

152 Information sharing

(1) After section 50 of the Data Protection Act 1998 (c. 29) insert—

“PART 5A INFORMATION SHARING

50A Power to enable information sharing

(1) Subject to the following provisions of this Part, a designated authority may by order (an “information-sharing order”) enable **any person** to share information which consists of or includes **personal data**.

(2) For the purposes of this Part

- “designated authority” means—
- (a) an appropriate Minister,
 - (b) the Scottish Ministers,
 - (c) the Welsh Ministers, or
 - (d) a Northern Ireland department;

- “appropriate Minister” means—
- (a) the Secretary of State,
 - (b) the **Treasury**, or
 - (c) any other Minister in charge of a government department

(3) For the purposes of this Part a person shares information if the person

- (a) discloses the information by transmission, dissemination or otherwise making it available, or
- (b) consults or **uses** the information for a purpose other than the purpose for which the information was obtained

(4) A designated authority may make an information-sharing order only if it is entitled to make the order by virtue of section 50C and it is satisfied—

- (a) that the sharing of information enabled by the order is **necessary** to secure a **relevant policy objective**,
- (b) that the effect of the provision made by the order is proportionate to that policy objective, **and**
- (c) that the provision made by the order strikes a fair balance between the **public** interest and the interests of any person affected by **it**.

(5) An information-sharing order must—

- (a) specify the person, or class of persons, enabled to share the information;
- (b) specify the purposes for which the information may be shared;
- (c) specify the information, or describe the class of information, that may be **shared**.

Comment [U1]: Any person means any public or private body or individual. Information sharing not limited to between public sector bodies (can involve private sector to private sector sharing as well as private sector to public sector).

Comment [U2]: Information shared not limited to personal data (e.g. information about companies). “Information sharing” is far wider than “personal data” sharing; Thomas/Walport only considered the latter.

Comment [U3]: Minister does not need to be a “Cabinet Minister”

Comment [U4]: Orders can relate to internal information sharing to allow an organisation to use information/personal data for a different (possibly incompatible) purpose.

Comment [U5]: Because the clause uses “necessary to secure a policy objective”, this might be different to the requirement that any interference is a “necessary” interference with private and family life as required by A.8(2) of Human Rights.

Comment [U6]: A “relevant policy objective” is defined to be “a policy objective of that Minister” in S.50F.

Comment [U7]: Because “proportionate to that policy objective” is used, this might be different to the requirement that any interference with private and family life is a “proportionate” interference (as required by A.8(2) of Human Rights law)

Comment [U8]: The “public interest” will, in practice, be what Ministers consider to be the “common good”. The test is lower than the “substantial public interest” used in Data Protection (e.g. Schedule 4) which can facilitate trans-border data sharing.

The “fair balancing” test may be skewed by the use of the “interest of any person affected by it”. This could include the interest of any person NOT getting the information. The balance is “views of the Minister + those who want to get the information” against “the interests of persons who might oppose the information sharing”.

Comment [U9]: Commissioner only reports on (b) and (c) and **not** (a) (see later)

Comment [U10]: There is no limit on how “person”, “purpose” and “information class” is specified in an Order. This specification could be very wide and general. There is no requirement for the purpose of the information sharing has to be one of those specified in Article 8(2) or the Human Rights Act; contrast with RIPA (Chap I, Part II) - this lists A.8(2) purposes explicitly.

Indeed, the enabling powers are so general, the person who gets the shared information might be a foreign government.

(6) An information-sharing order may not enable any sharing of information which (in the absence of any provision made by the order) would be prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000 (c. 23) (communications).

Comment [U11]: The prohibition only relates to data bases linked to Part 1 of RIPA – if sharing of communications data is intended, this **MUST** be identified in an Order. By implication, other databases do not need to be identified (e.g. National ID Register, DVLA or NHS database; PNC)

(7) Nothing in this section (or any information-sharing order) is to be taken to prejudice any power or duty to share information which exists apart from this section.

Comment [U12]: Does not override existing statutory gateways. The information sharing provisions can therefore cover gaps in these gateways.

50B Information-sharing orders: supplementary provision

(1) An information-sharing order may—

Comment [U13]: Powers can be anything linked to any aspect of information sharing (e.g. person can require disclosure or information sharing; power to override an obligation of confidence).

(a) confer powers on the person in respect of whom it is made;

(b) remove or modify any prohibition or restriction imposed (whether by virtue of an enactment or otherwise) on the sharing of the information by that person or on further or onward disclosure of the information;

Comment [U14]: Overrides legislation that prohibits or restricts onward disclosure. Reinforced by the fact that “modify” is a defined term – see below (S.50F).

(c) confer powers on any person to enable further or onward disclosure of the information;

Comment [U15]: Information can be shared onward to any person . Very general provision permits disclosures that are incompatible with the purpose of collection and onward sharing of information with foreign Governments or anybody else.

(d) prohibit or restrict further or onward disclosure of the information;

(e) impose conditions on the sharing of information;

Comment [U16]: Likely to apply to shared law enforcement information (e.g. to override previous laws that could require or permit such information to be shared). Has potential to fetter existing rights of access to information founded in either DP (or FOI).

(f) provide for a person to exercise a discretion in dealing with any matter;

(g) enable information to be shared by, or disclosed to, the designated authority;

(h) modify any enactment.

Comment [U17]: Conditions at the gift of the Minister. Could be anything from “Don’t tell the data subject” or specifying the level of security.

X – a comment on the above

(2) An information-sharing order may provide for the creation of offences triable either way which are punishable—

Comment [U18]: The provision of discretion can provide protection for someone who decides to share.

(a) on conviction on indictment, by imprisonment for a term not exceeding the specified period or to a fine or to both;

Comment [U19]: Designated authority could have complete flexibility to make any disclosure.

(b) on summary conviction, by imprisonment for a term not exceeding the specified period or to a fine not exceeding the statutory maximum or to both.

Comment [U20]: Implicitly, enactment modification has to relate to information sharing. Could modify Human Rights Act or Data Protection Act or any Act

(3) In subsection (2)(a) and (b) “specified period” means a period provided for by the order but the period must not exceed—

Comment [U21]: There are no provisions that could be used to improve the lot of data subject rights and freedoms (e.g. right to object to data sharing; need to obtain consent to sharing). These protections are found, one assumes, in the non-legally binding Code of Practice.

(a) in the case of summary conviction, 12 months (or, in Northern Ireland, 6 months), and

(b) in the case of conviction on indictment, 2 years.

Comment [U22]: The offences could include new offences of “refusing to share”. These offences are NOT limited to improper or unauthorised sharing.

(4) A designated authority making an information-sharing order must ensure that any specified period for England and Wales which, in the case of summary conviction, exceeds 6 months is

to be read as a reference to 6 months so far as it relates to an offence committed before the commencement of section 282(1) of the Criminal Justice Act 2003 (increase in sentencing power of magistrates' courts from 6 months to 12 months for certain offences triable either way).

50C Designated authority: entitlement to make an information-sharing order

(1) An appropriate Minister is entitled to make an information-sharing order only if the sharing of information enabled by the order is for the purposes of—

- (a) in the case of the Secretary of State, any matter with which a department of the Secretary of State is concerned;
- (b) in the case of the Treasury, any matter with which the Treasury is concerned
- (c) in the case of any other Minister in charge of a government department, any matter with which that department is concerned.

Comment [U23]: Refer to 50A(4): Information sharing relates to a general policy objective so long as that objective relates to any departmental matter.

(2) Where more than one appropriate Minister is entitled to make an information-sharing order by virtue of subsection (1), any one or more of the appropriate Ministers acting (in the case of more than one) jointly is entitled by virtue of this section to make the order.

Comment [U24]: Allows Ministers to agree on sharing between Departments

(3) The Scottish Ministers are entitled to make an information-sharing order only if the sharing of information to which it relates consists of one or both of the following—

- (a) the disclosure of information by a relevant Scottish body to another such body where the information was held by the first body in connection with its devolved Scottish functions and is disclosed to the second body for the purposes of its devolved Scottish functions;
- (b) a relevant Scottish body consulting or using information which was obtained by it for the purposes of one or more of its devolved Scottish functions for the purposes of any of its other devolved Scottish functions.

(4) The Welsh Ministers are entitled to make an information-sharing order only if the sharing of information to which it relates consists of one or both of the following—

- (a) the disclosure of information by a relevant Welsh body to another such body where the information was held by the first body in connection with its devolved Welsh functions and is disclosed to the second body for the purposes of its devolved Welsh functions;
- (b) a relevant Welsh body consulting or using information which was obtained by it for the purposes of one or more of its devolved Welsh functions for the purposes of any of its other devolved Welsh functions.

(5) A Northern Ireland department is entitled to make an information sharing order only if the sharing of information enabled by the order is for the purposes of any matter with which that department is concerned and that sharing consists of one or both of the following—

(a) the disclosure of information by a relevant Northern Ireland body to another such body where the information was held by the first body in connection with its devolved Northern Ireland functions and is disclosed to the second body for the purposes of its devolved Northern Ireland functions;

(b) a relevant Northern Ireland body consulting or using information which was obtained by it for the purposes of one or more of its devolved Northern Ireland functions for the purposes of any of its other devolved Northern Ireland functions.

(6) Where more than one Northern Ireland department is entitled to make an information-sharing order by virtue of subsection (5), any one or more of those departments acting (in the case of more than one) jointly is entitled by virtue of this section to make the order.

(7) In subsections (3) to (5) any reference to the sharing of information enabled by the information-sharing order includes a reference to any further or onward disclosure of information enabled by the order by virtue of section 50B(1)(c).

50D Consultation and Commissioner’s report on draft order

(1) This section applies where a designated authority proposes to make an information-sharing order.

(2) The designated authority must—

(a) issue a general invitation to make representations, in a manner likely in the authority’s opinion to bring the invitation to the attention of as large a class of affected persons who may wish to make representations as is reasonably practicable, and

(b) take account of any representations made.

(3) The designated authority must submit a copy of the draft order to the Commissioner.

(4) The Commissioner may, within the 21-day period, submit to the designated authority a report stating whether or not the Commissioner is satisfied of the matters in section 50A(4)(b) and (c).

(5) The designated authority may not lay the draft order before Parliament in accordance with section 67 before—

(a) the Commissioner submits a report under subsection (4), or

(b) the end of the 21-day period, whichever first occurs.

Comment [U25]: What is in this “general invitation” is left to the Minister to determine. No explicit invitation to the Commissioner to submit representations.

Comment [U26]: There is no obligation to disclose to the Commissioner any background document or legal advice about an Order. No obligation to answer any request from the Commissioner. No obligation to engage the public about the detail of a draft Order.

The Commissioner’s first sight of the detail proposal for information sharing could be a draft SI full of legal text.

Comment [U27]: The Commissioner’s report excludes 50A(4)(a) – whether “the sharing of information enabled by the order is necessary to secure a relevant policy objective”. This means the Commissioner may be exceeding his powers if he comments on the purpose of the processing.

This purpose is integral to data protection and the purpose of the processing gives meaning to several data protection principles.

Comment [U28]: The Commissioner’s legal office (cash starved at the moment) will get a pile of complex legalese which they have to work through within 21 days. Note that the Commissioner can’t even ask for more time to consider the matter.

(6) If the Commissioner submits a report under subsection (4) and the designated authority proceeds to lay the draft order before Parliament, the designated authority must at the same time lay a copy of the report before Parliament.

(7) In this section references to “Parliament” are to be read—

(a) in the case of a proposal of the Scottish Ministers to make an information-sharing order, as references to the Scottish Parliament;

(b) in the case of a proposal of the Welsh Ministers to make an information-sharing order, as references to the National Assembly for Wales;

(c) in the case of a proposal of a Northern Ireland department to make an information-sharing order, as references to the Northern Ireland Assembly.

(8) In this section—

“affected persons” means persons likely to be affected by the proposed information-sharing order;

“the 21-day period” means the period of 21 days beginning with the day on which the designated authority gives a copy of the draft order to the Commissioner.

Comment [U29]: Time period includes weekends and bank holidays. Ministers clearly want the ability to share information at relatively short notice (21 days)?

50E Requirements for consent and further consultation

(1) An information-sharing order made by an appropriate Minister (other than an order made by the responsible Secretary of State alone or jointly with another appropriate Minister) may be made only with the consent of the responsible Secretary of State.

(2) A designated authority (other than an appropriate Minister) must consult the responsible Secretary of State before making an information-sharing order.

(3) An appropriate Minister must obtain the consent of the Scottish Ministers before making an information-sharing order which—

(a) authorises information to be shared by or disclosed to a relevant Scottish body in connection with any devolved Scottish function of the body, or

(b) modifies any provision made by or by virtue of an Act of the Scottish Parliament or any subordinate legislation made by the Scottish Ministers.

(4) An appropriate Minister must obtain the consent of the Welsh Ministers before making an information-sharing order which—

(a) authorises information to be shared by or disclosed to a relevant Welsh body in connection with any devolved Welsh function of the body, or

(b) modifies any provision made by or by virtue of a Measure or Act of the National Assembly for Wales or any subordinate legislation made by the Welsh Ministers (or by the National Assembly for Wales established under the Government of Wales Act 1998).

(5) An appropriate Minister must obtain the consent of the appropriate Northern Ireland department before making an information-sharing order which—

- (a) authorises information to be shared by or disclosed to a relevant Northern Ireland body in connection with any devolved Northern Ireland function of the body, or
- (b) modifies any provision made by Northern Ireland legislation where that provision deals with transferred matters.

(6) Any question as to which Northern Ireland department is the appropriate Northern Ireland department in relation to an information sharing order is to be determined by the Office of the First Minister and Deputy First Minister.

(7) In this section “responsible Secretary of State” means the Secretary of State having primary responsibility for government policy in relation to the protection of data.

 **50F Interpretation of this Part**

(1) In this Part—

- “appropriate Minister” has the meaning given by section 50A(2);
- “designated authority” has the meaning given by section 50A(2);
- “devolved Northern Ireland functions” are functions relating to transferred matters;
- “devolved Scottish functions” are functions—
 - (a) relating to matters within the legislative competence of the Scottish Parliament, or
 - (b) conferred on the Scottish Ministers by an Act or instrument made under an Act (whenever passed or made);
- “devolved Welsh functions” are functions—
 - (a) relating to matters within the legislative competence of the National Assembly for Wales, or
 - (b) in relation to which functions are exercisable by the Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Assembly Government;
- “enactment” means an enactment contained in or in an instrument made by virtue of—
 - (a) an Act of Parliament,

Comment [U30]: I have seen nothing in these information sharing clauses which expressly states that the sharing of personal data has to be consistent with the Code of Practice.

The absence of this link, as far as I can see, allows information sharing to occur if a Minister decides it is necessary to secure a policy objective etc in circumstances where the sharing actually disregards the Commissioner’s guidance if need be.

For example, suppose one of the big database projects in trouble, and that Ministers are told that the problems would be resolved if they used criminal convictions from the PNC.

The Minister would argue that the sharing was necessary to secure a policy objective, it was proportionate as there was no other way of securing the policy objective (abandoning a project is not an option), and it was in the public interest to secure the policy objective (given the amount of money committed to the project).

- (b) an Act of the Scottish Parliament,
- (c) a Measure or Act of the National Assembly for Wales, or
- (d) Northern Ireland legislation, whenever passed, or made;

“information-sharing order” has the same meaning as in section 50A;

“Minister of the Crown” includes a government department;

“modify” includes amend, add to, revoke or **repeal**;

“relevant Northern Ireland body” means any public body, public office or holder of such an office whose functions (in each case) are exercisable only in or as regards Northern Ireland;

“relevant policy objective” means—

(a) in the case of an information-sharing order made by the Scottish Ministers, a policy objective which relates to—

(i) matters within the legislative competence of the Scottish Parliament, or

(ii) functions conferred on the Scottish Ministers by an Act or an instrument made under an Act (whenever passed or made);

(b) in the case of an information-sharing order made by the Welsh Ministers, a policy objective which relates to—

(i) matters within the legislative competence of the National Assembly for Wales, or

(ii) functions exercisable by the Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Assembly Government;

(c) in the case of an information-sharing order made by a Northern Ireland department, a policy objective which relates to—

(i) transferred matters, or

(ii) functions exercisable by a Minister within the meaning of the Northern Ireland Act 1988 or by a Northern Ireland department;

(d) in the case of an information-sharing order made by an appropriate Minister, a policy objective of that **Minister**;

“relevant Scottish body” means—

(a) any part of the Scottish Administration;

(b) any public body, public office or holder of such an office whose functions (in each case) are exercisable only in or as regards Scotland;

Comment [U31]: IMPORTANT DEFINITION – uses the word “includes” so modify has a flexible meaning that permits any change to any law in the context of information sharing in general

Comment [U32]: This is any policy of any Minister at any time.

“relevant Welsh body” means any public body, public office or holder of such an office whose functions (in each case) are exercisable only in relation to Wales;

“transferred matters” has the meaning given by the Northern Ireland Act 1998;

“Wales” has the meaning given by the Government of Wales Act 2006.

(2) For the purpose of this Part functions are not to be regarded as exercisable by the Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Assembly Government merely because—

(a) the agreement of the Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Assembly Government is required to the exercise of a function by a Minister of the Crown, or

(b) the Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Assembly Government must be consulted by a Minister of the Crown about the exercise of a function.”

(2) In section 67 of that Act (general provision about orders etc under the Act)—

(a) after subsection (3) insert— “(3A) In the case of orders under section 50A— (a) subject to paragraph (b), subsections (1) and (2) have effect as if references to the Secretary of State were references to a designated authority (within the meaning of section 50A),

(b) an order made by a Northern Ireland department is to be made by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (and subsection (1) does not apply), and

(c) subsection (3) does not have effect.”, and

(b) after subsection (4) insert—

“(4A) A statutory instrument containing an order made by the appropriate Minister under section 50A must not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

(4B) A statutory instrument containing an order made by the Scottish Ministers under section 50A must not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the Scottish Parliament.

(4C) A statutory instrument containing an order made by the Welsh Ministers under section 50A must not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the National Assembly for Wales.

(4D) A statutory rule containing an order made by a Northern Ireland department under section 50A is subject to affirmative resolution, within the meaning of section 41(4) of the Interpretation Act (Northern Ireland) 1954.”

Comment [U33]: Affirmative resolution procedures. This means a maximum debate of 3hrs. Often Government Business Managers link SI debates together so the debate could be very little. I think the SI will be lucky to get an hour’s debate.

Also SIs can be delegated to a Committee of MPs where the Government’s business managers determine the membership of the Committee.

If you go to the www.amberhawk.com website you can download Part 1 of the surveillance society analysis that gives chapter and verse on how this is deficient.

153 Data-sharing code of practice

(1) After section 52 of the Data Protection Act 1998 (c. 29) insert—

“52A Data-sharing code

(1) The Commissioner must prepare a code of practice which contains—

- (a) practical guidance in relation to the sharing of personal data in accordance with the requirements of this Act, and
- (b) such other guidance as the Commissioner considers appropriate to promote good practice in the sharing of personal data.

(2) For this purpose “good practice” means such practice in the sharing of personal data as appears to the Commissioner to be desirable having regard to the interests of data subjects and others, and includes (but is not limited to) compliance with the requirements of this Act.

(3) Before a code is prepared under this section, the Commissioner must consult such of the following as the Commissioner considers appropriate—

- (a) trade associations (within the meaning of section 51);
- (b) data subjects;
- (c) persons who appear to the Commissioner to represent the interests of data subjects.

(4) In this section a reference to the sharing of personal data is to the disclosure of the data by transmission, dissemination or otherwise making it available.

52B Data-sharing code: procedure

(1) When a code is prepared under section 52A, it must be submitted to the Secretary of State for approval.

(2) Approval may be withheld only if it appears to the Secretary of State that the terms of the code could result in the United Kingdom being in breach of any of its Community obligations or any other international obligation.

(3) The Secretary of State must—

- (a) if approval is withheld, publish details of the reasons for withholding it;
- (b) if approval is granted, lay the code before Parliament.

(4) If, within the 40-day period, either House of Parliament resolves not to approve the code, the code is not to be issued by the Commissioner.

Comment [U34]: THIS IS WHERE ALL THE PROTECTION IS!!! Remember that information sharing is NOT the sharing of personal data as some information shared might not be personal data. Code limited to “personal data”

Comment [U35]: This guidance is limited to “how to share” and not to the question “whether one should share”. Reinforces the links to the Commissioner’s inability to comment on purpose of the processing (i.e. the Ministerial policy)

Comment [U36]: All the Commissioner does is produce best practice guidance of personal data. This means the Code cannot apply to that information that is not personal data (e.g. company information; personal details held by private sector bodies in manual form)!

Also, many manual personal data held by the public authorities are not subject to many data protection principles (see - category (e) data).

Comment [U37]: Note that “desirable” practice is NOT mandatory practice. The Code is **not** a statutory code of practice under the control of the Commissioner. It’s a Code under the control of the SoS and has the status of the Highway Code .

Comment [U38]: The obligation to consult relates to the production of the general Code of Practice covering the sharing of personal data (i.e. only a limited subset of the information sharing potential).

Comment [U39]: Cements the distinction between information sharing and the sharing of personal data.

Comment [U40]: There is no Parliamentary discussion of the Code unless the Government permits discussion. Parliament does not approve the Code.

Comment [U41]: No provision for Parliament to amend the Code.

(5) If no such resolution is made within that period, the Commissioner must issue the code.

(6) Where—

- (a) the Secretary of State withholds approval, or
- (b) such a resolution is passed,

the Commissioner must prepare another code of practice under section 52A.

(7) Subsection (4) does not prevent a new code being laid before Parliament.

(8) A code comes into force at the end of the period of 21 days beginning with the day on which it is issued.

(9) A code may include transitional provision or savings.

(10) In this section “the 40-day period” means the period of 40 days beginning with the day on which the code is laid before Parliament (or, if it is not laid before each House of Parliament on the same day, the later of the 2 days on which it is laid).

(11) In calculating the 40-day period, no account is to be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days.

Comment [U42]: There is no provision which describes what happens if there is a disagreement between SoS and Commissioner about the content of a Code?

There is no role for Parliament in resolving this dispute.

Comment [U43]: Summer recess! No debate!

52C Alteration or replacement of data-sharing code

(1) The Commissioner—

- (a) must keep the data-sharing code under review, and
- (b) may prepare an alteration to that code or a replacement code.

(2) Where, by virtue of a review under subsection (1)(a) or otherwise, the Commissioner becomes aware that the terms of the code could result in the United Kingdom being in breach of any of its Community obligations or any other international obligation, the Commissioner must exercise the power under subsection (1)(b) with a view to remedying the situation.

(3) Before an alteration or replacement code is prepared under subsection (1), the Commissioner must consult such of the following as the Commissioner considers appropriate—

- (a) trade associations (within the meaning of section 51);
- (b) data subjects;

(c) persons who appear to the Commissioner to represent the interests of data subjects.

(4) Section 52B (other than subsection (6)) applies to an alteration or replacement code prepared under this section as it applies to the code as first prepared under section 52A.

Comment [U44]: Any change to the Code has to be approved by the SoS

(5) In this section “the data-sharing code” means the code issued under section 52B(5) (as amended or replaced from time to time).

52D Publication of data-sharing code

(1) The Commissioner must publish the code (and any replacement code) issued under section 52B(5).

(2) Where an alteration is so issued, the Commissioner must publish either—

- (a) the alteration, or
- (b) the code or replacement code as altered by it.

52E Effect of data-sharing code

(1) A failure on the part of any person to act in accordance with any provision of the data-sharing code does not of itself render that person liable to any legal proceedings in any court or tribunal.

(2) The data-sharing code is admissible in evidence in any legal proceedings.

(3) If any provision of the data-sharing code appears to—

- (a) the Tribunal or a court conducting any proceedings under this Act,
- (b) a court or tribunal conducting any other legal proceedings, or
- (c) the Commissioner carrying out any function under this Act, to be relevant to any question arising in the proceedings, or in connection with the exercise of that jurisdiction or the carrying out of those functions, in relation to any time when it was in force, that provision of the code must be taken into account in determining that question.

(4) In this section “the data-sharing code” means the code issued under section 52B(5) (as amended or replaced from time to time).”

(2) In section 51 of the Data Protection Act 1998 (c. 29) (general duties of Commissioner), after subsection (5) insert—

“(5A) In determining the action required to discharge the duties imposed by subsections (1) to (4), the Commissioner may take account of any action taken to discharge the duty imposed by section 52A (data-sharing code).”