

**EXPLANATORY MEMORANDUM TO
THE FREEDOM OF INFORMATION (TIME FOR COMPLIANCE WITH
REQUEST) REGULATIONS 2009**

2009 No.

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by command of Her Majesty. This memorandum contains information for the Joint Committee of Statutory Instruments.

2. Purpose of the instrument

2.1 Public authorities usually have 20 working days within which to reply to requests made under the Freedom of Information Act 2000 (“the Act”). In certain circumstances, these regulations extend the time period within which the managers of controlled, voluntary, and grant-maintained integrated schools and pupil referral units in Northern Ireland must respond to a request made under the Act.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 Section 10(1) of the Act requires public authorities to respond to a written request for information promptly, and in any event, not later than 20 working days from date of receipt. The governing bodies of schools in England and Wales and the managers of schools in Northern Ireland are public authorities under the Act. Section 10(4) of the Act allows the Secretary of State to make regulations to extend this 20 day time period up to 60 working days from the date of receipt of the request, although requests should still be answered as promptly as possible. Section 10(5) allows such regulations to prescribe a different number of days in relation to different cases.

4.2 One set of regulations has already been made under section 10(4) of the Act: the Freedom of Information (Time for Compliance with Request) Regulations 2004 (SI 2004/3364 – the “2004 Regulations”). Amongst other things, the 2004 Regulations make provision in respect of governing bodies of certain schools in England and Wales. These 2009 regulations are being made to make similar provision in respect of the managers of certain educational establishments in Northern Ireland, which were not included in the 2004 Regulations. Scotland has its own FOI regime.

5. Territorial Extent and Application

5.1 This instrument extends to the United Kingdom.

6. European Convention on Human Rights

6.1 Michael Wills, the Minister of State for Justice, has made the following statement regarding Human Rights:

“In my view the provisions of The Freedom of Information (Time for Compliance with Request) Regulations 2009 are compatible with the Convention rights.”

7. Policy background

- 7.1 The Act provides for the right to make a request for information to a public authority. It entitles a person making such a request: (a) to be informed in writing by the public authority whether it holds information, and (b) if that is the case, to have that information communicated to them (section 1(1)).
- 7.2 Section 10(1) of the Act requires a public authority to comply with a request promptly, and in any event, not later than 20 working days following the date of receipt. Where the authority gives the applicant a fees notice, the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority, are to be disregarded for the purpose of calculating the twentieth working day (section 10(2)).
- 7.3 The 2004 Regulations came into force on 1 January 2005 in relation to governing bodies of maintained schools and maintained nursery schools in England and Wales, and schools maintained by the Secretary of State for Defence. The effect of the 2004 Regulations is to provide these persons with up to 60 working days to deal with FOI requests. The 2004 Regulations were made because these educational establishments close for periods well in excess of 20 working days (school summer holidays for example), making it impractical for them to deal with FOI requests within the normal 20 working days.
- 7.4 The 2004 Regulations did not make provision in respect of schools in Northern Ireland. In 2006, representation was made by the Northern Ireland Education and Library Boards to the Ministry of Justice (then Department for Constitutional Affairs) highlighting the apparent anomaly. These 2009 Regulations would give the managers of schools and pupil referral units in Northern Ireland (which are public authorities under the Act) a maximum of 60 working days to deal with an FOI request. This is to take account of the fact that otherwise the normal 20 day time period will continue to apply, even though there might be no session in the school or unit in question for some weeks. If the managers of the school or unit can deal with the request more quickly than 60 working days, then regulation 2(2) of these 2009 regulations requires that they must.

8. Consultation outcome

- 8.1 Prior to the making of these regulations, the Department for Education in Northern Ireland carried out a limited consultation with educational stakeholders, namely some employers of controlled schools and internal school branches within the Department of Education in Northern Ireland. In all instances, where views were expressed, there was a positive response to the proposed regulations which would provide Northern Ireland schools and units with additional time to comply with freedom of information requests, where needed.

9. Guidance

- 9.1 If the 2009 regulations are made, the Northern Ireland Education and Library Boards, in conjunction with the Department for Education in Northern Ireland, will agree the methodology for notifying and issuing any necessary guidance to all affected schools and units by June 2009.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 The impact on the public sector would be minimal. The 2009 regulations would assist the managers of schools and units which receive an FOI request shortly before or during periods when there is no session at the school or unit (e.g. school holidays). They would give them more time than the normal usual time limit of 20 working days to respond to the request.
- 10.3 No impact on the private or voluntary sectors is foreseen and so an Impact Assessment has not been prepared for this instrument.

11. Regulating small business

- 11.1 The legislation does not apply to small business.

12. Monitoring & review

- 12.1 The Information Commissioner's Office is the independent authority set up to ensure public authorities comply with their statutory obligations under the Act. If the Commissioner receives a significant increase in the number of complaints from requesters regarding the performance of Northern Ireland schools as a consequence of this regulation, the Ministry of Justice will review the situation to ensure that the Act continues to work effectively.
- 12.2 When notifying schools in Northern Ireland the Department of Education in Northern Ireland will invite Heads to provide feedback on the impact of the change in regulation.

13. Contact

Stuart Watts or Rebecca Woodward of the FOI Policy and Strategy Unit, Ministry of Justice can answer any queries relating to the instrument. Tel 020 3334 3911 or 020 3334 3920

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