

FREEDOM OF INFORMATION (SCOTLAND) ACT 2002

EXPLANATORY NOTES

THE ACT – SECTION BY SECTION

Part 1 – Access to information held by Scottish public authorities

Section 3 – Scottish public authorities

22. This section defines the term “Scottish public authority” and specifies that certain information is outwith the scope of the Act.
23. “Scottish public authority” means any body (or other person or office-holder) which is listed in schedule 1, designated by order under section 5(1), or which is a publicly-owned company as defined by section 6.
24. Section 3(2) defines when, for the purposes of the Act, information is considered to be “held” by an authority. This does not extend to information held on behalf of another person, but does extend to information held by a person other than the authority on behalf of the authority.
25. Section 3(2)(a)(ii) provides that information is not caught by the Act if the authority is holding it in confidence, having received it from a UK Government Department. This mirrors the Scotland Act 1998 (Modifications of Schedules 4 and 5) Order 1999. In terms of the 1998 Act, such information does not come under the devolved competence.
26. Unless subject to section 22, or designated as open information for the purposes of section 3(4), information is not regarded as held by the Keeper of the Records of Scotland if it has been transferred by a public authority within the meaning of the Freedom of Information Act 2000. The effect of designating information as open information for the purposes of section 3(4) is to bring that information within the scope of the Act where this would not otherwise have been the case.