

SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4631 of 25 October, 2019

LEGAL NOTICE NO. 211 OF 2019

EUROPEAN UNION (WITHDRAWAL) ACT 2019

DATA PROTECTION

ELECTRONIC COMMUNICATIONS

THE DATA PROTECTION, PRIVACY AND ELECTRONIC COMMUNICATIONS (AMENDMENTS ETC) (EU EXIT) REGULATIONS 2019

In exercise of the powers conferred by sections 11(1), 15(1) and paragraph 1 of Schedule 3 to the European Union (Withdrawal) Act 2019, and section 184 of the Data Protection Act 2004, the Minister has made the following Regulations–

Title.

1. These Regulations may be cited as the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019.

Commencement.

2.(1) Subject to subregulation (2), these Regulations come into operation on exit day.

(2) Regulation 8 comes into force on the day of publication.

(3) An amendment, repeal or revocation made by these Regulations has the same extent in Gibraltar as the provision to which it relates.

Interpretation.

3. In these Regulations–

"the 2004 Act" means the Data Protection Act 2004;

"the Gibraltar GDPR" means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27th April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) as it forms part of Gibraltar law by virtue of section 6 of the European Union (Withdrawal) Act 2019.

Amendment of the Gibraltar GDPR.

4. Schedule 1 amends the Gibraltar GDPR.

Amendment of the Data Protection Act 2004.

5. Schedule 2 amends the 2004 Act.

GDPR merger modifications.

6.(1) Schedules 1 and 2 include modifications (“the GDPR merger modifications”) that merge the provisions relating to the processing of personal data that, immediately before exit day, are found in the EU GDPR and the applied GDPR, read with the 2004 Act.

(2) Retained case law and retained general principles of EU law falling within paragraph (3) are not, by virtue of the GDPR merger modifications, to be treated as relevant to the Gibraltar GDPR or the 2004 Act as they apply to applied GDPR processing on and after exit day.

(3) Retained case law and retained general principles of EU law fall within this paragraph so far as they are, or are derived from, principles or decisions that are not relevant to any of the following immediately before exit day-

- (a) the applied GDPR;
- (b) the applied Chapter 2; or
- (c) Parts V to VII of the 2004 Act so far as they apply to applied GDPR processing,

having regard (among other things) to the limits of EU competence immediately before exit day.

(4) In this regulation-

“the applied Chapter 2” means Chapter 2 of Part II of the 2004 Act as applied by Chapter 3 of that Part immediately before exit day (see section 26 of that Act);

“the applied GDPR” means the EU GDPR as applied by Chapter 3 of Part II of the 2004 Act as it has effect immediately before exit day (see section 26 of that Act);

“applied GDPR processing” means the processing of personal data to which the applied GDPR applied immediately before exit day (see section 25 of the 2004 Act);

“the EU GDPR” means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27th April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) as it has effect in EU law immediately before exit day;

“retained case law” and “retained general principles of EU law” have the same meaning as in the European Union (Withdrawal) Act 2019 (see section 3(1) of that Act).

Consequential amendments of other legislation.

7. In Schedule 3-

- (a) Part 1 revokes certain retained EU law;
- (b) Part 2 contains amendments of primary and subsidiary legislation that are consequential on Schedules 1 and 2;
- (c) Part 3 contains modifications of legislation that are consequential on those Schedules;
- (d) Part 4 contains supplementary provision.

Amendment of the Communications (Personal Data and Privacy) Regulations 2006.

8.(1) Regulation 2 of the Communications (Personal Data and Privacy) Regulations 2006 is amended as follows.

(2) In subregulation (1), after the definition of “communications provider” insert-

““consent” by a user or subscriber corresponds to the data subject’s consent in the GDPR (as defined in the definition of “the Gibraltar GDPR” at section 2(1) of the Data Protection Act 2004);”.

(3) Delete subregulation (4).

SCHEDULE 1

Amendments of the Gibraltar GDPR

Introduction.

1. The Gibraltar GDPR is amended as follows.
2. In the title of the Regulation, for “, and repealing Directive 95/46/EC (General Data Protection Regulation)” substitute “(Gibraltar General Data Protection Regulation)”.

Chapter I (general provisions).

3. In Article 1, delete paragraph 3.
- 4.(1) Article 2 is amended as follows.
 - (2) For paragraph 1 substitute-
 - “1. This Regulation applies to the automated or structured processing of personal data, including-
 - (a) processing in the course of an activity which, immediately before exit day, fell outside the scope of EU law; and
 - (b) processing in the course of an activity which, immediately before exit day, fell within the scope of Chapter 2 of Title 5 of the Treaty on European Union (common foreign and security policy activities).”.
 - (3) For paragraph 2 substitute-
 - “2. This Regulation does not apply to-
 - (a) the processing of personal data by an individual in the course of a purely personal or household activity;
 - (b) the processing of personal data by a competent authority for any of the law enforcement purposes (see Part III of the 2004 Act).”.
 - (4) Delete paragraph 3.
 - (5) In paragraph 4, for “Directive 2000/31/EC” (to the end) substitute “the Electronic Commerce Act 2001, in particular the provisions about the liability of intermediary service providers.”.
 - (6) After paragraph 4 insert-

“5. In this Article-

- (a) “the automated or structured processing of personal data” means-
 - (i) the processing of personal data wholly or partly by automated means, and
 - (ii) the processing otherwise than by automated means of personal data which forms part of a filing system or is intended to form part of a filing system;
- (b) “competent authority” and “law enforcement purposes” have the same meaning as in Part III of the 2004 Act (see sections 39 and 40 of that Act).”.

5.(1) Article 3 is amended as follows.

(2) In paragraph 1, for “the Union” (in both places) substitute “Gibraltar”.

(3) In paragraph 2-

(a) before “processing” (in the first place) insert “relevant”;

(b) for every instance of “the Union” substitute “Gibraltar”.

(4) After paragraph 2 insert-

“2A. In paragraph 2, “relevant processing of personal data” means processing to which this Regulation applies, other than processing described in Article 2(1)(a) or (b).”.

(5) In paragraph 3-

(a) for “the Union” substitute “Gibraltar”;

(b) for “Member State law” substitute “Gibraltar law”.

6.(1) Article 4 is amended as follows.

(2) Before paragraph (1) insert-

“ (A1) ‘the 2004 Act’ means the Data Protection Act 2004;

(A2) ‘the Commissioner’ means the Information Commissioner (see section 123 of the 2004 Act);”.

(3) In paragraph (7), for “; where the purposes and means of such processing are determined by Union or Member State law, the controller or the specific criteria for its nomination may be provided for by Union or Member State law” substitute “(but see section 8 of the 2004 Act)”.

(4) In paragraph (9), for “Union or Member State law” substitute “Gibraltar law”.

(5) After paragraph (10) insert-

“ (10A) ‘public authority’ and ‘public body’ are to be interpreted in accordance with section 9 of the 2004 Act and provision made under that section;”.

(6) Delete paragraph (16).

(7) In paragraph (17), for “the Union” substitute “Gibraltar”.

(8) In paragraph (20), for “on the territory of a Member State” substitute “in Gibraltar”.

(9) Delete paragraph (21).

(10) After paragraph (21) insert-

“ (21A) ‘foreign designated authority’ means an authority designated for the purposes of Article 13 of the Data Protection Convention (as defined in section 2 of the 2004 Act) by a party, which is bound by that Convention;”.

(11) Delete paragraphs (22), (23) and (24).

(12) In paragraph (25), before the semi-colon insert “as it has effect immediately before exit day”.

(13) After paragraph (26) insert-

“(27) ‘third country’ means a country or territory outside Gibraltar;

(28) references to a fundamental right or fundamental freedom (however expressed) are to a fundamental right or fundamental freedom which continues to form part of Gibraltar law on and after exit day by virtue of section 7 of the European Union (Withdrawal) Act 2019, as the right or freedom is amended or otherwise modified by Gibraltar law from time to time on or after exit day.”.

Chapter II (principles).

7.(1) Article 6 is amended as follows.

(2) Delete paragraph 2.

(3) In paragraph 3-

(a) in the first subparagraph, for points (a) and (b) (and the colon before them) substitute “Gibraltar law”;

(b) in the second subparagraph, for “The Union or Member State law” substitute “Gibraltar law”.

(4) In paragraph 4-

(a) for “a Union or Member State law” substitute “Gibraltar law”;

(b) after “safeguard” insert “the security of Gibraltar or any of”.

8.(1) Article 8 is amended as follows.

(2) In paragraph 1-

(a) for “16 years old” substitute “13 years old”;

(b) for “of 16 years” substitute “of 13 years”;

(c) delete the second subparagraph.

(3) In paragraph 3, for “of Member States” substitute “as it operates in Gibraltar law”.

(4) After paragraph 3 insert-

“4. In paragraph 1, the reference to information society services does not include preventive or counselling services.”.

9.(1) Article 9 is amended as follows.

(2) In paragraph 2(a), for “Union or Member State law provide” substitute “Gibraltar law provides”.

(3) In paragraph 2(b)-

(a) for “Union or Member State law” substitute “Gibraltar law”;

(b) for “to Member State law” substitute “to Gibraltar law”.

(4) In paragraph 2(g), for “Union or Member State law” substitute “Gibraltar law”.

(5) In paragraph 2(h), for “Union or Member State law” substitute “Gibraltar law”.

(6) In paragraph 2(i), for “Union or Member State law” substitute “Gibraltar law”.

(7) paragraph 2(j)-

(a) after “Article 89(1)” insert “(as supplemented by section 23 of the 2004 Act)”;

(b) for “Union or Member State law” substitute “Gibraltar law”.

(8) In paragraph 3, for “Union or Member State law” (in both places) substitute “Gibraltar law”.

(9) After paragraph 3 insert-

“3A. In paragraph 3, ‘national competent bodies’ means competent bodies of Gibraltar.”.

(10) Delete paragraph 4.

(11) After deleted paragraph 4 insert-

“5. In the 2004 Act-

- (a) section 12 makes provision about when the requirement in paragraph 2(b), (g), (h), (i) or (j) of this Article for authorisation by, or a basis in, Gibraltar law is met;
- (b) section 13(1) makes provision about when the processing of personal data is carried out in circumstances described in paragraph 3 of this Article.”.

10.(1) Article 10 is amended as follows.

(2) The existing text becomes paragraph 1.

(3) In paragraph 1, for “Union or Member State law” substitute “Gibraltar law”.

(4) After paragraph 1 insert-

“2. In the 2004 Act-

- (a) section 12 makes provision about when the requirement in paragraph 1 of this Article for authorisation by Gibraltar law is met;
- (b) section 13(2) makes provision about the meaning of “personal data relating to criminal convictions and offences or related security measures”.

Chapter III (rights of the data subject).

11.(1) Article 12 is amended as follows.

(2) In paragraph 4, for “a supervisory authority” substitute “the Commissioner”.

(3) After paragraph 6 insert-

“6A. The Commissioner may publish (and amend or withdraw)-

- (a) standardised icons for use in combination with information provided to data subjects under Articles 13 and 14;
- (b) a notice stating that other persons may publish (and amend or withdraw) such icons, provided that the icons satisfy requirements specified in the notice as to the information to be presented by the icons and the procedures for providing the icons.

6B. The Commissioner must not publish icons or a notice under paragraph 6A unless satisfied (as appropriate) that the icons give a meaningful overview of the intended processing in an easily visible, intelligible and clearly legible manner or that the notice will result in icons that do so.”.

(4) In paragraph 7-

- (a) for “The information” substitute “If standardised icons are published as described in paragraph 6A (and not withdrawn), the information”;
- (b) for “standardised” to “processing” substitute “the icons”.

(5) Delete paragraph 8.

12.(1) Article 13 is amended as follows.

(2) In paragraph 1(f), for “an adequacy decision by the Commission” substitute “a decision based on an adequacy regulation as set out in Article 45(1) of the Gibraltar GDPR,”.

(3) In paragraph 2(d), for “a supervisory authority” substitute “the Commissioner”.

13.(1) Article 14 is amended as follows.

(2) In paragraph 1(f), for “an adequacy decision by the Commission” substitute “a decision based on an adequacy regulation as set out in Article 45(1) of the Gibraltar GDPR,”.

(3) In paragraph 2(e), for “a supervisory authority” substitute “the Commissioner”.

(4) In paragraph 5(c), for “Union or Member State law to which the controller is subject and” substitute “a provision of Gibraltar law”.

(5) In paragraph 5(d), for “Union or Member State law” substitute “Gibraltar law”.

14. In Article 15(1)(f), for “a supervisory authority” substitute “the Commissioner”.

15.(1) Article 17 is amended as follows.

(2) In paragraph 1(e), for “in Union or Member State law to which the controller is subject” substitute “under Gibraltar law”.

(3) In paragraph 3(b), for “by Union or Member State law to which the controller is subject” substitute “under Gibraltar law”.

16. In Article 18(2), delete “of the Union or of a Member State”.

17. In Article 21(5)-

- (a) delete “and notwithstanding Directive 2002/58/EC,”;
- (b) after “using technical specifications” insert “, notwithstanding Gibraltar law made before exit day implementing Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector”.

18.(1) Article 22 is amended as follows.

(2) In paragraph 2(b), for “authorised by Union or Member State law to which the controller is subject and” substitute “required or authorised by Gibraltar law”.

(3) After paragraph 3 insert-

“3A. Section 17 of the 2004 Act, and regulations under that section, make provision to safeguard data subjects’ rights, freedoms and legitimate interests in cases that fall within point (b) of paragraph 2 (but not within point (a) or (c) of that paragraph).”.

19.(1) Article 23 is amended as follows.

(2) In paragraph 1-

- (a) for “Union or Member State law to which the data controller or processor is subject may restrict by way of legislative measure” substitute “The Minister may restrict”;
- (b) delete points (a) and (b);
- (c) in point (e)-
 - (i) delete “of the Union or of a Member State” in the first place it occurs;
 - (ii) for “of the Union or of a Member State”, in the second place it occurs, substitute “of Gibraltar”.

(3) In paragraph 2, for “any legislative measure referred to in” substitute “provision made in exercise of the power under”.

(4) After paragraph 2 insert-

“3. The Minister may exercise the power under paragraph 1 only by making regulations under section 20 of the 2004 Act.”.

Chapter IV (controller and processor).

20. In Article 26(1), for “Union or Member State law to which the controllers are subject” substitute “Gibraltar law”.

21.(1) Article 27 is amended as follows.

- (2) In the heading, for “the Union” substitute “Gibraltar”.
- (3) In paragraph 1, for “the Union” substitute “Gibraltar”.
- (4) Delete paragraph 3.
- (5) In paragraph 4, for “supervisory authorities” substitute “the Commissioner”.

22.(1) Article 28 is amended as follows.

- (2) In paragraph 3-
 - (a) in the opening words, for “Union or Member State law” substitute “Gibraltar law”;
 - (b) in point (a), for “Union or Member State law to which the processor is subject” substitute “Gibraltar law”;
 - (c) in point (g), for “Union or Member State law” substitute “Gibraltar law”;
 - (d) in the second subparagraph, for “other Union or Member State data protection provisions” substitute “other Gibraltar law relating to data protection”.
- (3) In paragraph 4, for “Union or Member State law” substitute “Gibraltar law”.
- (4) In paragraph 6, for “paragraphs 7 and 8” substitute “paragraph 8”.
- (5) Delete paragraph 7.
- (6) In paragraph 8-
 - (a) for “A supervisory authority” substitute “The Commissioner”;
 - (b) delete “and in accordance with the consistency mechanism referred to in Article 63”.

23. In Article 29, for “Union or Member State law” substitute “Gibraltar law”.

24.(1) Article 30 is amended as follows.

(2) In paragraph 1(g), after “Article 32(1)” insert “or, as appropriate, the security measures referred to in section 30(3) of the 2004 Act”.

(3) In paragraph 2(d), after “Article 32(1)” insert “or, as appropriate, the security measures referred to in section 30(3) of the 2004 Act”.

(4) In paragraph 4, for “the supervisory authority” substitute “the Commissioner”.

25.(1) Article 31 is amended as follows.

(2) In the heading, for “the supervisory authority” substitute “the Commissioner”.

(3) For “the supervisory authority in the performance of its tasks” substitute “the Commissioner in the performance of the Commissioner’s tasks”.

26. In Article 32(4), for “Union or Member State law” substitute “Gibraltar law”.

27.(1) Article 33 is amended as follows.

(2) In the heading, for “the supervisory authority” substitute “the Commissioner”.

(3) In paragraph 1-

(a) for “the supervisory authority competent in accordance with Article 55” substitute “the Commissioner”;

(b) for “the notification to the supervisory authority” substitute “the notification under this paragraph”.

(4) In paragraph 5, for “the supervisory authority” substitute “the Commissioner”.

28. In Article 34(4), for “the supervisory authority” substitute “the Commissioner”.

29.(1) Article 35 is amended as follows.

(2) In paragraph 4-

(a) in the first sentence, for “The supervisory authority” substitute “The Commissioner”;

(b) delete the second sentence.

(3) In paragraph 5-

(a) in the first sentence, for “The supervisory authority” substitute “The Commissioner”;

(b) delete the second sentence.

(4) Delete paragraph 6.

(5) For paragraph 10 substitute-

“10. In the case of processing pursuant to point (c) or (e) of Article 6(1), paragraphs 1 to 7 of this Article do not apply if a data protection impact assessment has already been carried out for the processing as part of a general impact assessment required by Gibraltar law, unless Gibraltar law provides otherwise.”.

30.(1) Article 36 is amended as follows.

(2) In paragraph 1, for “the supervisory authority” substitute “the Commissioner”.

(3) In paragraph 2-

(a) in the first sentence, for “the supervisory authority” (in both places) substitute “the Commissioner”;

(b) in the third sentence, for “The supervisory authority” substitute “The Commissioner”;

(c) in the last sentence, for “the supervisory authority has obtained information it” substitute “the Commissioner has obtained information the Commissioner”.

(4) In paragraph 3-

(a) in the opening words, for “the supervisory authority” (in both places) substitute “the Commissioner”;

(b) in point (f), for “the supervisory authority” substitute “the Commissioner”.

(5) In paragraph 4-

(a) for “Member States shall consult the supervisory authority” substitute “The relevant authority must consult the Commissioner”;

(b) for “a national parliament” substitute “Parliament”.

(6) After paragraph 4 insert-

“4A. In paragraph 4, “the relevant authority” means in relation to a legislative measure adopted by Parliament, or a regulatory measure based on such a legislative measure, the Minister.”.

(7) Delete paragraph 5.

31.(1) Article 37 is amended as follows.

(2) In paragraph 4, delete “or, where required by Union or Member State law shall,”.

(3) In paragraph 7, for “the supervisory authority” substitute “the Commissioner”.

32. In Article 38(5), for “Union or Member State law” substitute “Gibraltar law”.

33.(1) Article 39 is amended as follows.

(2) In paragraph 1(a) and (b), for “other Union or Member State data protection provisions” substitute “other Gibraltar law relating to data protection”.

(3) In paragraph 1(d) and (e), for “the supervisory authority” substitute “the Commissioner”.

34.(1) Article 40 is amended as follows.

(2) In paragraph 1, for “The Member States, the supervisory authorities, the Board and the Commission” substitute “The Commissioner”.

(3) In paragraph 2(i), for “supervisory authorities” substitute “the Commissioner”.

(4) In paragraph 3, delete “and having general validity pursuant to paragraph 9 of this Article”.

(5) In paragraph 4, for “supervisory authorities competent pursuant to Article 55 or 56” substitute “the Commissioner”.

(6) In paragraph 5-

(a) for “the supervisory authority which is competent pursuant to Article 55. The supervisory authority” substitute “the Commissioner, who”;

(b) for “it finds” substitute “the Commissioner finds”.

(7) In paragraph 6, for “and where the code of conduct concerned does not relate to processing activities in several Member States, the supervisory authority” substitute “the Commissioner”.

(8) Delete paragraphs 7, 8, 9, 10 and 11.

35.(1) Article 41 is amended as follows.

(2) In paragraph 1, for “the competent supervisory authority” (in both places) substitute “the Commissioner”.

(3) In paragraph 2(a) and (d), for “the competent supervisory authority” substitute “the Commissioner”.

(4) Delete paragraph 3.

(5) In paragraph 4, for “the competent supervisory authority” (in both places) substitute “the Commissioner”.

(6) In paragraph 5, for “The competent supervisory authority” substitute “The Commissioner”.

36.(1) Article 42 is amended as follows.

(2) In paragraph 1-

(a) for “The Member States, the supervisory authorities, the Board and the Commission” substitute “The Commissioner”;

(b) delete “, in particular at Union level,”.

(3) In paragraph 4, for “the supervisory authorities which are competent pursuant to Article 55 or 56” substitute “the Commissioner”.

(4) In paragraph 5-

(a) for “the competent supervisory authority” substitute “the Commissioner”;

(b) for “that competent supervisory authority” substitute “the Commissioner”;

(c) delete “or by the Board pursuant to Article 63” and the second sentence.

(5) In paragraph 6, for “the competent supervisory authority” substitute “the Commissioner”.

(6) In paragraph 7, for “the competent supervisory authority” substitute “the Commissioner”.

(7) In paragraph 8, for “The Board” substitute “The Commissioner”.

37.(1) Article 43 is amended as follows.

(2) In paragraph 1-

(a) in the opening words-

(i) for “the competent supervisory authority” substitute “the Commissioner”;

(ii) for “the supervisory authority” substitute “the Commissioner”;

(iii) for “Members States shall ensure that those certification bodies are” substitute “In accordance with section 21 of the 2004 Act, those certification bodies may only be”;

(b) for point (a) substitute-

“(a) the Commissioner;”;

(c) in point (b)-

- (i) for “the national accreditation body” substitute “the Gibraltar national accreditation body”;
- (ii) for “the supervisory authority which is competent pursuant to Article 55 or 56” substitute “the Commissioner”.

(3) In paragraph 2-

- (a) in point (a), for “the competent supervisory authority” substitute “the Commissioner”;
- (b) in point (b), for “the supervisory authority” to the end substitute “the Commissioner”;
- (c) in point (e), for “the competent supervisory authority” substitute “the Commissioner”.

(4) In paragraph 3, for “the supervisory authority which is competent pursuant to Article 55 or 56 or by the Board pursuant to Article 63” substitute “the Commissioner”.

(5) In paragraph 5, for “the competent supervisory authorities” substitute “the Commissioner”.

(6) In paragraph 6-

- (a) for “the supervisory authority” substitute “the Commissioner”;
- (b) delete from “The supervisory authorities” to the end.

(7) In paragraph 7, for “the competent supervisory authority or the national accreditation body” substitute “the Commissioner or the Gibraltar national accreditation body”.

(8) Delete paragraphs 8 and 9.

Chapter V (transfers of personal data to third countries or international organisations).

38.(1) Article 45 is amended as follows.

- (2) In paragraph 1, for “where the Commission” to the end of the first sentence substitute-
“if-

- (a) it is a transfer which, if made from the United Kingdom to that third country or international organisation, would at the time when it is made be based on adequacy regulations for the purposes of the UK GDPR and Part 2 of the UK Data Protection Act 2018; or
- (b) it is a transfer to the United Kingdom.”.

(3) After paragraph 1 insert-

“1A. In this Article-

“the UK GDPR” means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27th April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018 passed by the Parliament at Westminster, and further amended by the United Kingdom’s The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019, as amended from time to time;

“UK Data Protection Act 2018” means the United Kingdom’s Data Protection Act 2018 passed by the Parliament at Westminster.”.

(4) Delete paragraphs 2, 3, 4, 5 and 6.

(5) In paragraph 7, for “A decision pursuant to paragraph 5 of this Article” substitute “The amendment or revocation of adequacy regulations”.

(6) Delete paragraphs 8 and 9.

39.(1) Article 46 is amended as follows.

(2) In paragraph 1, for “a decision pursuant to Article 45(3)” substitute “a decision based on adequacy regulations”.

(3) After paragraph 1 insert-

“1A. In this Article “based on adequacy regulations” means a transfer in accordance with Article 45 of the Gibraltar GDPR.”.

(4) In paragraph 2-

(a) for “a supervisory authority” substitute “the Commissioner”;

(b) for paragraph (c) substitute-

“(c) standard data protection clauses specified in regulations made by the Minister under section 21A of the 2004 Act and for the time being in force;”;

(c) for paragraph (d) substitute-

“(d) standard data protection clauses specified in a document issued (and not withdrawn) by the Commissioner under section 128A of the 2004 Act and for the time being in force;”.

(5) In paragraph 3, for “Subject to the authorisation from the competent supervisory authority” substitute “With authorisation from the Commissioner”.

(6) Delete paragraphs 4 and 5.

40.(1) Article 47 is amended as follows.

(2) In paragraph 1-

(a) for “The competent supervisory authority” substitute “The Commissioner”;

(b) delete “in accordance with the consistency mechanism set out in Article 63”.

(3) In paragraph 2(e), for “the competent supervisory authority and before the competent courts of the Member States in accordance with Article 79” substitute “the Commissioner and before a court in accordance with Article 79 (see section 182 of the 2004 Act)”.

(4) In paragraph 2(f)-

(a) for “established on the territory of a Member State” substitute “established in Gibraltar”;

(b) for “not established in the Union” substitute “not established in Gibraltar”.

(5) In paragraph 2(j), for “the competent supervisory authority” substitute “the Commissioner”.

(6) In paragraph 2(k), for “the supervisory authority” substitute “the Commissioner”.

(7) In paragraph 2(l), for “the supervisory authority” (in both places) substitute “the Commissioner”.

(8) In paragraph 2(m), for “the competent supervisory authority” substitute “the Commissioner”.

(9) Delete paragraph 3.

41. Delete Article 48.

42.(1) Article 49 is amended as follows.

(2) In paragraph 1-

(a) in the opening words, for “an adequacy decision pursuant to Article 45(3)” substitute “a decision based on adequacy regulations”;

(b) in point (g), for “Union or Member State law” (in both places) substitute “Gibraltar law”;

(c) in the second subparagraph, for “the supervisory authority” substitute “the Commissioner”.

(3) After paragraph 1 insert-

“1A. In this Article “based on adequacy regulations” means a transfer in accordance with Article 45 of the Gibraltar GDPR.”.

(4) In paragraph 4, for “shall be recognised in Union law or in the law of the Member State to which the controller is subject” substitute “must be public interest that is recognised in Gibraltar law (whether in regulations under section 22(1) of the 2004 Act or otherwise)”.

(5) Delete paragraph 5.

(6) After deleted paragraph 5 insert-

“5A. This Article and Article 46 are subject to restrictions in regulations under section 22(2) of the 2004 Act.”.

43. In Article 50, for “the Commission and supervisory authorities” substitute “the Commissioner”.

Chapter VI (independent supervisory authorities).

44. For the heading of Chapter 6 substitute “The Commissioner”.

45.(1) Article 51 is amended as follows.

(2) For the heading, substitute “Monitoring the application of this Regulation”.

(3) In paragraph 1-

(a) for “Each Member State shall provide for one or more independent public authorities to be” substitute “The Commissioner is”;

(b) delete “within the Union (‘supervisory authority’)”.

(4) Delete paragraphs 2, 3 and 4.

46.(1) Article 52 is amended as follows.

(2) In paragraph 1-

(a) for “Each supervisory authority” substitute “The Commissioner”;

- (b) delete “its” (in both places).
- (3) In paragraph 2-
- (a) for “The member or members of each supervisory authority” substitute “The Commissioner”;
 - (b) delete “their” (in both places).
- (4) In paragraph 3-
- (a) for “Member or members of each supervisory authority” substitute “The Commissioner”;
 - (b) for “their duties” substitute “the Commissioner’s duties”;
 - (c) for “during their term of office” substitute “while holding office”.
- (5) Delete paragraphs 4, 5 and 6.
47. Delete Article 53.
48. Delete Article 54.
49. In the heading of section 2 of Chapter VI, for “Competence, tasks” substitute “Tasks”.
50. Delete Article 55.
51. Delete Article 56.
- 52.(1) Article 57 is amended as follows.
- (2) In paragraph 1-
- (a) for “each supervisory authority shall on its territory” substitute “the Commissioner must”;
 - (b) in point (c), for “, in accordance with Member State law, the national parliament” substitute “Parliament”;
 - (c) in point (e), for “the supervisory authorities in other Member States” substitute “foreign designated authorities”;
 - (d) in point (f), for “another supervisory authority” substitute “a foreign designated authority”;
 - (e) delete point (g);

(f) in point (h), for “another supervisory authority” substitute “a foreign designated authority”;

(g) in point (j), after “and” insert “issue standard data protection clauses referred to”;

(h) after point (o) insert-

“(oa) maintain a public register of certification mechanisms and data protection seals and marks pursuant to Article 42(8) and of controllers or processors established in third countries and certified pursuant to Article 42(7);”;

(i) delete point (t).

(3) In paragraph 2, for “Each supervisory authority” substitute “The Commissioner”.

(4) In paragraph 3, for “the tasks of each supervisory authority shall be” substitute “the Commissioner’s tasks is to be”.

(5) In paragraph 4, for “supervisory authority” (in both places) substitute “Commissioner”.

53.(1) Article 58 is amended as follows.

(2) In paragraph 1-

(a) for “Each supervisory authority shall have” substitute “The Commissioner has”;

(b) in point (e), for “its” substitute “the Commissioner’s”;

(c) in point (f), for “Union or Member State procedural law” substitute “Gibraltar law”.

(3) In paragraph 2, for “Each supervisory authority shall have” substitute “The Commissioner has”.

(4) In paragraph 3-

(a) for “Each supervisory authority shall have” substitute “The Commissioner has”;

(b) in point (b)-

(i) for “its” substitute “the Commissioner’s”;

(ii) for “the national parliament, the Member State government or, in accordance with Member State law, to” substitute “Parliament, the government or other”;

(c) delete point (c).

(5) After paragraph 3 insert-

“3A. In the 2004 Act, section 124(4) to (9) provide that the Commissioner’s functions under this Article are subject to certain safeguards.”.

(6) Delete paragraphs 4, 5 and 6.

54. In Article 59-

(a) for “Each supervisory authority” substitute “The Commissioner”;

(b) for “its” substitute “the Commissioner’s”;

(c) for the second sentence substitute “The Commissioner must arrange for those reports to be laid before Parliament and send a copy to the Minister.”;

(d) delete “, to the Commission and to the Board”.

Chapter VII (cooperation and consistency).

55. Delete Articles 60 to 76 and the headings for, and for the sections of, Chapter VII.

Chapter VIII (remedies, liability and penalties).

56.(1) Article 77 is amended as follows.

(2) In the heading, for “a supervisory authority” substitute “the Commissioner”.

(3) In paragraph 1, for “a supervisory authority, in particular in the Member State of his or her habitual residence, place of work or place of the alleged infringement” substitute “the Commissioner”.

(4) In paragraph 2, for “The supervisory authority with which the complaint has been lodged” substitute “The Commissioner”.

57.(1) Article 78 is amended as follows.

(2) In the heading, for “a supervisory authority” substitute “the Commissioner”.

(3) In paragraph 1, for “a supervisory authority” substitute “the Commissioner”.

(4) In paragraph 2, for “the supervisory authority which is competent pursuant to Articles 55 and 56” substitute “the Commissioner”.

(5) Delete paragraph 3.

(6) Delete paragraph 4.

58.(1) Article 79 is amended as follows.

- (2) In paragraph 1, for “a supervisory authority” substitute “the Commissioner”.
- (3) Delete paragraph 2.

59.(1) Article 80 is amended as follows.

- (2) In paragraph 1-
 - (a) for the words from “a not-for profit” to “their personal data” substitute “a body or other organisation which meets the conditions in section 189(3) and (4) of the 2004 Act”;
 - (b) delete “where provided for by Member State law”.
- (3) In paragraph 2-
 - (a) for “Member States” substitute “The Minister”;
 - (b) delete “, in that Member State.”;
 - (c) for “the supervisory authority which is competent pursuant to Article 77” substitute “the Commissioner”.

(4) After paragraph 2 insert-

“3. The Minister may exercise the power under paragraph 2 of this Article only by making regulations under section 191(3) of the 2004 Act.”.

60. Delete Article 81.

61. In Article 82, delete paragraph 6.

62.(1) Article 83 is amended as follows.

- (2) In paragraph 1, for “Each supervisory authority” substitute “The Commissioner”.
- (3) In paragraph 2-
 - (a) in point (f), for “the supervisory authority” substitute “the Commissioner”;
 - (b) in point (h), for “the supervisory authority” substitute “the Commissioner”.
- (4) In paragraph 4, for “10 000 000 EUR” substitute “£8,700,000”.
- (5) In paragraph 5-
 - (a) for “20 000 000 EUR” substitute “£17,500,000”;

(b) for point (d) substitute-

“(d) any obligations under Part 5 or 6 of Schedule 2 to the 2004 Act or regulations made under section 20(1)(c) of the 2004 Act;”;

(c) in point (e), for “the supervisory authority” substitute “the Commissioner”.

(6) In paragraph 6-

(a) for “the supervisory authority” substitute “the Commissioner”;

(b) for “20 000 000 EUR” substitute “£17,500,000”.

(7) Delete paragraphs 7, 8 and 9.

(8) After deleted paragraph 9 insert-

“10. In the 2004 Act, section 124(9) makes provision about the exercise of the Commissioner’s functions under this Article.”.

63. In Article 84, for paragraphs 1 and 2 substitute-

“Part VI of the 2004 Act makes further provision about penalties applicable to infringements of this Regulation.”.

Chapter IX (provisions relating to specific processing situations).

64.(1) Article 85 is amended as follows.

(2) Delete paragraph 1.

(3) In paragraph 2-

(a) for “Members States shall” substitute “the Minister may”;

(b) for “independent supervisory authorities” substitute “the Commissioner”;

(c) delete “, Chapter VII (cooperation and consistency)”.

(4) After paragraph 2 insert-

“2A. The Minister may exercise the power under paragraph 2 of this Article only by making regulations under section 20 of the 2004 Act.”.

(5) Delete paragraph 3.

65. In Article 86 for “Union or Member State law” substitute “Gibraltar law”.

66. After Article 86 insert-

“Article 86A

Processing and the security of Gibraltar

Chapter 3 of Part II of the 2004 Act makes provision about the application of this Regulation where processing is carried out, or exemption from a provision of this Regulation is required, for the purposes of safeguarding the security of Gibraltar or for defence purposes.”.

67. Delete Article 87.

68. Delete Article 88.

69.(1) Article 89 is amended as follows.

(2) After paragraph 1 insert-

“1A. In the 2004 Act, section 23 makes provision about when the requirements in paragraph 1 are satisfied.”.

(3) Delete paragraphs 2, 3 and 4.

70. Delete Article 90.

71. Delete Article 91.

Chapter X (delegated acts and implementing acts).

72. Delete Articles 92 and 93 and the heading for Chapter X.

Chapter XI (final provisions).

73.(1) Article 94 is amended as follows.

(2) Delete paragraph 1.

(3) In paragraph 2-

- (a) in the first sentence, for “the repealed Directive” substitute “Directive 95/46/EC of the European Parliament and of the Council of 24th October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (which ceased to have effect on 25th May 2018)”;
- (b) in the second sentence, for “by this Regulation” substitute “by the EU GDPR (as defined in section 2 of the 2004 Act)”.

74.(1) Article 95 is amended as follows.

(2) For “the Union” substitute “Gibraltar”.

(3) For “Directive 2002/58/EC” substitute “Gibraltar law made before exit day implementing Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector”.

75.(1) Article 96 is amended as follows.

(2) For “Member States” substitute “Gibraltar or the Commissioner”.

(3) For “Union law” substitute “Gibraltar law”.

76. Delete Article 97.

77. Delete Article 98.

78. Delete Article 99.

79. Delete the sentence following Article 99.

Supplementary.

80. It is not to be presumed, by virtue of the revocation of a provision by this Schedule, that the provision was applicable to Gibraltar immediately before exit day (and so would, but for this Schedule, be part of the Gibraltar GDPR).

SCHEDULE 2

Amendments of the Data Protection Act 2004

Introduction.

1. The Data Protection Act 2004 is amended as follows.

Part I (General).

2.(1) Section 2 is amended as follows.

(2) Delete the definition of “competent authority”.

(3) In the definition of ““Controller” and “Processor”” delete “Chapter 2 or 3 of” and “Chapter or”.

(4) In the definition of “the data protection legislation”-

(a) for paragraph (a) substitute-

“(a) the Gibraltar GDPR;”;

(b) delete paragraph (b);

(c) in paragraph (e), for “the GDPR” substitute “the EU GDPR”.

(5) In the definition of “enactment”-

(a) in paragraph (a) delete “and”;

(b) in paragraph (b) after the semi-colon insert “and”;

(c) after paragraph (b) insert-

“(c) any retained direct EU legislation;”.

(6) After the definition of “filing system” insert-

““The EU GDPR” means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) as it has effect in EU law;”.

(7) In the definition of “the GDPR”-

(a) for “The GDPR” substitute “The Gibraltar GDPR”;

- (b) for “(General Data Protection Regulation)” substitute “(Gibraltar General Data Protection Regulation), as it forms part of Gibraltar law by virtue of section 6 of the European Union (Withdrawal) Act 2019 (and see section 2(1B)(a))”.
- (8) Delete the definition of “the applied GDPR”.
- (9) In the definition of “international obligation of Gibraltar” delete paragraph (a).
- (10) Delete the definitions of “Schengen Agreement” and “Schengen State”.
- (11) In the definition of “tribunal” for the full-stop substitute a semi-colon.
- (12) After the definition of “tribunal” insert-
- ““UK Data Protection Act 2018” means the United Kingdom’s Data Protection Act 2018 passed by the Parliament at Westminster.”.
- (13) After subsection (1) insert-
- “(1A) In this Act, references to a fundamental right or fundamental freedom (however expressed) are to a fundamental right or fundamental freedom which continues to form part of Gibraltar law on and after exit day by virtue of section 7 of the European Union (Withdrawal) Act 2019, as the right or freedom is amended or otherwise modified by Gibraltar law, from time to time on or after exit day.
- (1B) In the definition of “the Gibraltar GDPR” at subsection (1)-
- (a) the reference to Regulation (EU) 2016/679 as it forms part of Gibraltar law by virtue of section 6 of the European Union (Withdrawal) Act 2019 is to be treated as a reference to that Regulation as modified by Schedule 1 to the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (“the 2019 Regulations”); but
- (b) nothing in the definition or in paragraph (a) determines whether, where Regulation (EU) 2016/679 is modified on or after exit day by the Gibraltar law (other than by Schedule 1 to the 2019 Regulations), the reference to Regulation (EU) 2016/679 is then to be read as a reference to that Regulation as modified.
- (1C) Subsection (1B) is not to be read as implying anything about how other references to Regulation (EU) 2016/679 or references to other retained EU law are to be interpreted.”.
- (14) In subsection (2)-
- (a) for paragraph (a) substitute-

“(a) references to the Gibraltar GDPR are to the Gibraltar GDPR read with Part II;”;

(b) delete paragraph (b);

(c) in paragraphs (c) and (d), delete “Chapter 2 or 3 of”.

3.(1) Section 3 is amended as follows.

(2) In subsection (1), for “GDPR” substitute “Gibraltar GDPR”.

(3) In subsection (2), for “GDPR and applies a broadly equivalent regime to certain types of processing to which the GDPR does not apply” substitute “Gibraltar GDPR”.

(4) Delete subsection (3).

(5) In subsection (4), delete “and implements the Law Enforcement Directive”.

(6) In subsection (8), for “GDPR, the applied GDPR” substitute “Gibraltar GDPR”.

(7) In subsection (9), for “GDPR, the applied GDPR” substitute “Gibraltar GDPR”.

Part II (general processing) (other than Schedules 1 to 6).

4.(1) Section 6 is amended as follows.

(2) In subsection (2)-

(a) for “Chapter 2 of this Part” substitute “This Part”;

(b) for every instance of “GDPR” substitute “Gibraltar GDPR”.

(3) Delete subsection (3).

5.(1) Section 7 is amended as follows.

(2) In subsection (1)-

(a) delete “Chapter 2 of”;

(b) for “GDPR” (in both places) substitute “Gibraltar GDPR”;

(c) for “Chapter 2 as” substitute “this Part as”.

(3) In subsection (2)-

(a) for every instance of “GDPR” substitute “Gibraltar GDPR”;

(b) for “Chapter 2” substitute “this Part”.

- (4) In subsection (3), for “Chapter 2” substitute “this Part”.
- (5) Delete subsections (4), (5) and (6).
- (6) In subsection (7)-
 - (a) delete “Chapter 2 or Chapter 3 of”;
 - (b) for “the Chapter” substitute “this Part”.
6. For the heading of Chapter 2 substitute “The Gibraltar GDPR”.
7. In the italic heading before section 8, for “GDPR” substitute “*Gibraltar GDPR*”.
8. In section 8(1) and (2), for “GDPR” substitute “Gibraltar GDPR”.
- 9.(1) Section 9 is amended as follows.
 - (2) In subsection (1)-
 - (a) for “GDPR” substitute “Gibraltar GDPR”;
 - (b) delete “under Gibraltar law”.
 - (3) In subsection (2) after “or “public body”” insert “for the purposes of the Gibraltar GDPR”.
 - (4) In subsection (3), for “GDPR” substitute “Gibraltar GDPR”.
10. In section 10, for “GDPR” substitute “Gibraltar GDPR”.
11. Delete section 11.
- 12.(1) Section 12 is amended as follows.
 - (2) In subsections (1), (2) and (3), for “GDPR” substitute “Gibraltar GDPR”.
 - (3) In subsection (5), for “10 of the GDPR” substitute “10(1) of the Gibraltar GDPR”.
13. In section 13, in subsection (1) (in both places) and in subsection (2), for “GDPR” substitute “Gibraltar GDPR”.
- 14.(1) Section 14 is amended as follows.
 - (2) In subsection (2) for “GDPR” substitute “Gibraltar GDPR”.
 - (3) In subsection (3) for “contained the GDPR” substitute “contained in the Gibraltar GDPR”.

15. In section 15(1)(a) and (b), for “GDPR” substitute “Gibraltar GDPR”.

16. In section 16(1) and (2), for “GDPR” substitute “Gibraltar GDPR”.

17.(1) Section 17 is amended as follows.

(2) In subsection (1)-

(a) for “GDPR” (in both places) substitute “Gibraltar GDPR”;

(b) for “authorised by law and subject to safeguards for the data subject’s rights, freedoms and legitimate interests” substitute “required or authorised under Gibraltar law”.

(3) In subsections (3)(c), (5) and (6), for every instance of “GDPR” substitute “Gibraltar GDPR”.

18. For the italic heading before section 19 substitute “*Exemptions etc*”.

19.(1) Section 19 is amended as follows.

(2) In subsection (1), for “GDPR” substitute “Gibraltar GDPR”.

(3) In subsection (2)(a)-

(a) for “GDPR” (in the first place) substitute “Gibraltar GDPR”;

(b) for “, as allowed for by” substitute “(of a kind described in”;

(c) for “GDPR” (in the second place) substitute “Gibraltar GDPR”.

(4) In subsection (2)(b)-

(a) for “GDPR” (in the first place) substitute “Gibraltar GDPR”;

(b) for “, as allowed for by” substitute “(of a kind described in”;

(c) for “GDPR” (in the second place) substitute “Gibraltar GDPR”.

(5) In subsection (2)(c)-

(a) for “GDPR” (in the first place) substitute “Gibraltar GDPR”;

(b) for “, as allowed for by” substitute “(of a kind described in”;

(c) for “GDPR” (in the second place) substitute “Gibraltar GDPR”.

(6) In subsection (2)(d)-

- (a) for “GDPR” (in the first place) substitute “Gibraltar GDPR”;
- (b) for “, as allowed for by” substitute “(of a kind described in”;
- (c) for “GDPR” (in the second place) substitute “Gibraltar GDPR”.

(7) In subsection (2)(e)-

- (a) for “, V and VII of the GDPR” substitute “and V of the Gibraltar GDPR”;
- (b) for “, as allowed for by Article 85(2) of the GDPR” substitute “(of a kind described in Article 85(2) of the Gibraltar GDPR)”.

(8) In subsection (2)(f)-

- (a) for “GDPR” (in the first place) substitute “Gibraltar GDPR”;
- (b) delete “, as allowed for by Article 89(2) and (3) of the GDPR”.

(9) In subsection (3)-

- (a) for “GDPR” (in the first place) substitute “Gibraltar GDPR”;
- (b) for “, as allowed for by” substitute “(of a kind described in”;
- (c) for “GDPR” (in the second place) substitute “Gibraltar GDPR”.

(10) In subsection (5), for “and the exemption in section 28” substitute “(sections 28 to 30)”.

20.(1) Section 20 is amended as follows.

(2) In subsection (1)-

- (a) in the opening words, for “GDPR” substitute “Gibraltar GDPR”;
- (b) in paragraph (a) for every instance of “GDPR” substitute “Gibraltar GDPR”;
- (c) in paragraph (b), for “GDPR to make a legislative measure” substitute “Gibraltar GDPR to make provision”;
- (d) in paragraph (c), for every instance of “GDPR” substitute “Gibraltar GDPR”.

(3) In subsection (2)-

- (a) in paragraph (a)(ii) delete “and”;

(b) in paragraph (b) for the full-stop substitute-

“; and

(c) consequentially amend the Gibraltar GDPR by adding, varying or omitting a reference to section 19, Schedule 2 or 3, this section or regulations under this section.”.

21. For the italic heading before section 21 substitute “*Certification*”.

22.(1) Section 21 is amended as follows.

(2) In subsection (1)(b), for “national accreditation body” substitute “Gibraltar national accreditation body”.

(3) In subsection (3), for “national accreditation body” substitute “Gibraltar national accreditation body”.

(4) In subsection (6)-

(a) for “national accreditation body” substitute “Gibraltar national accreditation body”;

(b) for “GDPR” substitute “Gibraltar GDPR”.

(5) In subsection (7)-

(a) for “national accreditation body” substitute “Gibraltar national accreditation body”;

(b) for “GDPR” substitute “Gibraltar GDPR”.

(6) In subsection (8) for “GDPR” substitute “Gibraltar GDPR”;

(7) In subsection (9) for “national accreditation body” substitute “Gibraltar national accreditation body”.

23. Before section 22 (but after the italic heading before it) insert-

“Standard data protection clauses.

21A.(1) The Minister may by regulations specify standard data protection clauses which the Minister considers provide appropriate safeguards for the purposes of transfers of personal data to a third country or an international organisation in reliance on Article 46 of the Gibraltar GDPR (and see also section 128A).

(2) The Minister must keep under review the standard data protection clauses specified in regulations under this section that are for the time being in force.”.

24.(1) Section 22 is amended as follows.

(2) In the heading, before the full-stop insert “: public interest”.

(3) In subsection (1), for “GDPR” substitute “Gibraltar GDPR”.

(4) In subsection (2), for paragraph (a) substitute-

“(a) the transfer cannot take place based on adequacy regulations; and”.

(5) After subsection (2) insert-

“(3) In this section “based on adequacy regulations” means a transfer in accordance with Article 45 of the Gibraltar GDPR.”.

25. In section 23(2), for “GDPR” substitute “Gibraltar GDPR”.

26. In section 24-

(a) for “this Chapter” (in both places) substitute “this Part”;

(b) for “GDPR” substitute “Gibraltar GDPR”.

27. Delete section 25 and the italic heading before it.

28. Delete section 26 and the italic heading before it.

29. Delete section 27.

30.(1) Section 28 is amended as follows.

(2) In subsection (1)-

(a) for “the applied GDPR” substitute “the Gibraltar GDPR”;

(b) for “this Chapter” substitute “the Gibraltar GDPR”.

(3) In subsection (2)-

(a) in paragraphs (a), (b), (c) and (d), for “the applied GDPR” substitute “the Gibraltar GDPR”;

(b) in paragraph (e), for “the applied GDPR” (in both places) substitute “the Gibraltar GDPR”;

(c) in paragraph (f), for “the applied GDPR” substitute “the Gibraltar GDPR”;

(d) after paragraph (f) insert-

“(fa) in Part II of this Act, section 21A;”;

(e) in paragraph (g)-

(i) in subparagraph (ii), for “the applied GDPR” substitute “the Gibraltar GDPR”,

(ii) in subparagraph (iii) for the semi-colon substitute a comma,

(iii) after subparagraph (iii) insert-

“(iv) section 128A (standard clauses for transfers to third countries);”.

31. In section 29(5), for “the applied GDPR” substitute “the Gibraltar GDPR”.

32.(1) Section 30 is amended as follows.

(2) In the heading, for “applied GDPR” substitute “Gibraltar GDPR”.

(3) In subsections (1) and (2)-

(a) for “the applied GDPR” substitute “the Gibraltar GDPR”;

(b) for “this Chapter” substitute “the Gibraltar GDPR”.

(4) In subsection (3), for “the applied GDPR” substitute “the Gibraltar GDPR”.

(5) After subsection (4) insert-

“(5) The functions conferred on the Commissioner in relation to the Gibraltar GDPR by Articles 57(1)(a), (d), (e), (h) and (u) and 58(1)(d) and (2)(a) to (d) of the Gibraltar GDPR (which are subject to safeguards set out in section 124) include functions in relation to subsection (3).”.

33. Delete Part IIA.

Part III (law enforcement processing) (other than Schedules 7 and 8).

34. In section 42(7), for “other than a Member State” substitute “outside Gibraltar”.

35. In section 57, delete subsection (8).

36. In section 76, delete subsection (8).

37.(1) Section 82 is amended as follows.

(2) In subsection (3)-

- (a) in paragraph (a) for “an adequacy decision as per section 83” substitute “adequacy regulations (see section 83A)”;
- (b) in paragraphs (b) and (c), for “an adequacy decision” substitute “adequacy regulations”.

(3) In subsection (5)(a), delete “a Member State or”.

38. Delete section 83.

39. After deleted section 83 insert-

“Transfers based on adequacy regulations.

83A.(1) A transfer to a third country or an international organisation may be made if it is based on adequacy regulations.

(2) For the purposes of this Part, a transfer of personal data to a third country or an international organisation is based on adequacy regulations if-

- (a) it is a transfer which, if made from the United Kingdom to that third country or international organisation, would at the time when it is made be based on adequacy regulations for the purposes of Part 3 of the UK Data Protection Act 2018; or
- (b) it is a transfer to the United Kingdom,

and such a transfer does not require specific authorisation.”.

40. In section 85(1)(c), delete “a Member State or”.

41. Section 86(4), for “Member States” substitute “Gibraltar”.

42. In section 87(5)(a), delete “a Member State or”.

43.(1) Section 89 is amended as follows.

(2) In subsection (1), for “an EU recipient or a non-EU recipient” substitute “a non-Gibraltar recipient”.

(3) In subsection (2)-

- (a) delete the definition of “EU recipient”;
- (b) for ““non-EU recipient”” substitute ““non-Gibraltar recipient””.

(4) In subsection (4), for “the EU recipient or non-EU recipient” substitute “the non-Gibraltar recipient”.

(5) Delete subsections (5), (6) and (7).

Part V (Information Commissioner) (other than Schedules 12 to 14).

44.(1) Section 124 is amended as follows.

(2) In the heading, for “GDPR” substitute “Gibraltar GDPR”.

(3) Delete subsection (1).

(4) In subsection (2), in paragraphs (a) and (b), for “GDPR” substitute “Gibraltar GDPR”.

(5) In subsections (3) and (4), for “GDPR” substitute “Gibraltar GDPR”.

(6) In subsection (5), for “GDPR” (in both places) substitute “Gibraltar GDPR”.

(7) In subsection (6), for “GDPR” substitute “Gibraltar GDPR”.

(8) In subsection (7), for “GDPR” (in both places) substitute “Gibraltar GDPR”.

(9) In subsection (8)(a) and (b), for “GDPR” substitute “Gibraltar GDPR”.

(10) In subsections (9) and (10), for “GDPR” substitute “Gibraltar GDPR”.

45.(1) Section 125 is amended as follows.

(2) Before subsection (1) insert-

“ (A1) The Commissioner is responsible for monitoring the application of Part III of this Act, in order to protect the fundamental rights and freedoms of individuals in relation to processing by a competent authority for any of the law enforcement purposes (as defined in Part III) and to facilitate the free flow of personal data.”

(3) In subsection (1), delete paragraph (a).

(4) In subsection (2), for “GDPR” substitute “Gibraltar GDPR”.

46.(1) Section 126 is amended as follows.

(2) After “this Act” insert “or the Gibraltar GDPR”.

(3) Delete “and see also Article 55(3) of the GDPR” (and the comma before those words).

47.(1) Section 127 is amended as follows.

(2) For the heading substitute “Co-operation between parties to the Data Protection Convention.”.

(3) Delete subsections (1), (2), (3) and (4).

48. After section 128 insert-

“Standard clauses for transfers to third countries etc.

128A.(1) The Commissioner may issue a document specifying standard data protection clauses which the Commissioner considers provide appropriate safeguards for the purposes of transfers of personal data to a third country or an international organisation in reliance on Article 46 of the Gibraltar GDPR (and see also section 21A).

(2) The Commissioner may issue a document that amends or withdraws a document issued under subsection (1).

(3) A document issued under this section-

- (a) must specify when it comes into force;
- (b) may make different provision for different purposes; and
- (c) may include transitional provision or savings.

(4) Before issuing a document under this section, the Commissioner must consult the Minister and such of the following as the Commissioner considers appropriate-

- (a) trade associations;
- (b) data subjects;
- (c) persons who appear to the Commissioner to represent the interests of data subjects.

(5) After a document is issued under this section the Commissioner must send a copy to the Minister.

(6) The Commissioner must publish a document issued under this section.

(7) The Commissioner must keep under review the clauses specified in a document issued under this section for the time being in force.

(8) In this section, “trade association” includes a body representing controllers or processors.”.

49.(1) Section 129 is amended as follows.

(2) In subsection (2), for every instance of “GDPR” substitute “Gibraltar GDPR”.

(3) After subsection (2) insert-

“ (2A) The Commissioner may contribute to the activities of international organisations with data protection functions.”.

(4) In subsection (4), in the definition of “third country”, for “that is not a Member State or the United Kingdom” substitute “outside Gibraltar”.

50. In section 132(6), for “GDPR” (in both places) substitute “Gibraltar GDPR”.

51. In section 136(1), for “GDPR” substitute “Gibraltar GDPR”.

52. In section 140(2), delete paragraph (d).

53. In section 143(4), for “GDPR” substitute “Gibraltar GDPR”.

54. In section 144(1)(b), for “GDPR” substitute “Gibraltar GDPR”.

55. In section 147(2), for “GDPR” substitute “Gibraltar GDPR”.

Part VI (enforcement) (other than Schedules 15 and 16).

56. In section 150(9)-

(a) for “GDPR” (in both places) substitute “Gibraltar GDPR”;

(b) for “the European Union” substitute “Gibraltar”.

57. In section 151(9), for “GDPR” substitute “Gibraltar GDPR”.

58. In section 155(2)(a), (b), (c) and (e), (3) and (4)(b) and (c), for “GDPR” substitute “Gibraltar GDPR”.

59. In section 157(1)(b) and (8)(a), for “GDPR” substitute “Gibraltar GDPR”.

60. In section 162(2)(a), for “GDPR” (in both places) substitute “Gibraltar GDPR”.

61.(1) Section 164 is amended as follows.

(2) In subsection (1), for “GDPR” (in both places) substitute “Gibraltar GDPR”;

(3) In subsection (2)(a), delete “83,”.

(4) In subsection (5), for “20 million Euros” (in both places) substitute “£17,500,000”.

(5) In subsection (6), for “10 million Euros” (in both places) substitute “£8,700,000”.

(6) Delete subsection (7).

62. In section 166(1) and (2), for “GDPR” substitute “Gibraltar GDPR”.

63.(1) Section 170 is amended as follows.

(2) In subsection (1), for “GDPR” (in both places) substitute “Gibraltar GDPR”.

(3) In subsection (5)(b), for “another supervisory authority or” substitute “a”.

(4) Delete subsection (6).

(5) In subsection (7), delete the definition of “supervisory authority”.

64. In section 171(1), for “GDPR” substitute “Gibraltar GDPR”.

65. In section 172(4), for “GDPR” substitute “Gibraltar GDPR”.

66.(1) Section 173 is amended as follows.

(2) In the heading, for “GDPR” substitute “Gibraltar GDPR”.

(3) In subsections (1) and (2), for “GDPR” substitute “Gibraltar GDPR”.

67. In section 174(1), for “GDPR” substitute “Gibraltar GDPR”.

68. In section 175(7), for “GDPR” substitute “Gibraltar GDPR”.

69. In section 176(8)(a), for “GDPR” substitute “Gibraltar GDPR”.

70. In section 178(2)(a) and (b), for “GDPR” substitute “Gibraltar GDPR”.

71. In section 179(2)(a) and (b), for “GDPR” substitute “Gibraltar GDPR”.

72. In section 182(2)(c) and (d), for “GDPR” substitute “Gibraltar GDPR”.

73. In section 183, in the definition of “representative”, for “GDPR” (in both places) substitute “Gibraltar GDPR”.

Part VII (supplementary and final provision) (other than Schedule 17).

74.(1) Section 184 is amended as follows.

(2) In subsection (1)(b)-

(a) after the comma in subparagraph (ii) insert “or”;

(b) in paragraph (iii) for “, or” substitute a full-stop;

(c) delete paragraph (iv).

(3) In subsection (3), delete paragraph (a).

75.(1) Section 185 is amended as follows.

(2) In subsection (2)(d), for “processing of personal data to which Chapter 3 of Part II of this Act applies” substitute “relevant processing of personal data”.

(3) After subsection (2) insert-

“ (3) In subsection (2)(d), “relevant processing of personal data” means processing of personal data described in Article 2(1)(a) or (b) of the Gibraltar GDPR.”.

76. In section 187(4)(a) and (b), for “GDPR” substitute “Gibraltar GDPR”.

77.(1) Section 188 is amended as follows.

(2) In subsection (2)(a), for “GDPR” substitute “Gibraltar GDPR”.

(3) In subsection (3)(b), for “sections 27 and 28” substitute “section 28”.

78.(1) Section 189 is amended as follows.

(2) In subsection (1), in the opening words, for “GDPR applies” substitute “Gibraltar GDPR applies, Article 80(1) of the Gibraltar GDPR (representation of data subjects)”.

(3) In subsection (1)(a)-

(a) delete “Article 80(1) of the GDPR (representation of data subjects)”;

(b) for “that Article” substitute “subsections (3) and (4)”;

(c) for “GDPR” (in the second place) substitute “Gibraltar GDPR”.

(4) In subsection (1)(b)-

(a) for “a data subject may also authorise” substitute “also authorises”;

(b) for “GDPR” substitute “Gibraltar GDPR”.

(5) In subsection (2)-

(a) for “GDPR” substitute “Gibraltar GDPR”;

(b) in paragraph (a), for “, (4)(d) and (6)(c)” substitute “and (4)(d)”.

(6) In subsection (5), for “GDPR” substitute “Gibraltar GDPR”.

79. In section 190(2), for “GDPR” substitute “Gibraltar GDPR”.

80. In section 191 for every instance of “GDPR” substitute “Gibraltar GDPR”.

81.(1) Section 198 is amended as follows.

(2) In subsection (1), for “(2) and (3)” substitute “(1A) and (2)”.

(3) After subsection (1) insert-

“(1A) In the case of the processing of personal data to which Part II (the Gibraltar GDPR) applies, it applies to the types of such processing to which the Gibraltar GDPR applies by virtue of Article 3 of the Gibraltar GDPR.”.

(4) In subsection (2), for “It applies to the processing of personal data” substitute “In the case of the processing of personal data to which Part II does not apply, it applies where such processing is carried out”.

(5) Delete subsection (3).

(6) In subsection (4), for “Subsections (1) to (3)” substitute “Subsections (1), (1A) and (2)”.

(7) Delete subsection (6).

(8) In subsection (7), delete “, and references to a person who has an establishment in another country or territory have a corresponding meaning”.

82. In section 199(2) and (3), for “GDPR” substitute “Gibraltar GDPR”.

83. In section 200(2), for “GDPR” substitute “Gibraltar GDPR”.

Schedules.

84.(1) Schedule 1 is amended as follows.

(2) In paragraph 2(3), for “GDPR” substitute “Gibraltar GDPR”.

(3) In paragraph 4(b), for “GDPR” substitute “Gibraltar GDPR”.

(4) In paragraph 39(a), for “GDPR” substitute “Gibraltar GDPR”.

(5) In paragraph 41, for “GDPR” (in both places) substitute “Gibraltar GDPR”.

85.(1) Schedule 2 is amended as follows.

(2) In the heading, for “GDPR” substitute “GIBRALTAR GDPR”.

- (3) In the heading of Part 1, for “BASED ON” substitute “AS DESCRIBED IN”.
- (4) In the heading before paragraph 1, for “GDPR” (in the first place) substitute “Gibraltar GDPR”.
- (5) In paragraph 1-
 - (a) in subparagraph (a), for “GDPR” (in both places) substitute “Gibraltar GDPR”;
 - (b) in subparagraph (b), for “GDPR” (in both places) substitute “Gibraltar GDPR”.
- (6) In paragraph 2-
 - (a) in subparagraph (1), for “GDPR” (in the second place) substitute “Gibraltar GDPR”;
 - (b) in subparagraph (3), for “GDPR” substitute “Gibraltar GDPR”.
- (7) In paragraph 3-
 - (a) in subparagraph (1), for “GDPR” substitute “Gibraltar GDPR”;
 - (b) in subparagraph (3), for every instance of “GDPR” substitute “Gibraltar GDPR”.
- (8) In the heading of Part 2, for “BASED ON” substitute “AS DESCRIBED IN”.
- (9) In the heading before paragraph 5, for “GDPR” (in the first place) substitute “Gibraltar GDPR”.
- (10) In paragraph 5, for “GDPR” (in the second and third places) substitute “Gibraltar GDPR”.
- (11) In paragraph 9, for “GDPR” (in the second place) substitute “Gibraltar GDPR”.
- (12) In the heading of Part 3, for “BASED ON ARTICLE 23(1):” substitute “FOR THE”.
- (13) In paragraph 11(1), for “GDPR” (in both places) substitute “Gibraltar GDPR”.
- (14) In the heading of Part 4, for “BASED ON” substitute “AS DESCRIBED IN”.
- (15) In the heading before paragraph 13, for “GDPR” (in the first place) substitute “Gibraltar GDPR”.
- (16) In paragraph 13, for “GDPR” (in the second and third places) substitute “Gibraltar GDPR”.
- (17) In paragraph 15(3), for “GDPR” substitute “Gibraltar GDPR”.

- (18) In paragraph 20-
- (a) in subparagraph (2), for “GDPR” (in both places) substitute “Gibraltar GDPR”;
 - (b) in subparagraph (3), for “GDPR” substitute “Gibraltar GDPR”.
- (19) In the heading of Part 5, delete “BASED ON ARTICLE 85(2)”.
- (20) In paragraph 22(8)-
- (a) in the opening words, for “GDPR” (in the second and third places) substitute “Gibraltar GDPR”;
 - (b) in paragraphs (a), (b), (c) and (d), for “GDPR” substitute “Gibraltar GDPR”;
 - (c) in paragraph (d) for the semicolon substitute a full-stop;
 - (d) delete paragraph (e).
- (21) In the heading of Part 6, delete “BASED ON ARTICLE 89”.
- (22) In paragraph 23-
- (a) in subparagraph (1), for “subparagraph (3)” substitute “subparagraphs (3) and (4)”;
 - (b) in subparagraph (2), for “GDPR (the rights in which may be derogated from by virtue of Article 89(2) of the GDPR)” substitute “Gibraltar GDPR”;
 - (c) in subparagraph (3)(a), for “GDPR” substitute “Gibraltar GDPR”;
 - (d) after subparagraph (3) insert-
 - “ (4) Where processing for a purpose described in subparagraph (1) serves at the same time another purpose, the exemption in subparagraph (1) is available only where the personal data is processed for a purpose referred to in that subparagraph.”.
- (23) In paragraph 24-
- (a) in subparagraph (1), for “subparagraph (3)” substitute “subparagraphs (3) and (4)”;
 - (b) in subparagraph (2), for “GDPR (the rights in which may be derogated from by virtue of Article 89(3) of the GDPR)” substitute “Gibraltar GDPR”;
 - (c) in subparagraph (3), for “GDPR” substitute “Gibraltar GDPR”;
 - (d) after subparagraph (3) insert-

“(4) Where processing for a purpose described in subparagraph (1) serves at the same time another purpose, the exemption in subparagraph (1) is available only where the personal data is processed for a purpose referred to in that subparagraph.”.

86.(1) Schedule 3 is amended as follows.

(2) In the heading, for “GDPR” substitute “GIBRALTAR GDPR”.

(3) In the heading of Part 1, for “GDPR” (in the first place) substitute “GIBRALTAR GDPR”.

(4) In paragraph 1, for “GDPR” (in the second and third places) substitute “Gibraltar GDPR”.

(5) In paragraph 2(2), for “GDPR” substitute “Gibraltar GDPR”.

(6) In the heading before paragraph 5, for “GDPR” substitute “Gibraltar GDPR”.

(7) In paragraph 5(1), for “GDPR” substitute “Gibraltar GDPR”.

(8) In the heading before paragraph 6, for “GDPR” substitute “Gibraltar GDPR”.

(9) In paragraph 6(1), for “GDPR” substitute “Gibraltar GDPR”.

(10) In paragraph 7(2), for “GDPR” substitute “Gibraltar GDPR”.

(11) In the heading before paragraph 11, for “GDPR” substitute “Gibraltar GDPR”.

(12) In paragraph 11, for “GDPR” substitute “Gibraltar GDPR”.

(13) In paragraph 14(2), for “GDPR” substitute “Gibraltar GDPR”.

(14) In the heading before paragraph 16, for “GDPR” substitute “Gibraltar GDPR”.

(15) In paragraph 16, for “GDPR” substitute “Gibraltar GDPR”.

(16) In the heading before paragraph 17 heading, for “GDPR” substitute “Gibraltar GDPR”.

(17) In paragraph 17(2), for “GDPR” substitute “Gibraltar GDPR”.

87. In Schedule 5, in the following provisions, for “national accreditation body” substitute “Gibraltar national accreditation body”-

(a) paragraph 1(2) (in both places);

(b) paragraph 4(4) (in both places);

(c) paragraph 6(4).

88. Delete Schedule 6.

89. In Schedule 12, delete paragraph 1(2)(c).

90.(1) Schedule 13 is amended as follows.

(2) In paragraph 1(1)-

(a) in paragraph (e), delete “LED supervisory authorities and”;

(b) in paragraph (f), delete “LED supervisory authorities and” and “the Law Enforcement Directive and”;

(c) in paragraph (g), delete “an LED supervisory authority,”;

(d) in paragraph (h) for the semicolon substitute a full-stop;

(e) delete paragraph (i).

(3) In paragraph 3, delete the definition of “LED supervisory authority”.

91. In Schedule 14, delete Part 1.

92. In Schedule 17 at paragraphs (4)(a) and (b) for “GDPR” substitute “Gibraltar GDPR”.

93. After Schedule 17 insert-

“SCHEDULE 18

Further transitional provision etc

Part 1

Interpretation

The applied GPDR.

1. In this Schedule, “the applied GDPR” means the EU GDPR as applied by Chapter 3 of Part II before exit day.

Part 2

Continuation of existing acts etc.

Merger of the directly applicable GDPR and the applied GDPR.

2.(1) On and after exit day, references in an enactment to the Gibraltar GDPR (including the reference in the definition of “the data protection legislation” in section 2(1) include-

- (a) the EU GDPR as it was directly applicable to Gibraltar before exit day, read with Chapter 2 of Part II of this Act as it had effect before exit day; and
- (b) the applied GDPR, read with Chapter 3 of Part II of this Act as it had effect before exit day.

(2) On and after exit day, references in an enactment to, or to a provision of, Chapter 2 of Part II of this Act (including general references to this Act or to Part II of this Act) include that Chapter or that provision as applied by Chapter 3 of Part II of this Act as it had effect before exit day.

(3) Subparagraphs (1) and (2) have effect-

- (a) in relation to references in this Act, except as otherwise provided;
- (b) in relation to references in other enactments, unless the context otherwise requires.

3.(1) Anything done in connection with the EU GDPR as it was directly applicable to Gibraltar before exit day, the applied GDPR or this Act-

- (a) if in force or effective immediately before exit day, continues to be in force or effective on and after exit day; and
- (b) if in the process of being done immediately before exit day, continues to be done on and after exit day.

(2) References in this paragraph to anything done include references to anything omitted to be done.

Part 3

Transfers to third countries and international organisations

Gibraltar GDPR: transfers subject to appropriate safeguards provided by standard data protection clauses.

4.(1) Subject to paragraph 5, the appropriate safeguards referred to in Article 46(1) of the Gibraltar GDPR may be provided for on and after exit day as described in this paragraph.

(2) The safeguards may be provided for by any standard data protection clauses included in an arrangement which, if the arrangement had been entered into

immediately before exit day, would have provided for the appropriate safeguards referred to in Article 46(1) of the EU GDPR by virtue of Article 46(2)(c) or (d) or (5) of the EU GDPR.

(3) The safeguards may be provided for by a version of standard data protection clauses described in subparagraph (2) incorporating changes where-

(a) all of the changes are made in consequence of the withdrawal of Gibraltar from the EU or provision made by regulations under section 11 or 15 of the European Union (Withdrawal) Act 2019 (or both), and

(b) none of the changes alters the effect of the clauses.

(4) The following changes are to be treated as falling within subparagraph (3)(a) and (b)-

(a) changing references to adequacy decisions made by the European Commission into references to equivalent provision based on adequacy regulations made in accordance with Article 45 of the Gibraltar GDPR;

(b) changing references to transferring personal data outside the European Union or the European Economic Area into references to transferring personal data outside Gibraltar.

(5) In the case of a transfer of personal data made under arrangements entered into before exit day, the safeguards may be provided for on and after exit day by standard data protection clauses not falling within subparagraph (2) which-

(a) formed part of the arrangements immediately before exit day; and

(b) at that time, provided for the appropriate safeguards referred to in Article 46(1) of the EU GDPR by virtue of Article 46(2)(c) or (d) or (5) of the EU GDPR.

(6) The Minister and the Commissioner must keep the operation of this paragraph under review.

(7) In this paragraph, “adequacy decision” means a decision made on the basis of-

(a) Article 45(3) of the EU GDPR; or

(b) Article 25(6) of Directive 95/46/EC of the European Parliament and of the Council of 24th October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

(8) This paragraph has effect in addition to Article 46(2) and (3) of the Gibraltar GDPR.

5.(1) Paragraph 4 does not apply to the extent that it has been disapplied by-

- (a) regulations made by the Minister, or
- (b) a document issued by the Commissioner.

(2) Subsections (3) to (8) of section 128A apply in relation to a document issued by the Commissioner under this paragraph as they apply to a document issued by the Commissioner under section 128A(2).

Gibraltar GDPR: transfers subject to appropriate safeguards provided by binding corporate rules.

6.(1) The appropriate safeguards referred to in Article 46(1) of the Gibraltar GDPR may be provided for on and after exit day as described in subparagraphs (2) to (4), subject to subparagraph (5).

(2) The safeguards may be provided for by any binding corporate rules authorised by the Commissioner which, immediately before exit day, provided for the appropriate safeguards referred to in Article 46(1) of the EU GDPR by virtue of Article 46(5) of the EU GDPR.

(3) The safeguards may be provided for by a version of binding corporate rules described in subparagraph (2) incorporating changes where-

- (a) all of the changes are made in consequence of the withdrawal of Gibraltar from the EU or provision made by regulations under section 11 or 15 of the European Union (Withdrawal) Act 2019 (or both); and
- (b) none of the changes alters the effect of the rules.

(4) The following changes are to be treated as falling within subparagraph (3)(a) and (b)-

- (a) changing references to adequacy decisions made by the European Commission into references to equivalent provision based on adequacy regulations made in accordance with Article 45 of the Gibraltar GDPR;
- (b) changing references to transferring personal data outside the European Union or the European Economic Area into references to transferring personal data outside Gibraltar.

(5) Subparagraphs (2) to (4) cease to apply in relation to binding corporate rules if, on or after exit day, the Commissioner withdraws the authorisation of the rules (or, where subparagraph (3) is relied on, the authorisation of the rules mentioned in subparagraph (2)).

(6) The Commissioner must keep the operation of this paragraph under review.

(7) In this paragraph-

“adequacy decision” means a decision made on the basis of-

- (a) Article 45(3) of the EU GDPR; or
- (b) Article 25(6) of Directive 95/46/EC of the European Parliament and of the Council of 24th October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data;

“binding corporate rules” has the meaning given in Article 4(20) of the Gibraltar GDPR.

(8) This paragraph has effect in addition to Article 46(2) and (3) of the Gibraltar GDPR.

Part 4

Repeal of provisions in Chapter 3 of Part II

Applied GDPR: power to make provision in consequence of GDPR regulations.

7.(1) Regulations made under section 27 before exit day continue in force until they are revoked, despite the repeal of that section by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019.

(2) The provisions listed in section 188(3) include regulations made under section 27 before exit day (and not revoked).

(3) Subparagraphs (1) and (2) do not have effect so far as otherwise provided by Gibraltar law.

Applied GDPR: security of Gibraltar certificates.

8.(1) This paragraph applies to a certificate issued under section 29 of this Act which has effect immediately before exit day.

(2) A reference in the certificate to a provision of the applied GDPR has effect, on and after exit day, as if it were a reference to the corresponding provision of the Gibraltar GDPR or this Act.

Part 5

The Information Commissioner

Confidentiality of information.

9. The repeal of section 140(2)(d) by The Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 has effect only in relation to a disclosure of information made on or after exit day.

Part 6

Enforcement

GDPR: maximum amount of penalties.

10. In relation to an infringement, before exit day, of a provision of the EU GDPR (as it was directly applicable to Gibraltar) or the applied GDPR-

- (a) Article 83(5) and (6) of the Gibraltar GDPR and section 164(5)(a) and (b) of this Act have effect as if for “£17,500,000” there were substituted “20 million Euros”;
- (b) Article 83(4) of the Gibraltar GDPR and section 164(6)(a) and (b) of this Act have effect as if for “£8,700,000” there were substituted “10 million Euros”;
- (c) the maximum amount of a penalty in sterling must be determined by applying the spot rate of exchange set by the United Kingdom’s Bank of England on the day on which the penalty notice is given under section 162 of this Act.

GDPR: right to an effective remedy against the Commissioner.

11.(1) This paragraph applies where-

- (a) proceedings are brought against a decision made by the Commissioner before exit day; and
- (b) the Commissioner’s decision was preceded by an opinion or decision of the European Data Protection Board in accordance with the consistency mechanism referred to in Article 63 of the EU GDPR.

(2) The Commissioner must forward the Board’s opinion or decision to the court or tribunal dealing with the proceedings.”.

SCHEDULE 3

Consequential amendments of other legislation

PART 1

Revocation of retained EU law

Revocation of Regulations and Decisions.

1. The following Regulations and Decisions are revoked in so far as they are retained EU law-

- (a) Commission Decision 2000/518/EC of 26th July 2000 pursuant to Directive 95/46/EC of the European Parliament and of the Council on the adequate protection of personal data provided in Switzerland;
- (b) Commission Decision 2001/497/EC of 15th June 2001 on standard contractual clauses for the transfer of personal data to third countries, under Directive 95/46/EC;
- (c) Commission Decision 2002/2/EC of 20th December 2001 pursuant to Directive 95/46/EC of the European Parliament and of the Council on the adequate protection of personal data provided by the Canadian Personal Information Protection and Electronic Documents Act;
- (d) Commission Decision 2003/490/EC of 30th June 2003 pursuant to Directive 95/46/EC of the European Parliament and of the Council on the adequate protection of personal data in Argentina;
- (e) Commission Decision 2003/821/EC of 21st November 2003 on the adequate protection of personal data in Guernsey;
- (f) Commission Decision 2004/411/EC of 28th April 2004 on the adequate protection of personal data in the Isle of Man;
- (g) Commission Decision 2004/915/EC of 27th December 2004 amending Decision 2001/497/EC as regards the introduction of an alternative set of standard contractual clauses for the transfer of personal data to third countries;
- (h) Commission Decision 2008/393/EC of 8th May 2008 pursuant to Directive 95/46/EC of the European Parliament and of the Council on the adequate protection of personal data in Jersey;
- (i) Commission Decision 2010/87/EU of 5th February 2010 on standard contractual clauses for the transfer of personal data to processors established in third countries under Directive 95/46/EC of the European Parliament and of the Council;

- (j) Commission Decision 2010/146/EU of 5th March 2010 pursuant to Directive 95/46/EC of the European Parliament and of the Council on the adequate protection provided by the Faeroese Act on processing of personal data;
- (k) Commission Decision 2010/625/EU of 19th October 2010 pursuant to Directive 95/46/EC of the European Parliament and of the Council on the adequate protection of personal data in Andorra;
- (l) Commission Decision 2011/61/EU of 31st January 2011 pursuant to Directive 95/46/EC of the European Parliament and of the Council on the adequate protection of personal data by the State of Israel with regard to automated processing of personal data;
- (m) Commission Implementing Decision 2012/484/EU of 21st August 2012 pursuant to Directive 95/46/EC of the European Parliament and of the Council on the adequate protection of personal data by the Eastern Republic of Uruguay with regard to automated processing of personal data;
- (n) Commission Implementing Decision 2013/65/EU of 19th December 2012 pursuant to Directive 95/46/EC of the European Parliament and of the Council on the adequate protection of personal data by New Zealand;
- (o) Commission Implementing Decision (EU) 2016/1250 of 12th July 2016 pursuant to Directive 95/46/EC of the European Parliament and of the Council on the adequacy of the protection provided by the EU-U.S. Privacy Shield;
- (p) Commission Implementing Decision (EU) 2016/2295 of 16th December 2016 amending Decisions 2000/518/EC, 2002/2/EC, 2003/490/EC, 2003/821/EC, 2004/411/EC, 2008/393/EC, 2010/146/EU, 2010/625/EU, 2011/61/EU and Implementing Decisions 2012/484/EU, 2013/65/EU on the adequate protection of personal data by certain countries, pursuant to Article 25(6) of Directive 95/46/EC of the European Parliament and of the Council;
- (q) Commission Implementing Decision (EU) 2016/2297 of 16th December 2016 amending Decisions 2001/497/EC and 2010/87/EU on standard contractual clauses for the transfer of personal data to third countries and to processors established in such countries, under Directive 95/46/EC of the European Parliament and of the Council;
- (r) Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23rd October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC.

Revocation of provisions of EEA agreement.

2. Paragraphs 5e, 5ea, 5ed, 5ee, 5ef, 5eg, 5eh, 5ei, 5ek, 5el, 5em, 5en, 5eo, 5ep and 5eq of Annex 11 to the EEA agreement, as it forms part of Gibraltar law on and after exit day by virtue of section 6(1) of the European Union (Withdrawal) Act 2019, are revoked in so far as they are retained EU law.

PART 2

Amendments of primary and subsidiary legislation

Financial Services (Occupational Pensions Institutions) Act 2006.

3. In the Financial Services (Occupational Pensions Institutions) Act 2006 for every instance of “the GDPR” substitute “the Gibraltar GDPR”.

Data Protection (Search and Seizure) Regulations 2006.

4. In the Data Protection (Search and Seizure) Regulations 2006, in the definition of “authorised officer” in regulation 2, for “section 164” substitute “section 161”.

Electronic Identification and Trust Services for Electronic Transactions Regulations 2017.

5.(1) The Electronic Identification and Trust Services for Electronic Transactions Regulations 2017 are amended as follows.

(2) In regulation 7(8) delete “section 32 of”.

(3) For Schedule 1 substitute-

“SCHEDULE 1

Enforcement powers of supervisory body

Provisions applied for enforcement purposes.

1. For the purposes of enforcing these Regulations and the eIDAS Regulation, the following provisions of Parts V to VII of the Data Protection Act 2004 apply with the modifications set out in paragraphs 2 to 25-

- (a) section 148 (publication by the Commissioner);
- (b) section 149 (notices from the Commissioner);
- (c) section 150 (information notices);
- (d) section 151 (information notices: restrictions);

- (e) section 152 (false statements made in response to an information notice);
- (f) section 152A (information orders);
- (g) section 153 (assessment notices);
- (h) section 154 (assessment notices: restrictions);
- (i) section 154A (destroying or falsifying information and documents etc);
- (j) section 155 (enforcement notices);
- (k) section 156 (enforcement notices: supplementary);
- (l) section 158 (enforcement notices: restrictions);
- (m) section 159 (enforcement notices: cancellation and variation);
- (n) section 160 and Schedule 15 (powers of entry and inspection);
- (o) section 162 and Schedule 16 (penalty notices);
- (p) section 164 (maximum amount of penalty);
- (q) section 166 (amount of penalties: supplementary);
- (r) section 167 (guidance about regulatory action);
- (s) section 168 (rights of appeal);
- (t) section 169 (determination of appeals);
- (u) section 182 (jurisdiction);
- (v) section 184(1), (2), (4) and (5) (regulations, rules of court and consultation);
- (w) section 192 (penalties for offences);
- (x) section 193 (prosecution);
- (y) section 196 (Court proceedings: contempt);
- (z) section 197 (Court Procedure Rules).

General modification of references to the Data Protection Act 2004.

2. The provisions listed in paragraph 1 have effect as if-

- (a) references to the Data Protection Act 2004 were references to the provisions of that Act as applied by these Regulations;
- (b) references to a particular provision of that Act were references to that provision as applied by these Regulations.

Modification of section 150 (information notices).

3.(1) Section 150 has effect as if subsections (9) and (10) were deleted.

(2) In that section, subsection (1) has effect as if-

- (a) in paragraph (a)-
 - (i) for “controller or processor” there were substituted “trust service provider”;
 - (ii) for “the data protection legislation” there were substituted “the eIDAS Regulation and the EITSET Regulations”;
- (b) paragraph (b) were deleted.

(3) In that section, subsection (2) has effect as if paragraph (a) were deleted.

Modification of section 151 (information notices: restrictions).

4.(1) Section 151 has effect as if subsections (1) and (9) were deleted.

(2) In that section-

- (a) subsections (3)(b) and (4)(b) have effect as if for “the data protection legislation” there were substituted “the eIDAS Regulation or the EITSET Regulations”;
- (b) subsection (7)(a) has effect as if for “this Act” there were substituted “section 152 or 154A or paragraph 15 of Schedule 15”;
- (c) subsection (8) has effect as if for “this Act (other than an offence under section 152)” there were substituted “section 154A or paragraph 15 of Schedule 15”.

Modification of section 152A (information orders).

5. Section 152A(2)(b) has effect as if for “section 150(2)(b)” there were substituted “section 150(2)”.

Modification of section 153 (assessment notices).

6.(1) Section 153 has effect as if subsection (10) were deleted.

(2) In that section-

(a) subsection (1) has effect as if-

(i) for “controller or processor” (in both places) there were substituted “trust service provider”;

(ii) for “the data protection legislation” there were substituted “the eIDAS requirements”;

(b) subsection (2) has effect as if paragraphs (g) and (h) were deleted;

(c) subsections (7), (8) and (9) have effect as if for every instance of “controller or processor” there were substituted “trust service provider”.

Modification of section 154 (assessment notices: restrictions).

7.(1) Section 154 has effect as if subsection (5) was deleted.

(2) In that section, subsections (2)(b) and (3)(b) have effect as if for “the data protection legislation” there were substituted “the eIDAS Regulation or the EITSET Regulations”.

Modification of section 155 (enforcement notices).

8.(1) Section 155 has effect as if subsections (2) to (5) and (7) to (9) were deleted.

(2) In that section-

(a) subsection (1) has effect as if-

(i) for “as described in subsection (2), (3), (4) or (5)” there were substituted “to comply with the eIDAS requirements”;

(ii) for “sections 156 and 157” there were substituted “section 156”;

(b) subsection (6) has effect as if the words “given in reliance on subsection (2), (3) or (5)” were deleted.

Modification of section 156 (enforcement notices: supplementary).

9.(1) Section 156 has effect as if subsection (3) were deleted.

(2) In that section, subsection (2) has effect as if the words “in reliance on section 155(2)” and “or distress” were deleted.

Modification of section 158 (enforcement notices: restrictions).

10. Section 158 has effect as if subsections (1), (2) and (4) were deleted.

Withdrawal notices.

11. The provisions listed in paragraph 1 have effect as if after section 159 there were inserted-

“Withdrawal notices

Withdrawal notices.

159A.(1) The Commissioner may, by written notice (a “withdrawal notice”), withdraw the qualified status from a trust service provider, or the qualified status of a service provided by a trust service provider, if-

- (a) the Commissioner is satisfied that the trust service provider has failed to comply with an information notice or an enforcement notice; and
- (b) the condition in subsection (2) or (3) is met.

(2) The condition in this subsection is met if the period for the trust service provider to appeal against the information notice or enforcement notice has ended without an appeal having been brought.

(3) The condition in this subsection is met if an appeal against the information notice or enforcement notice has been brought and-

- (a) the appeal and any further appeal in relation to the notice has been decided or has otherwise ended; and
- (b) the time for appealing against the result of the appeal or further appeal has ended without another appeal having been brought.

(4) A withdrawal notice must-

- (a) state when the withdrawal takes effect; and
- (b) provide information about the rights of appeal under section 168.”.

Modification of Schedule 15 (powers of entry and inspection).

12.(1) Schedule 15 has effect as if paragraph 3 were deleted.

(2) Paragraph 1(1) of that Schedule (issue of warrants in connection with non-compliance and offences) has effect as if for paragraph (a) (but not the final “and”) there were substituted-

“(a) there are reasonable grounds for suspecting that-

(i) a trust service provider has failed or is failing to comply with the eIDAS requirements, or

(ii) an offence under section 152 or 154A or paragraph 15 of Schedule 15 has been or is being committed.”.

(3) Paragraph 2 of that Schedule (issue of warrants in connection with assessment notices) has effect as if-

(a) in subparagraphs (1) and (2), for “controller or processor” there were substituted “trust service provider”;

(b) in subparagraph (2), for “the data protection legislation” there were substituted “the eIDAS requirements”.

(4) Paragraph 5 of that Schedule (content of warrants) has effect as if-

(a) in subparagraph (1)(c), for “the processing of personal data” there were substituted “the provision of trust services”;

(b) in subparagraph (2)(c)-

(i) for “controller or processor” there were substituted “trust service provider”;

(ii) for “as described in section 155(2)” there were substituted “to comply with the eIDAS requirements”;

(c) in subparagraph (3)(a) and (c)-

(i) for “controller or processor” there were substituted “trust service provider”;

(ii) for “the data protection legislation” there were substituted “the eIDAS requirements”.

(5) Paragraph 11 of that Schedule (privileged communications) has effect as if, in subparagraphs (1)(b) and (2)(b), for “the data protection legislation” there were substituted “the eIDAS Regulation or the EITSET Regulations”.

Modification of section 162 (penalty notices).

13.(1) Section 162 has effect as if subsections (1)(a), (2)(a), (3)(g), (4) and (6) to (8) were deleted.

(2) Subsection (2) of that section has effect as if-

- (a) the words “Subject to subsection (4),” were deleted;
 - (b) in paragraph (b), the words “to the extent that the notice concerns another matter,” were deleted.
- (3) Subsection (3) of that section has effect as if-
- (a) for every instance of “controller or processor” there were substituted “trust services provider”;
 - (b) in paragraph (c), the words “or distress” were deleted;
 - (c) in paragraph (c), for “data subjects” there were substituted “relying parties”;
 - (d) in paragraph (d), for “section 66, 75, 112 or 116” there were substituted “Article 19(1) of the eIDAS Regulation”.

Modification of Schedule 16 (penalties).

14. Schedule 16 has effect as if paragraphs 3(2)(b) and 5(2)(b) were deleted.

Modification of section 164 (maximum amount of penalty).

15. Section 164 has effect as if subsections (1) to (3) and (6) were deleted.

Modification of section 166 (amount of penalties: supplementary).

16. Section 166 has effect as if-

- (a) in subsection (1), the words “Article 83 of the GDPR and” were deleted;
- (b) in subsection (2), the words “Article 83 of the GDPR” and “and section 164” were deleted.

Modification of section 167 (guidance about regulatory action).

17.(1) Section 167 has effect as if subsection (4) was deleted.

- (2) In that section, subsection (3)(e) has effect as if for “controllers and processors” there were substituted “trust service providers”.

Modification of section 168 (rights of appeal).

18.(1) Section 168 has effect as if subsection (6) were deleted.

- (2) In that section, subsection (1) has effect as if, after paragraph (c), there were inserted-

“(ca)a withdrawal notice;”.

Modification of section 169 (determination of appeals).

19. Section 169 has effect as if subsection (7) were deleted.

Modification of section 182 (jurisdiction).

20. Section 182 has effect as if subsections (2)(c) and (d) were deleted.

Modification of section 184 (regulations, rules of court and consultation).

21. Section 184 has effect as if subsection (3) was deleted.

Modification of section 192 (penalties for offences).

22.(1) Section 192 has effect as if subsections (3) to (5) were deleted.

(2) In that section-

- (a) subsection (1) has effect as if the words “section 128, 161 or 178 or” were deleted;
- (b) subsection (2) has effect as if for “section 140, 152, 154A, 175, 176 or 186” there were substituted “section 152 or 154A”.

Modification of section 193 (prosecution).

23. Section 193 has effect as if subsections (2) to (5) were deleted.

Modification of section 196 (Court proceedings: contempt).

24. Section 196 has effect as if in subsection (1)(a), for subparagraphs (i) and (ii) there were substituted “on an appeal under section 168”.

Modification of section 197 (Court Procedure Rules).

25. Section 197 has effect as if-

- (a) in subsection (2), for paragraphs (a) and (b) there were substituted “the exercise of the rights of appeal conferred by section 168”;
- (b) in subsection (3)(a) and (b), for “the processing of personal data” there were substituted “the provision of trust services”.

Interpretation.

26. In this Schedule-

“the eIDAS requirements” means the requirements of Chapter III of the eIDAS Regulation;

“the EITSET Regulations” means these Regulations;

“withdrawal notice” has the meaning given in section 159A of the Data Protection Act 2004 (as inserted in that Act by this Schedule).”.

Freedom of Access to Information on the Environment Regulations 2005.

6.(1) The Freedom of Access to Information on the Environment Regulations 2005 are amended as follows.

(2) In regulation 2(2) for “the Data Protection Act 2004” substitute “the Gibraltar GDPR”.

(3) In regulation 13(2)(ii) for “section 16 of that Act” substitute “the data subjects right to object under the Gibraltar GDPR”.

Immigration (Passenger Data) Rules 2014.

7. In the Immigration (Passenger Data) Rules 2014, in rule 6 for “the Data Protection Act 2004, and the information referred to in section 10.(2)(d) of that Act shall be regarded as necessary for the purposes of that section” substitute “the Gibraltar GDPR”.

Immigration (Passenger Name Record) Rules 2018.

8. In the Immigration (Passenger Name Record) Rules 2018, at rule 2(1), specifically in the definition of “supervisory authority” delete “section 21 of”.

PART 3

Modification

References to the GDPR.

9.(1) Legislation described in subparagraph (2) has effect on and after exit day as if it were modified in accordance with subparagraphs (3) and (4) (but see subparagraph (5)).

(2) That legislation is-

- (a) subsidiary legislation made on or before exit day;
- (b) primary legislation passed or made on or before exit day.

(3) The following have effect as references to the Gibraltar GDPR-

- (a) references to the GDPR as defined in section 2(1) of the 2004 Act or as defined for the purposes of Parts V to VII of the 2004 Act;
- (b) other references to Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation).

(4) References described in subparagraph (3) which are references to the GDPR or the Regulation read with Chapter 2 of Part II of the 2004 Act have effect as references to the Gibraltar GDPR read with Part II of that Act.

(5) Subparagraphs (1) to (4) have effect unless the context otherwise requires and, in particular, do not affect references to the Regulation mentioned in subparagraph (3)(b) as it has effect in EU law.

(6) Paragraph 2 of Schedule 18 to the 2004 Act (inserted by these Regulations) has effect in relation to references to the Gibraltar GDPR arising as a result of this paragraph as it has effect in relation of other references to the Gibraltar GDPR.

(7) In this paragraph-

“references” includes any references, however expressed;

“subsidiary legislation” has the meaning given in the Interpretation and General Clauses Act.

PART 4

Supplementary

Interpretation of references to enactments.

10. Nothing in Parts 2 and 3 of this Schedule is to be read as implying anything about whether references to an enactment or statutory provision (whether in Acts or instruments amended by those Parts of this Schedule or elsewhere) include the Gibraltar GDPR or other retained direct EU legislation.

Dated 25th October, 2019.

A J ISOLA,
Minister with responsibility for data protection.

EXPLANATORY MEMORANDUM

These Regulations make amendments to legislation in relation to the regulation of the processing of personal data.

These Regulations are made in exercise of the powers in sections 11(1) and 15(1) of, and paragraph 1 of Schedule 3 to, the European Union (Withdrawal) Act 2019 (“the EUWA 2019”), in order to address failures of retained EU law to operate effectively and other deficiencies (in particular under section 11(2)(a), (b), (d) and (g)) arising from the withdrawal of Gibraltar from the European Union (“EU”).

These Regulations also exercise powers in section 184 of the Data Protection Act 2004 (“the DPA 2004”) to make provision consequential to that Act.

Regulations 1 to 3 cover title, commencement, and interpretation.

Regulation 4 introduces Schedule 1, which amends Regulation (EU) 2016/679 of the European Parliament and of the Council (“the GDPR”) as it forms part of Gibraltar law by virtue of section 6 of the EUWA 2019.

Regulation 5 introduces Schedule 2, which amends the DPA 2004.

Among other things, changes made by Schedules 1 and 2 have the effect of merging two preexisting regimes for the regulation of the processing of personal data – namely that established by the GDPR as supplemented by Chapter 2 of Part II of the DPA 2004 as originally enacted, and that established in Chapter 3 of Part II of the DPA 2004 as originally enacted (“the applied GDPR”). The applied GDPR extended GDPR standards to certain processing out of scope of EU law and the GDPR.

Regulation 6 makes provision concerning interpretation in relation to processing that prior to exit day was subject to the applied GDPR.

Regulation 7 introduces Schedule 3, which makes amendments to other legislation. Part 1 of Schedule 3 revokes certain EU data protection law that forms part of Gibraltar law by virtue of section 6 of the EUWA 2019. Part 2 of Schedule 3 makes amendments to other legislation consequential to the amendments made in Schedules 1 and 2. Part 3 of Schedule 3 makes general provision for references to the GDPR (that are not otherwise amended by Part 2) to have effect as references to the Gibraltar GDPR on and after exit day. Part 4 of Schedule 3 makes supplementary provision in respect of Parts 2 and 3.

Regulation 8 makes amendments to the Communications (Personal Data and Privacy) Regulations 2006, in light of provision made by the GDPR relating to the meaning of “consent”.