

Keeling Schedule for A.5,A.6. A.13,A.14 and other commentary.

5 **Lawfulness of processing (of DPDI Bill)**

5 In Article 21(1) (right to object), after “point (e)” insert “, (ea)”.

**Article 13: Info from data subject**

Unchanged paras 1, 2 and 3 are changed (but latter exempted by new para 5)

3. Where the controller intends to further process the personal data for a purpose other than that for which the personal data were collected, the controller shall provide the data subject prior to that further processing with information on that other purpose and with any relevant further information as referred to in paragraph 2.

4. Paragraphs 1, 2 and 3 do not apply to the extent that, the data subject already has the information.

“5. Paragraph 3 does not apply to the extent that—

(a) the controller intends to further process the personal data—

(i) for (and only for) the purposes of scientific or historical research, the purposes of archiving in the public interest or statistical purposes, and

(ii) in accordance with Article 84B, and

(b) providing the information is impossible or would involve a disproportionate effort.

6. For the purposes of paragraph 5(b), whether providing information would involve a disproportionate effort depends on, among other things, the number of data subjects, the age of the personal data and any appropriate safeguards applied to the processing

**Commented [CP1]:** This has been included from Clause 5 of the DPDI Bill, as the right to object applies to processing (e.g disclosures) subject to the lawful basis specified in new paragraph (ea) of A.6.

This right to object is much diminished if there is an applicable exemption from the right to object and/or an exemption from providing information in a Privacy Notice concerning the existence of the right to object.

This is the case in this Bill as many disclosures can be linked to A.23 exemptions.

**Commented [CP2]:** There is no real change here in A.13 and A.14 except with respect to research.

**Deleted:** shall not apply where and insofar as

**Commented [CP3]:** Interesting to compare with “reasonable means” to identify the data subject as used in the definition of personal data.

It’s “the time, effort and costs involved in identifying the individual by that means, and the technology and other resources available to the person”

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**Article 14: Info from other sources (i.e. not the data subject)**

Paragraphs 1 to 4 of A.13 are unchanged

5 Paragraphs 1 to 4 do not apply to the extent that as:

- (a) the data subject already has the information;
- (c) obtaining or disclosure is expressly laid down by a provision of domestic law which provides appropriate measures to protect the data subject's legitimate interests;
- (d) the personal data must remain confidential subject to an obligation of professional secrecy regulated by domestic law, including a statutory obligation of secrecy.
- "(e) providing the information is impossible or would involve a disproportionate effort or
- (f) the obligation referred to in paragraph 1 is likely to render impossible or seriously impair the achievement of the objectives of the processing for which the personal data are intended.

"6. For the purposes of paragraph 5(e), whether providing information would involve a disproportionate effort depends on, among other things, the number of data subjects, the age of the personal data and any appropriate safeguards applied to the processing.

7. A controller relying on paragraph 5(e) or (f) must take appropriate measures to protect the data subject's rights, freedoms and legitimate interests, including by making the information available publicly."

**Commented [CP4]:** All the comments marked "Deleted" are as a result of the deletions specified in the DPDI Bill

**Deleted:** shall not apply where and insofar

**Deleted:** <#>(b) the provision of such information proves impossible or would involve a disproportionate effort, in particular for processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes, subject to the conditions and safeguards referred to in Article 89(1) or in so far as the obligation referred to in paragraph 1 of this Article is likely to render impossible or seriously impair the achievement of the objectives of that processing. In such cases the controller shall take appropriate measures to protect the data subject's rights and freedoms and legitimate interests, including making the information publicly available;¶

**Deleted:** <#>or

**Deleted:** where

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**IMPACT OF CHANGES**

**Section 8 of the DPA2018: Lawfulness of processing: public interest etc**

In Article 6(1) of the GDPR (lawfulness of processing), the reference in point (e) to processing of personal data that is necessary for the performance of a task carried out in the public interest or in the exercise of official authority includes processing of personal data that is necessary for—

- (a) the administration of justice,
- (b) the exercise of a function of either House of Parliament,
- (c) the exercise of a function conferred on a person by an enactment or rule of law, or
- (d) the exercise of a function of the Crown, a Minister of the Crown or a government department,

**Article 6**

Lawfulness of processing

1. Processing shall be lawful only if and to the extent that at least one of the following applies:

- (a) the data subject has given consent to the processing of his or her personal data for one or more specific purposes;
- (b) processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract;
- (c) processing is necessary for compliance with a legal obligation to which the controller is subject;
- (d) processing is necessary in order to protect the vital interests of the data subject or of another natural person;
- (e) processing is necessary for the performance of a task of the controller carried out in the public interest or a task carried out in the exercise of official authority vested in the controller;
- “(ea) processing is necessary for the purposes of a recognised legitimate interest
- (f) processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child.

Points (ea) and (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks.

**Commented [CP5]:** The text of Section 8 appears to be out of step with the revised A.6(1)(e), but the reference to “public interest” and “official authority” is that of the controller because the clause expands the interpretation of a revised A.6(1)(e)

**Commented [CP6]:** The Human Rights changes, if enacted, means that the “public interest” equates to the “interests of the Government of the day”.

**Commented [CP8]:** The Human Rights changes, if enacted, means that the “necessary” equates what to the Government considers to be “necessary”.

**Deleted:** the controller’s

**Deleted:**

**Commented [CP9]:** Any person does not need to be the controller that has the personal data. It provides a lawful basis for a controller with the personal data to disclose personal data to any other public body controller that has the function..

**Deleted:** or

**Deleted:** (e) an activity that supports or promotes democratic engagement.

**Commented [CP10]:** The changes tighten the provision so that they relate to the controller

**Commented [CP11]:** This is a new A.6 lawful basis, expanded by Annex 1

**Commented [CP12]:** Annex 1 cannot be used to legitimize processing by a public body for its public task.

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2. **[REMOVED FROM THE UK GDPR]**

3. The basis for the processing referred to in point (c) and (e) of paragraph 1 shall be laid down by domestic law.

The purpose of the processing shall be determined in that legal basis or, as regards the processing referred to in point (e) of paragraph 1, shall be necessary for the performance of a task of the controller carried out in the public interest or a task carried out in the exercise of official authority vested in the controller. That legal basis may contain specific provisions to adapt the application of rules of this Regulation, inter alia: the general conditions governing the lawfulness of processing by the controller; the types of data which are subject to the processing; the data subjects concerned; the entities to, and the purposes for which, the personal data may be disclosed; the purpose limitation; storage periods; and processing operations and processing procedures, including measures to ensure lawful and fair processing such as those for other specific processing situations as provided for in Chapter IX. The domestic law shall meet an objective of public interest and be proportionate to the legitimate aim pursued.

“5. For the purposes of paragraph 1 (ea), processing is necessary for the purposes of a recognised legitimate interest only if it meets a condition in Annex 1”

Reminder that “**Statutory etc and government purposes**” also allow special category of personal data to be disclosed (Schedule 1, paragraph 6)

6(1) This condition is met if the processing—

- (a) is necessary for a purpose listed in sub-paragraph (2), and
- (b) is necessary for reasons of substantial public interest. (*Note*: for criminal offence data, there is no need for this “substantial public interest” test)

(2) Those purposes are—

- (a) the exercise of a function conferred on a person by an enactment or rule of law;
- (b) the exercise of a function of the Crown, a Minister of the Crown or a government department.

**Commented [CP13]:** Makes the provision consistent with a revised A.6(1)(e)

**Commented [CP14]:** This allows Ministers to modify any Principle to suit; held in reserve if there is a problem with a Principle

**Commented [CP15]:** Some of the powers to make the relevant changes can be found in Clause 8A(5) to 8A(8)

**Deleted:** 4. Where the processing for a purpose other than that for which the personal data have been collected is not based on the data subject’s consent or on domestic law which constitutes a necessary and proportionate measure in a democratic society to safeguard national security, defence or any of the objectives referred to in Article 23(1), the controller shall, in order to ascertain whether processing for another purpose is compatible with the purpose for which the personal data are initially collected, take into account, inter alia:¶

- (a) any link between the purposes for which the personal data have been collected and the purposes of the intended further processing;¶
- (b) the context in which the personal data have been collected, in particular regarding the relationship between data subjects and the controller;¶
- (c) the nature of the personal data, in particular whether special categories of personal data are processed, pursuant to Article 9, or whether personal data related to criminal convictions and offences are processed, pursuant to Article 10;¶
- (d) the possible consequences of the intended further processing for data subjects;¶
- (e) the existence of appropriate safeguards, which may include encryption or pseudonymisation.¶

**Commented [CP16]:** The processing in question is the disclosure by a Controller for a purpose in Annex to a public body which is using A.6(1)(e).

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“ANNEX 1

LAWFULNESS OF PROCESSING: RECOGNISED LEGITIMATE INTERESTS

*Disclosure for purposes of processing described in Article 6(1)(e)*

1. This condition is met where—
  - (a) the processing is necessary for the purposes of making a disclosure of personal data to another person in response to a request from the other person, and
  - (b) the request states that the other person needs the personal data for the purposes of carrying out processing described in Article 6(1)(e) that has a legal basis that satisfies Article 6(3).

*National security, public security and defence*

2. This condition is met where the processing is necessary—
  - (a) for the purposes of safeguarding national security,
  - (b) for the purposes of protecting public security, or
  - (c) for defence purposes.

Emergencies

3. This condition is met where the processing is necessary for the purposes of responding to an emergency.
4. In paragraph 3, “emergency” has the same meaning as in Part 2 of the Civil Contingencies Act 2004.

Crime

5. This condition is met where the processing is necessary for the purposes of—
  - (a) detecting, investigating or preventing crime, or
  - (b) apprehending or prosecuting offenders.

Safeguarding vulnerable individuals

6. This condition is met where the processing is necessary for the purposes of safeguarding a vulnerable individual.
7. In paragraph 6—

“safeguarding”, in relation to a vulnerable individual, means—

  - (a) protecting a vulnerable individual from neglect or physical, mental or emotional harm, or
  - (b) protecting the physical, mental or emotional well-being of

**Commented [CP17]:** “Necessary” could have been linked to the purpose of the disclosure and NOT the mechanics of the disclosure.

**Commented [CP18]:** The request should preferably state that the processing is “necessary for the disclosure purpose” and not that the “person needs the personal data”.

Necessary. appears in A.6(1)(e)/A.6(3) however.

**Commented [CP19]:** This condition (and those following) are not linked just to the processing operation of disclosure. It is linked to any processing operation (e.g. retention).

This could create a side issues (e.g. suppose MI5 say to a controller – “keep this bulk personal data for us for 1 year” – This will avoid the bulk data conditions that apply to MI5 in the Investigatory Powers Act 2016).

Please note that this argument applies to all the conditions specified in paragraphs 2 to 9 below.

**Commented [CP20]:** Although S.19 of the CCA2004 defines emergencies in terms of “threaten serious damage” (e.g. to transport, health), there is a general power for the Secretary of State to modify what is an “emergency”.

As, there are powers to require certain public bodies to share information in an emergency (these bodies are listed in Schedules 1 and 3 of the CCA2004), this provision risks providing an alternative to Schedules 1 and 3 and an alternative to the exercise of these data sharing powers in an emergency.

It also widens the Controllers that can disclose personal data in an emergency beyond those specified in Schedules 1 to 3.

**Commented [CP21]:** The vulnerability does not need to be “vital interests” (A.6(1)(d))

Controller (e.g. social work department) can ask for disclosure in these circumstances. The implication is that the public body asking has to have a function if protecting the vulnerable (A.6(1)(e))

The individual can be the data subject but this is not a requirement (could be the parent of the data subject where the parent is the vulnerable individual.)

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a vulnerable individual;

“vulnerable individual” means an individual—

- (a) aged under 18, or
- (b) aged 18 or over and at risk.

8. For the purposes of paragraph 7—

- (a) protection of an individual, or of the well-being of an individual, includes both protection relating to a particular individual and protection relating to a type of individual, and
- (b) an individual aged 18 or over is “at risk” if the controller **has** reasonable cause to suspect that the individual—
  - (i) has needs for care and support,
  - (ii) is experiencing, or at risk of, neglect or physical, mental or emotional harm, and
  - (iii) as a result of those needs is unable to protect themselves against the neglect, harm or risk.

**Commented [CP22]:** Permits general disclosures of personal data relating to a type of data subjects not linked to a specific individual.

**Commented [CP23]:** This is the controller asking for the information

Democratic engagement

A whole pile of stuff (3 pages) – read it if interested.

A.5 Principles relating to processing of personal data (PURPOSE LIMITATION ONLY)

1. Personal data shall be:

(a) processed lawfully, fairly and in a transparent manner in relation to the data subject (‘lawfulness, fairness and transparency’);

(b) collected (whether from the data subject or otherwise) for specified, explicit and legitimate purposes and not further processed by or on behalf of the controller in a manner that is incompatible with the purposes for which the controller collected the data. (‘purpose limitation’);

**Deleted:** those purposes; further processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes shall, in accordance with [Article 89\(1\)](#), not be considered to be incompatible with the initial purposes

(c) adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed (‘data minimisation’);

(d) accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay (‘accuracy’);

(e) kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed; personal data may be stored for longer periods insofar as the personal data will be processed solely for archiving purposes in

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the public interest, scientific or historical research purposes or statistical purposes in accordance with Article 89(1) subject to implementation of the appropriate technical and organisational measures required by this Regulation in order to safeguard the rights and freedoms of the data subject ('storage limitation');

(f) processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures ('integrity and confidentiality').

2. The controller shall be responsible for, and be able to demonstrate compliance with, paragraph 1 ('accountability').

"3. For the avoidance of doubt, processing is not lawful by virtue only of being processing in a manner that is compatible with the purposes for which the personal data was collected."

### NEW ARTICLE 8A DEALING WITH FURTHER PROCESSING

#### "Article 8A

#### Purpose limitation: further processing

1. This Article is about the determination, for the purposes of Article 5(1)(b) (purpose limitation), of whether processing of personal data by or on behalf of a controller for a purpose (a "new purpose") other than the purpose for which the controller collected the data ("the original purpose") is processing in a manner compatible with the original purpose.

2. In making the determination, a person must take into account, among other things:

- (a) any link between the original purpose and the new purpose;
- (b) the context in which the personal data was collected, including the relationship between the data subject and the controller;
- (c) the nature of the personal data, including whether it is a special category of personal data (see Article 9) or personal data related to criminal convictions and offences (see Article 10);
- (d) the possible consequences of the intended processing for data subjects;
- (e) the existence of appropriate safeguards (for example, encryption or pseudonymisation).

3. Processing of personal data for a new purpose is to be treated as processing in a manner compatible with the original purpose ~~where~~—

- (a) the data subject consents to the processing of personal data for the new purpose and the new purpose is specified, explicit

Commented [CP24]: Automatically compatible

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and legitimate.

(b) the processing is carried out in accordance with Article 84B—

(i) for the purposes of scientific research or historical research,

(ii) for the purposes of archiving in the public interest, or

(iii) for statistical purposes,

(c) the processing is carried out for the purposes of ensuring that processing of personal data complies with Article 5(1) or demonstrating that it does so.

(d) the processing meets a condition in Annex 2, or the processing is necessary to safeguard an objective listed in Article 23(1)(c) to (j) and is authorised by an enactment or rule of law.

**Commented [CP25]:** Annex 2 is automatically compatible

4. Where the controller collected the personal data based on Article 6(1)(a) (data subject's consent), processing for a new purpose is only processing in a manner compatible with the original purpose if—

**Deleted:** ¶

(a) it falls within paragraph 3(a) or (c), or

(b) it falls within paragraph 3(d) or (e) and the controller cannot be reasonably expected to obtain the data subject's consent.

5. The Secretary of State may by regulations amend Annex 2 by—

(a) adding or varying provisions, or

(b) omitting provisions added by regulations made under this paragraph.

6. The Secretary of State may only make regulations under paragraph 5 adding a case to Annex 2 where the Secretary of State considers that processing in that case is necessary to safeguard an objective listed in Article 23(1)(c) to (j).

7. Regulations under paragraph 5 may make provision identifying processing by any means, including by reference to the controller, the data subject, the personal data or the provision of Article 6(1) relied on for the purposes of the processing.

8. Regulations under paragraph 5 are subject to the affirmative resolution procedure.”

(Similar changes to law enforcement and national security re the Second Principle)

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SCHEDULE 2

PURPOSE LIMITATION: PROCESSING TO BE TREATED AS COMPATIBLE WITH ORIGINAL PURPOSE

In the UK GDPR, after Annex 1 (inserted by Schedule 1 to this Act) insert—

“ANNEX 2

PURPOSE LIMITATION: PROCESSING TO BE TREATED AS COMPATIBLE WITH ORIGINAL PURPOSE

Disclosure for purposes of processing described in Article 6(1)(e)

1. This condition is met where—
  - (a) the processing is necessary for the purposes of making a disclosure of personal data to another person in response to a request from the other person,
  - (b) the request states that the other person needs the personal data for the purposes of carrying out processing that—
    - (i) is described in Article 6(1)(e),
    - (ii) has a legal basis that satisfies Article 6(3), and
    - (iii) is necessary to safeguard an objective listed in Article 23(1)(c) to (j),  
and
  - (c) the processing is not carried out by a public authority in the performance of its tasks.

**Added: Objectives in Article 23(1)(c) to (j) are:**

- c) public security;
- (d) 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;
- (e) **other important objectives of general public interest**, in particular an important economic or financial interest of the United Kingdom, including monetary, budgetary and taxation matters, public health and social security;
- (f) the protection of judicial independence and judicial proceedings;
- (g) the prevention, investigation, detection and prosecution of breaches of ethics for regulated professions;
- (h) a monitoring, inspection or regulatory function connected, even occasionally, to the exercise of official authority in the cases referred to in points (a) to (e) and (g);
- (i) the protection of the data subject or the rights and freedoms of others;
- (j) the enforcement of civil law claims.

**Commented [CP26]:** Any exemption – including “other important objectives of general public” (see list below the paragraph added for convenience)

All the exemptions in Schedule 2 of the DPA2018 have an exemption from the right to be informed in A.13 and A.14.

This raises the question of whether data subjects will be made aware of disclosures between controllers

**Commented [CP27]:** My emphasis.

The Human Rights changes will equate “the general public interest” with “the interests of the Government of the day”

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Public security

2. This condition is met where the processing is necessary for the purposes of protecting public security.

Emergencies

3. This condition is met where the processing is necessary for the purposes of responding to an emergency.
4. In paragraph 2, “emergency” has the same meaning as in Part 2 of the Civil Contingencies Act 2004.

Crime

5. This condition is met where the processing is necessary for the purposes of—
  - (a) detecting, investigating or preventing crime, or
  - (b) apprehending or prosecuting offenders.

Protection of vital interests of data subjects and others

6. This condition is met where the processing is necessary for the purposes of protecting the vital interests of the data subject or another individual

Safeguarding vulnerable individuals

7. This condition is met where the processing is necessary for the purposes of safeguarding a vulnerable individual.
8. In paragraph 7—

“safeguarding”, in relation to a vulnerable individual, means—

  - (a) protecting a vulnerable individual from neglect or physical, mental or emotional harm, or
  - (b) protecting the physical, mental or emotional well-being of a vulnerable individual;

“vulnerable individual” means an individual

  - (a) aged under 18, or
  - (b) aged 18 or over and at risk.
9. For the purposes of paragraph 8—
  - (a) protection of an individual, or of the well-being of an individual, includes both protection relating to a particular individual and protection relating to a type of individual, and
  - (b) an individual aged 18 or over is “at risk” if the controller has reasonable cause to suspect that the individual—
    - (i) has needs for care and support,

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- (ii) is experiencing, or at risk of, neglect or physical, mental or emotional harm, and
- (iii) as a result of those needs is unable to protect themselves against the neglect, harm or risk.

Taxation

- 10. This condition is met where the processing is carried out for the purposes of the assessment or collection of a tax or duty or an imposition of a similar nature.

Legal obligations

- 11. This condition is met where the processing is necessary for the purposes of complying with an obligation of the controller under an enactment, a rule of law or an order of a court or tribunal.”

**Commented [CP28]:** This ensures the disclosure to HMRC is compatible with the purpose.

There is an exemption for these tex related purpose in Schedule 2, para 2 that can exempt all rights and the first two Principles in A.5. This includes the Purpose Limitation Principle.

If the Principle is exempt then there is no need to have this provision, except where the intent is to have disclosures to HMRC where the exemption does not apply