners] shall perform the functions conferred by this Act [<sup>F6</sup>or the Freedom of Information Act 2000] on the Commissioner during any vacancy in that office or at any time when the Commissioner is for any reason unable to act.
- (2) Without prejudice to sub-paragraph (1), any functions of the Commissioner under this Act [<sup>F7</sup>or the Freedom of Information Act 2000] may, to the extent authorised by him, be performed by any of his officers or staff.

#### Textual Amendments

- F5** Words in Sch. 5 para. 5(1) inserted (30.11.2000) by 2000 c. 36, ss. 18(4), 87(1)(i), **Sch. 2 Pt. II para. 21(2)(a)** (with ss. 7(1)(7), 56, 78)
- F6** Words in Sch. 5 para. 5(1) inserted (30.11.2000) by 2000 c. 36, ss. 18(4), 87(1)(i), **Sch. 2 Pt. II para. 21(2)(b)** (with ss. 7(1)(7), 56, 78)
- F7** Words in Sch. 5 para. 5(2) inserted (30.11.2000) by 2000 c. 36, ss. 18(4), 87(1)(i), **Sch. 2 Pt. II para. 21(3)** (with ss. 7(1)(7), 56, 78)

#### *Authentication of seal of the Commissioner*

- 6 The application of the seal of the Commissioner shall be authenticated by his signature or by the signature of some other person authorised for the purpose.

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*Presumption of authenticity of documents issued by the Commissioner*

- 7 Any document purporting to be an instrument issued by the Commissioner and to be duly executed under the Commissioner’s seal or to be signed by or on behalf of the Commissioner shall be received in evidence and shall be deemed to be such an instrument unless the contrary is shown.

*Money*

- 8 The [<sup>F8</sup> Secretary of State] may make payments to the Commissioner out of money provided by Parliament.

**Textual Amendments**

**F8** Words in Sch. 5 para. 8 substituted (19.8.2003) by [The Secretary of State for Constitutional Affairs Order 2003 \(S.I. 2003/1887\)](#), art. 9, [Sch. 2 para. 9\(1\)\(c\)](#)

- 9 (1) All fees and other sums received by the Commissioner in the exercise of his functions under this Act [<sup>F9</sup>, under section 159 of the Consumer Credit Act 1974 or under the Freedom of Information Act 2000] shall be paid by him to the [<sup>F10</sup> Secretary of State] .
- (2) Sub-paragraph (1) shall not apply where the [<sup>F10</sup> Secretary of State] , with the consent of the Treasury, otherwise directs.
- (3) Any sums received by the [<sup>F10</sup> Secretary of State] under sub-paragraph (1) shall be paid into the Consolidated Fund.

**Textual Amendments**

**F9** Words in Sch. 5 para. 9(1) substituted (30.11.2000) by [2000 c. 36, ss. 18\(4\), 87\(1\)\(i\)](#), [Sch. 2 Pt. II para. 22](#) (with [ss. 7\(1\)\(7\), 56, 78](#))

**F10** Words in Sch. 5 para. 9 substituted (19.8.2003) by [The Secretary of State for Constitutional Affairs Order 2003 \(S.I. 2003/1887\)](#), art. 9, [Sch. 2 para. 9\(1\)\(c\)](#)

*Accounts*

- 10 (1) It shall be the duty of the Commissioner—
- (a) to keep proper accounts and other records in relation to the accounts,
  - (b) to prepare in respect of each financial year a statement of account in such form as the [<sup>F11</sup> Secretary of State] may direct, and
  - (c) to send copies of that statement to the Comptroller and Auditor General on or before 31st August next following the end of the year to which the statement relates or on or before such earlier date after the end of that year as the Treasury may direct.
- (2) The Comptroller and Auditor General shall examine and certify any statement sent to him under this paragraph and lay copies of it together with his report thereon before each House of Parliament.
- (3) In this paragraph “financial year” means a period of twelve months beginning with 1st April.

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### Textual Amendments

- F11** Words in Sch. 5 para. 10 substituted (19.8.2003) by The Secretary of State for Constitutional Affairs Order 2003 (S.I. 2003/1887), art. 9, Sch. 2 para. 9(1)(c)

### *Application of Part I in Scotland*

- 11 Paragraphs 1(1), 6 and 7 do not extend to Scotland.

## PART II

### THE TRIBUNAL

#### *Tenure of office*

- 12 (1) Subject to the following provisions of this paragraph, a member of the Tribunal shall hold and vacate his office in accordance with the terms of his appointment and shall, on ceasing to hold office, be eligible for re-appointment.
- (2) Any member of the Tribunal may at any time resign his office by notice in writing to the Lord Chancellor [<sup>F12</sup>(in the case of the chairman or a deputy chairman) or to the Secretary of State (in the case of any other member)] .
- (3) A person who is the chairman or deputy chairman of the Tribunal shall vacate his office on the day on which he attains the age of seventy years; but this sub-paragraph is subject to section 26(4) to (6) of the <sup>M3</sup>Judicial Pensions and Retirement Act 1993 (power to authorise continuance in office up to the age of seventy-five years).

### Textual Amendments

- F12** Words in Sch. 5 para. 12(2) inserted (19.8.2003) by The Secretary of State for Constitutional Affairs Order 2003 (S.I. 2003/1887), art. 9, Sch. 2 para. 9(2)

### Marginal Citations

- M3** 1993 c. 8.

#### *Salary etc.*

- 13 The [<sup>F13</sup> Secretary of State] shall pay to the members of the Tribunal out of money provided by Parliament such remuneration and allowances as he may determine.

### Textual Amendments

- F13** Words in Sch. 5 para. 13 substituted (19.8.2003) by The Secretary of State for Constitutional Affairs Order 2003 (S.I. 2003/1887), art. 9, Sch. 2 para. 9(1)(c)

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### *Officers and staff*

- 14 The [<sup>F14</sup> Secretary of State] may provide the Tribunal with such officers and staff as he thinks necessary for the proper discharge of its functions.

#### **Textual Amendments**

- F14** Words in Sch. 5 para. 14 substituted (19.8.2003) by The Secretary of State for Constitutional Affairs Order 2003 (S.I. 2003/1887), art. 9, Sch. 2 para. 9(1)(c)

### *Expenses*

- 15 Such expenses of the Tribunal as the [<sup>F15</sup> Secretary of State] may determine shall be defrayed by the Secretary of State out of money provided by Parliament.

#### **Textual Amendments**

- F15** Words in Sch. 5 para. 15 substituted (19.8.2003) by The Secretary of State for Constitutional Affairs Order 2003 (S.I. 2003/1887), art. 9, Sch. 2 para. 9(1)(c)

### [<sup>F16</sup>PART III]

#### **Textual Amendments**

- F16** Sch. 5 Pt. III (ss. 16-17) repealed (30.1.2001) by 2000 c. 36, ss. 86, 87(3), Sch. 8 Pt. II (with ss. 56, 78)

- 16 Any reference in any enactment, instrument or other document to the Data Protection Registrar shall be construed, in relation to any time after the commencement of section 6(1), as a reference to the Commissioner.

- 17 Any reference in this Act or in any instrument under this Act to the Commissioner shall be construed, in relation to any time before the commencement of section 6(1), as a reference to the Data Protection Registrar.

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