

FREEDOM OF INFORMATION ACT 2000

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part IV: Enforcement

Section 53: Exception from duty to comply with decision notice or enforcement notice

180. *Section 53* enables ‘the accountable person’ (as defined in subsection (8)) to give a certificate to the Commissioner in certain cases where a decision notice or enforcement notice has been issued. The effect of the certificate is that the public authority need not comply with the notice to which the certificate relates. A certificate may be issued only where the information concerned is exempt information (and thus, under section 2, a public interest test is relevant). A certificate must be given to the Commissioner no later than the twentieth working day following the effective date (subsection (2)). The accountable person may only issue such a certificate if he has on reasonable grounds formed the opinion that, in respect of the request to which the certificate relates, the authority has not failed to comply with its obligations. In practice this will mean that the accountable person has formed a view different from that of the Commissioner on the question of the public interest.
181. *Subsection (1)(a)* provides that this section applies in relation to decision or enforcement notices served on Government departments, the National Assembly for Wales and any other public authority designated for this purpose by the Secretary of State. Any order to designate any such body is subject to the affirmative resolution procedure under section 82(2). *Subsection (5)* sets out the bodies or person the Secretary of State must consult before making such an order. *Subsection (1)(b)* provides that the section only applies to decision notices or enforcement notices relating to a failure to comply with the duty to confirm or deny that the authority holds the information requested, or the duty to disclose the information, where the only relevant exemptions are confirmed by any provision of Part II which does not confer absolute exemption.
182. *Subsection (3)* provides that the accountable person must lay a copy of the certificate before each House of Parliament, or the appropriate devolved Assembly, as soon as is practicable after issuing the certificate.
183. *Subsection (4)* defines the "effective date" in relation to a decision notice or enforcement notice, and it is the date from which the 20 working day period is counted.
184. *Subsection (6)* provides that where the certificate relates to a decision notice the accountable person must also inform the applicant (who was the complainant for the purposes of section 50) of his reasons for the decision, at the same time as giving the certificate to the Commissioner, or as soon after that time as is reasonably practicable.
185. *Subsection (7)* qualifies the previous subsection in that the accountable person is not obliged to provide information to the applicant, if, or to the extent that, it would involve the disclosure of exempt information.

*These notes refer to the Freedom of Information Act 2000
(c.36) which received Royal Assent on 30th November 2000*

186. *Subsection (8)* defines “accountable person”.